

Council meeting 6 & 7 June 2006

PUBLIC BUSINESS

Regulations for National Pharmacy Boards

Purpose

This paper suggests draft regulations for the establishment and maintenance of the Society's National Pharmacy Boards.

Strategic objections domains

- Influencing the development of the pharmacist to play a more inclusive part in healthcare, public health and social care
- An organisation that consistently performs as a regulator, professional representative leader and publisher

Key Objective

Implement National Pharmacy Boards in England, Scotland and Wales through initial elections in 2006, and establish effective working relationships based on the protocol agreed by the Council in 2005

Recommendation

The Council is asked to consider and agree to gazetting of regulations to establish and maintain National Pharmacy Boards. Its attention is drawn in particular to the question at 4.2.

1. General

- 1.1 These draft regulations have been prepared in accordance with the National Pharmacy Boards protocol, the decisions on composition agreed by the Council, and legal advice received. They take into account comments received from Privy Council advisers, the Welsh and Scottish Executives and the reference group for the establishment of the English Pharmacy Board (which latter now consists of the members of the Practice Committee).
- 1.2 It is intended that the draft regulations will entirely supersede the Society's current byelaw sections *XXIII: Scottish Department* and *XXIV: Welsh Executive*, as the Scottish and Welsh Executives will cease to operate as soon as the members of the new National Pharmacy Boards take office.
- 1.3 The general goal has been to keep to a minimum the amount of detail set out in regulations, and, so far as is appropriate, to capture the rest (for example, principles for ways of working) in protocols or guidelines, while avoiding improper sub-delegation.
- 1.4 Any exceptions to this rule have been made in the interests of risk avoidance. The draft regulations acknowledge that the Council remains the governing body of the RPSGB and that the National Pharmacy Boards will not be independent entities – not only in the legal sense but also in terms of their responsibility to the Society. The

Council is the over-arching policy-making body of the Society and is accountable for the discharge of all the Society's functions. The Boards are therefore accountable to the Council and must act within Council policy except in certain circumstances set out in the protocol as agreed by the Council from time to time (even in these instances, the Council retains the right to amend or revoke any policy agreed by a Board).

- 1.5 The Council has recognised that it should not interfere with the working of the National Pharmacy Boards without good reason. It will nevertheless be able to, and should, do so if something is proposed that does not accord with good governance; or that could damage the Society's reputation; or its ability to achieve its strategic aims. In addition, it has been thought appropriate to include certain provisions in regulations where there are to be common elements between the three Boards or where frequent review of a decision would not be helpful (e.g. aspects of election procedures and quora).

2. **Composition**

- 2.1 This section of the regulations does not refer to "ex officio" attendees, as only the elected members have special provisions applying to them and there does not need to be any express permission in the regulations for the attendance of a non-voting attendee member.

2.2 ***Pharmacy technician representation on the English Pharmacy Board***

Privy Council advisers commented that they were unclear why there was no provision to allow a pharmacy technician to be appointed or co-opted to the English Pharmacy Board. The Welsh Pharmacy Board will include an elected pharmacy technician member. The Scottish Pharmacy Board will have capacity to co-opt up to three persons and could therefore co-opt a pharmacy technician. The office has replied explaining that technicians will be regulated by the Society but that, unlike pharmacists, they will not be members, and that 6(3) of the draft regulations makes it clear that the Boards will not undertake any regulatory functions. The Council is asked to approve or alter statements aiming to ensure effective lay and pharmacy technician involvement in the work of the National Pharmacy Boards in paper 06.06/C/61

3. **Elections**

3.1 ***Level of detail***

The draft regulations make provision for an election scheme but the detailed scheme itself need not appear in the regulations. This will mean less material to clear with the Privy Council and provide flexibility to amend the system from time to time without the need for further external approval. While the three Charter powers (7(1), 9(3) and 9(4)) under which these regulations operate directly are exercisable by regulation, this does not necessarily mean that all aspects of the boards must be covered in the regulations themselves. For example, one would not expect to see the National Pharmacy Boards' standing orders set out (or even referenced) in the regulations. The Council's powers to give or approve standing orders, directions and protocols derive from articles 3(21), 8 and 9 of the Charter.

3.2 ***Approval of election scheme***

The draft regulations state (2(5)) that the National Pharmacy Board election scheme is to be approved by the Council. This is necessary because the Boards will not exist

until after the first elections are held (and we are not appointing interim/shadow boards). The Boards will be able to propose changes to the scheme for the future.

3.3 **Appointed members**

Where a member is referred to as appointed by the Council (2(1)(b)), this would not preclude the Council from conducting an election to decide who its appointee is.

3.4 **Terminology**

PC advisers felt that the term “first past the post” was too colloquial for regulations, and would prefer that we refer to a “simple majority” system. The office questioned this, as it could also be interpreted as meaning that a candidate would need to get a majority of total votes cast, but PC advisers still preferred their wording. The draft has been amended accordingly; the Society can ensure that any ambiguity is avoided in guidance.

4. **Casual Vacancies**

4.1 The Council has decided that a person filling a casual vacancy on the Council shall serve for the remaining period of office of the person whose departure gave rise to the vacancy. This principle has been reflected in the regulations for the National Pharmacy Boards. However, the Welsh Executive would prefer that casual vacancies on the Welsh Pharmacy Board should be filled only until the next election.

4.2 In the main, it has been felt desirable to keep provisions in the regulations common across the Boards as much as possible, in the interests of consistency and simplicity. Furthermore, it might be difficult for someone who had been brought in to fill a casual vacancy, which might happen at any point in the year, to “come up to speed” and make a worthwhile contribution to the work of the Board before the next election (particularly if elections are held every year). However, if the Council agrees, the draft could be amended as follows:

3(2) A person filling a casual vacancy shall serve ~~only~~ for the remaining period of office of the person whose departure gave rise to the vacancy **and a person filling a vacancy on the Welsh Pharmacy Board shall serve only until places are next filled on that Board by election.**

Does the Council wish to amend the draft so that casual vacancies on the Welsh Pharmacy Board shall be filled only until the next election?

4.3 The Welsh Executive further suggested that, should a casual vacancy occur, the candidate who received the most votes while not being elected (ie, the top unsuccessful candidate) in any election should fill that vacancy. It is not necessary to cover the method by which a casual vacancy should be filled in regulations. However, the Council has not favoured this method of filling a casual vacancy in the past, when reviewing its own processes, as it could be considered anti-democratic to select someone who had been rejected by voters. Moreover, legal advice suggests that stipulating such a method could be unworkable, as, for example, provisions would have to be made for what would happen if that person had died in the meantime or no longer wished to serve on a Board. Another reason why the Council

has not favoured this method in the past is that a casual vacancy can provide an opportunity to bring in someone who has a valuable contribution to make but might find it difficult to become an elected member eg. someone from a small sector of practice.

5. Co-options

- 5.1 The Council agreed that the Welsh Pharmacy Board should have the option to co-opt up to three members to ensure appropriate geographical & sectoral representation. At its meeting in September 2005, the Welsh Executive agreed that such co-opted persons should be required to serve only until the next election then stand for election. They would then be eligible again for subsequent co-option. The draft regulations have accordingly been worded at 5(1) to allow the Boards to co-opt for such time as they may determine up to a maximum of three years.
- 5.2 The Welsh Executive wished for further guidance on co-options and casual vacancies. This is not for regulations but guidance can be included in the forthcoming National Pharmacy Boards Governance Handbook.

6. Length of service

- 6.1 Privy Council advisers have confirmed that they require a limit on the number of consecutive terms a member may serve for an English pharmacy board, as with other regulated and chartered bodies. However, while they would prefer a three-term limit (of three years each) they would accept as an absolute maximum a four-term limit of three years each. Paragraph 5(2) of the draft provides therefore that English Pharmacy Board members may serve up to four consecutive terms, while members of the Welsh and Scottish Pharmacy Boards may serve up to three consecutive terms.
- 6.2 Limits on terms of office of the Chairmen and Vice-Chairmen of the National Pharmacy Boards need not be specified in the regulations; they can be covered in the National Pharmacy Boards Governance Handbook.

7. Powers and functions of the Boards

- 7.1 Section 6 "*Powers and functions*" of the draft regulations does not repeat the remit of the National Pharmacy Boards as agreed by the Council and set out in the protocols. In a legal instrument, only powers and closely described functions need to, or should, be given expression. It should not contain aspirational objects, which could give rise to wide interpretation problems. The National Pharmacy Boards will in any event be able to carry out the functions in their remit without express powers.

8. Proceedings of the Boards

- 8.1 The Welsh Executive sought clarification on whether National Pharmacy Board meetings would be 'in public', and whether persons other than Board members might attend. This is a matter to be covered in the National Pharmacy Boards Governance Handbook, rather than in regulations. For clarification, the public sessions of meetings would, as for the Council, be held in public, and, as with Council, the Chairmen would have the power to exclude the public for confidential items.

9. Subcommittees

- 9.1 Neither the regulations nor the protocol make mention of subcommittees. This will not preclude informal entities such as task & finish groups but any such group would be improper if it purported to act for the relevant Board, and the Society may not purport to give such groups any of the Boards' powers.

10. Miscellaneous

- 10.1 The regulations do not need to contain provisions for a secretary (these are mentioned in the Standing Orders); nor need they mention AGMs or detail reports of meetings etc. to Council. All these things can be covered in the forthcoming National Pharmacy Boards Governance Handbook.

11. Risk Implications

- 11.1 Much of the risk associated with devolution comes from failing to meet the constitutional challenges presented by it. These were identified in the Devolution Review Group's report.
- 11.2 The forward plan submitted to Council in December 2005 assumed that all decisions on the composition of the boards would have been taken by December 2005. This did not happen, and so the timetable for bringing the boards into being has already slipped by two months. A revised forward plan is attached at Appendix B.

12. Resource Implications

- 12.1 The suggestions in this paper contain no new resource implications that have not been included in previous papers to Council about the establishment of the Boards.
- 12.2 Some £140,000 has been included in the 2006 budget against direct costs associated with implementation of the Review Group's recommendations (2005, £125,000).
- 12.3 The national meetings all felt that the remit and membership of all RPSGB committees would need to be reviewed in the light of the establishment of the national Pharmacy Boards. Until this is done, it is not clear what additional cost the English Pharmacy Board -- which will have 15 members, together with the President and Vice-President of Council as *ex-officio* attendees -- will incur over and above that incurred by the current structures.
- 12.4 The Scottish Executive currently has 18 members, together with, *ex officio*, the President, Vice-President and other members of the Council who live in Scotland. The Scottish Pharmacy Board as currently agreed will have a membership of 12, with the ability to co-opt up to 3 others. The President and Vice-President of Council, with the pharmacist elected in the Scottish national constituency and a lay member of Council resident in Scotland, will be included *ex officio*.
- 12.5 The Welsh Executive currently has 12 members, together with the President, Vice-President and other members of the Council resident in Wales *ex officio*. The Welsh Pharmacy Board as currently agreed will have a membership of 12, with the ability to co-opt up to 3 others. The President or Vice-President of the Council, the pharmacist

elected in the Welsh national constituency and a lay member of Council resident in Wales would be included *ex officio*.

- 12.6 It is anticipated that the Welsh and Scottish Boards will meet with much the same frequency as do the Executives now. It is therefore envisaged that, while the Welsh and Scottish Boards will probably need some additional dedicated staff resource based in Cardiff and Edinburgh to deliver a changed remit, the Welsh and Scottish Board structures themselves might be thought of as replacing the existing Executives, at little or no additional cost. The budgeted funding will provide for this recruitment and a secretariat function in London for the English Pharmacy Board. The full year cost (in 2007) is likely to be in the order of £170,000.

13. Recommendation

The Council is asked to consider and agree to gazetting of regulations to establish and maintain National Pharmacy Boards. Its attention is drawn in particular to the question at 4.2.

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Appendix A**ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN****DRAFT REGULATIONS for National Pharmacy Boards****National Pharmacy Boards**

1. (1) There shall be three national pharmacy boards whose full names shall be the English Pharmacy Board of the Royal Pharmaceutical Society of Great Britain, the Scottish Pharmacy Board of the Royal Pharmaceutical Society of Great Britain, and the Welsh Pharmacy Board of the Royal Pharmaceutical Society of Great Britain, in these regulations referred to respectively as "the English Pharmacy Board", "the Scottish Pharmacy Board" and the "Welsh Pharmacy Board", and referred to collectively as "the Boards".

(2) The Welsh Pharmacy Board shall also be known as Bwrdd Fferylliaeth Gymreig Cymdeithas Fferyllol Frenhinol Prydain Fawr, which name shall be interchangeable with the English name of the Board and equally valid in all respects.

Composition of the Boards

2. (1) The English Pharmacy Board shall consist of

- (a) 12 pharmacists registered in Part 1 of the Society's Register of Pharmacists ("practising registered pharmacists") elected in accordance with a scheme made by the Council ("elected members"),
- (b) one pharmacist member of the Council and one lay member of the Council appointed by it, and
- (c) the member of the Council for the time being elected to the Council in the constituency of England, Isle of Man and Channel Islands.

(2) The Scottish Pharmacy Board shall consist of

- (a) 12 practising registered pharmacists elected in accordance with a scheme made by the Council ("elected members"), and
- (b) up to three persons co-opted by the Scottish Pharmacy Board.

(3) The Welsh Pharmacy Board shall consist of

- (a) 11 practising registered pharmacists and one pharmacy technician registered in Part 1 of the Society's Register of Pharmacy Technicians (a "practising registered pharmacy technician") elected in accordance with a scheme made by the Council ("elected members"), and
- (b) up to three persons co-opted by the Welsh Pharmacy Board.

- (4) An elected member shall automatically cease to be such on ceasing to be a practising registered pharmacist or, as the case may be, a practising registered pharmacy technician.
- (5) Election schemes made by the Council under these regulations shall provide
- (a) that a pharmacist shall not be eligible to vote unless his address entered in the Society's Register of Pharmacists is in the country in respect of which his vote is to be cast,
 - (b) that the election shall be conducted on a simple majority system.
- (6) In the election of a pharmacy technician to the Welsh Pharmacy Board, a pharmacy technician shall not be eligible to vote unless his address entered in the Society's Register of Pharmacy Technicians is in Wales.

Casual Vacancies

3. (1) A casual vacancy amongst the elected members may be filled by the relevant Board.
- (2) A person filling a casual vacancy shall serve only for the remaining period of office of the person whose departure gave rise to the vacancy.
- (3) Where the period to be served under paragraph (2) is less than a year the vacancy need not be filled.

Chairmen and Vice-Chairmen of Boards

4. The Boards shall each elect from amongst their own number a Chairman and a Vice-Chairman, who shall each serve for one year and shall be eligible for re-election.

Length of service

5. (1) An elected member of a Board shall serve for a term of three years. A person may be co-opted under regulation 2(2)(b) or 2(3)(b) for a term of up to three years. A member may resign at any time by writing to the secretary to the Board in question.
- (2) In the case of the English Pharmacy Board a member may serve a maximum of four consecutive terms, following which he may not serve again until three years have elapsed. In the cases of the Scottish Pharmacy Board and the Welsh Pharmacy Board, a member may serve a maximum of three consecutive terms, following which he may not serve again until three years have elapsed.
- (3) Time served in filling a casual vacancy shall constitute a term for the purpose of calculating the number of consecutive terms of service under this regulation.

Powers and functions of the Boards

6. (1) Subject
- (a) to the Charter of the Society,

(b) to any directions of the Council, and

(c) in the case of the Scottish Pharmacy Board and the Welsh Pharmacy Board, to the constraints of the scope from time to time of devolved responsibilities for health and related matters of legislatures in the countries concerned,

the Boards shall have power and capacity to advise government and its agencies, health service bodies and other organisations in the country concerned in respect of professional matters, to promote the science and practice of pharmacy and its contribution to health, and to support pharmacists in their professional roles.

(2) The Boards shall have such other powers and functions, including delegated powers and functions of the Council, as may be specified by the Council. The Boards shall be accountable in accordance with such protocols or other forms of instruction as may be issued by the Council.

(3) The Council shall not delegate any statutory function to a Board, and may revoke all or any powers or functions delegated to a Board.

(4) The Boards shall be serviced by the Society and shall have no power to incur expenditure, employ staff or enter into contracts.

Proceedings of the Boards

7. (1) The quorum for meetings of the English Pharmacy Board shall be 7.

(2) The quorum for meetings of the Scottish Pharmacy Board and the Welsh Pharmacy Board shall be 6.

(3) The Boards shall each meet at least three times a year, and meetings may be attended by persons other than Board members.

(4) The Boards shall keep minutes of their proceedings. Subject to the Charter and these regulations and to any directions given by, or standing orders made, or protocols approved, by the Council, each Board shall determine its own procedure.

Conduct and indemnity of members of Boards

8. (1) Members of the Boards shall comply with the Code of Conduct applicable to members of the Council and shall be treated, as nearly as possible, as members of the Council for the purposes of liability to sanctions under the Code.

(2) A member of a Board acting in good faith in the course of his or her duties in respect of the Board shall be indemnified by the Society in the same manner and to the same extent as a member of the Council.

Fees and expenses

9. Members of the Boards shall be entitled to be reimbursed their reasonable expenditure on travel, accommodation and subsistence incurred in connection with the meetings or business of the Boards and may be paid fees for attending meetings of the Boards (or of groups of members of the Boards) at rates approved by the Council.

Appendix B

National Pharmacy Boards Forward Plan

	Council	Office
June 2006	Council approves Regulations for gazetting.	
10 June 2006	<i>Gazetting of Regulations</i>	
Aug 2006	Council to authorise President to approve Regulations for submission to the Privy Council on completion of gazetting period (because, on Wed August 2, only 53 days will have elapsed since the start of gazetting)	Regulations (with comments, if received) to Privy Council for approval. If necessary and if Privy Council agrees, call for nominations to boards in advance of confirmation of regulations.
Aug-Sept 2006	<i>Privy Council confirm Regulations</i>	
Oct-Nov 2006	National Board elections/appointments	
December 2006	National Boards take office	