

Briefing for Pharmacy Technicians in Scotland on the implications of the decision to make the Pharmacists & Pharmacy Technicians Order under powers reserved to the Westminster Parliament

This factsheet summarises the background to the development of the draft Pharmacist and Pharmacy Technicians Order 2006, which will replace the Pharmacy Act 1954, and gives an overview of the implications for pharmacy technicians in Scotland. It also outlines reasons why pharmacy technicians in Scotland who will not be obliged to register with the Society under the Order might wish to do so.

Background

The professional regulation of pharmacists is reserved to the Westminster Parliament under the Scotland Act 1998. The regulation of new professions, coming into statutory regulation since 1998, is devolved for Scotland, to the Scottish Parliament. Hence, the Scottish Parliament has power to legislate on the professional regulation of pharmacy technicians in Scotland but not on the professional regulation of pharmacists.

The Section 60 Order under the Health Act 1999 has been prepared by the Department of Health (DH) in consultation with the health departments in Scotland and Wales. Recently, discussions between the DH and the Scottish Executive Health Department focussed on the arrangements for the subordinate legislation (rules) to be made under the Order. Unfortunately, it was not possible to agree a joint approach to the approval of the Society's rules, which will relate to the regulation of pharmacists (a reserved matter) and to pharmacy technicians (a devolved matter for Scotland). As a result, DH Ministers decided that the Order will be made solely under the powers of the Westminster Parliament. This means it will cover regulation of pharmacists across Great Britain and regulation of pharmacy technicians across England & Wales only. The reasons underlying this position are therefore constitutional and not pharmacy-related.

Impact of changes to the Order

The decision to make the Order under reserved powers avoids further delay. It has, however, created some confusion. This factsheet attempts to answer some of the questions that pharmacy technicians in Scotland have been asking. The information is based on the current situation and does not take account of any future plans for the regulation of pharmacy technicians in Scotland.

Will pharmacy technicians in Scotland have to register with the RPSGB?

Pharmacy technicians in England and Wales will be required to register with the Society, in the same way as pharmacists in GB are required to register. Pharmacy technicians in Scotland will be able to register with the Society but will not be required to do so, unless they are practising in England or Wales, or intend to do so.

Will RPSGB approve or accredit education and training for prospective pharmacy technicians in Scotland?

The Society will not be obliged to approve Scottish qualifications for pharmacy technicians. However, it may choose to approve Scottish qualifications, to allow someone onto the register of pharmacy technicians.

What happens to pharmacy technicians in Scotland who are on the Society's voluntary register? Pharmacy technicians in Scotland on the voluntary register will transfer automatically to the statutory register under the transitional arrangements in the Order. Of course, these people may have joined the voluntary register in the expectation that the Society would be regulating pharmacy technicians in Scotland. The Chairman of the Scottish Executive and the Secretary & Registrar have therefore written to all those on the voluntary register for pharmacy technicians who have addresses in Scotland, explaining that the Order will be made under reserved powers only. The letter also provided reassurance that pharmacy technicians in Scotland will still be able to register with the Society and will be more than welcome to do so.

Will 'registered pharmacy technician' and 'pharmacy technician' be protected titles in Scotland? The titles 'registered pharmacy technician' and 'pharmacy technician' will become protected titles in England and Wales only and anyone using one of these titles in England and Wales who is not on the register of pharmacy technicians will commit an offence. These titles will not be protected in Scotland, so they may be used in Scotland by someone who is not on the Society's register. Although this will not be an offence under the Pharmacists and Pharmacy Technicians Order, the person could be committing other fraud-related offences under Scottish law.

Similarly, it would be an offence in England and Wales for someone to have or exhibit a false certificate of registration as a pharmacy technician. It would also be an offence to use (or lend or allow to be used) a genuine certificate of registration as a pharmacy technician for fraudulent purposes. It would also be an offence for someone to leave the register of pharmacy technicians and not return their certificate to the Registrar, or to fail to return a duplicate certificate. Again, these new offences under the Order would not apply in Scotland, although the person could be committing other fraud-related offences under Scottish law.

Will pharmacy technicians in Scotland need indemnity arrangements?

Pharmacy technicians in England and Wales on the practising part of the Society's register will be obliged to have an adequate and appropriate indemnity arrangement in force, covering liabilities that may be incurred in carrying out work as a pharmacy technician. In Scotland, this requirement will apply only to those pharmacy technicians who choose to register with the Society.

Can pharmacy technicians in Scotland practise while on the non-practising register?

In England and Wales it will be an offence to practise as a pharmacy technician while registered in Part 2 (non-practising) of the register of pharmacy technicians. However, someone registered as a non-practising pharmacy technician could practise in Scotland without committing an offence (even if the person concerned had a registered address in England or Wales). In such cases, the Society's only remedy would be through its fitness to practise machinery.

How will RPSGB deal with fitness to practise allegations?

Pharmacy technicians outside England and Wales who choose to join the Society's register would be subject to the Society's fitness to practise procedures if an allegation was received concerning them. This is similar to the position of registered pharmacists with addresses outside GB. Effectively, such a registrant would be obeying the Society's rules on the basis of his/her private law relationship with the Society, not on the basis of those rules being the law of their country. However, some of the Society's powers in relation to fitness to practise matters concerning pharmacy technicians will not apply in Scotland.

The Order will give the Society powers to require someone to disclose information or documents relevant to the discharge of its fitness to practise functions. These powers cover Great Britain if a fitness to practise allegation relates to a pharmacist but only apply in England and Wales if an allegation relates to a pharmacy technician. Similarly, the Order will give the Society powers to disclose or publish information relating to a pharmacy technician's fitness to practise, where it considers it to be in the public interest to do so, but these powers will apply only in England and Wales. So information about the fitness to practise of a pharmacy technician in Scotland could only be disclosed and published in England & Wales.

Finally, the Registrar will have a duty to notify Ministers and the registrant's employer/s of an investigation into their fitness to practise. For pharmacists, the Registrar would inform employers in Great Britain but, for pharmacy technicians the Registrar would only inform employers in England and Wales. The Registrar will, however, be under a duty to notify Scottish Ministers of such allegations and it will be for them, subject to the requirements of Scottish law, to decide whether or not to inform employers in Scotland.

Are there any other issues?

Rules relating to the Society's registers, Specialisations, and Certificates of Registration will only extend to England and Wales for pharmacy technicians. The Society can still apply these rules to pharmacy technicians who are outside the jurisdiction, for example in Scotland, but the statutory rights and remedies under those rules can only be used by someone in England & Wales. So, for example, if the Society refused to register a specialisation of a pharmacy technician living in Scotland and s/he wanted to challenge that decision, s/he would have to do so through the English courts and on the basis of a breach of their rights under English and Welsh law, not any right under Scottish law.

Why pharmacy technicians in Scotland may want to register with the Society

Pharmacy technicians who practise only in Scotland will not be obliged to register, unlike those in England and Wales. There are nevertheless good reasons for pharmacy technicians in Scotland to maintain their registration, or to register for the first time. Pharmacy technicians are playing a growing part in delivering health services and are taking increasing responsibility for patient care. Being on the Society's register will mean being part of a health profession, recognised in statute. It will mean being able to practise as a pharmacy technician, and to use that title, anywhere in Great Britain. And it means being able to demonstrate to employers and others that they have met the requirements for registration, have agreed to comply with the Society's Code of Ethics for pharmacy technicians and are in good standing with the Society.

Pharmacy technicians registered with the Society also have the benefit of receiving *The Pharmaceutical Journal*, and may use the Society's legal and ethical advisory services. They have access to the Society's facilities for recording CPD. Being on the register also means being able to elect pharmacy technicians to the Society's Council.

Transitional arrangements relating to the register of pharmacy technicians will remain in place for two years after the statutory register comes into being, to enable technicians with a range of approved qualifications, other than S/NVQ level 3, who have been practising as pharmacy technicians to join the register provided that they do so within those two years. Pharmacy technicians in Scotland who do not have the S/NVQ level 3 qualification may want to register with the Society while the transitional arrangements apply.

For further information on the Section 60 Order and registration of pharmacy technicians please see the RPSGB website www.rpsgb.org

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