

PROPOSED AMENDMENTS TO THE TERMS OF SERVICE FOR CHEMISTS AS SET OUT IN SCHEDULE 2 TO THE PHARMACEUTICAL SERVICES REGULATIONS (NORTHERN IRELAND) 1997

Article 2 ‘Non-Diminution’: Screening Tool

This screening tool is intended to help policy and legislation makers decide whether Article 2 might be engaged by the policy area or legislation they are working on. The document allows for the examination in detail of each of the criteria set out in the ‘Non- Diminution’ Checklist. Policy and legislation makers may find it helpful to record their consideration of each of the criteria in the boxes provided.

Policy Title and Aims

What are the aims of the policy and how did the need for it emerge?

The Department of Health (DoH) has initiated a public consultation to seek views on potential amendments to the terms of service for chemists as set out in Schedule 2 to the Pharmaceutical Services Regulations (Northern Ireland) 1997. These proposed amendments to the terms of service for chemists would, if implemented, aim to enhance existing clinical governance arrangements and enable pharmacy contractors (or their staff) the ability to refuse to provide pharmaceutical services to a person who is violent, threatens violence, or commits, or threatens to commit a criminal offence.

It is intended that the proposed amendments in this consultation document in respect of the establishment of a legislative clinical governance framework, would bring community pharmacy in line with the clinical governance arrangements already in place for other healthcare professionals and for community pharmacy contractors in other parts of the UK. Compliance with these proposed changes would further demonstrate and embed quality and accountability in every interaction with patients and members of the public.

In addition, the outline proposals for potential legislative amendments to the terms of service for chemists in respect of being able to refuse to provide pharmaceutical service to a violent or potentially violent patient, would ensure that a community pharmacy contractor would not be in breach of their Terms of Service if they (or their staff) refused to provide pharmaceutical services to a patient who is violent, threatens violence, or commits, or threatens to commit a criminal offence. This is in line with the policy position across the HSC, that assaults on health professionals are not acceptable.

Assessment

(i) Does the policy/law under consideration engage a right (or equality of opportunity protection) included in the relevant part of the Belfast/Good Friday 1998 Agreement?

The Rights, Safeguards and Equality of Opportunities in this Chapter of the Belfast/Good Friday Agreement can be found at Annex A.

At present, this can sometimes be a difficult question to answer, given the lack of clarity around the scope of Article 2. If you are in doubt, please obtain legal advice from DSO.

No. It is not envisaged that the consultation or the implementation of the proposals via legislative change would engage a right (or equality of opportunity protection) included in the relevant part of the Belfast/Good Friday 1998 Agreement.

(ii) Was the right given effect (in whole or in part) in Northern Ireland, on or before 31 December 2020?

This question relates to whether the Right, Safeguard or Equality of Opportunity (RSEO) in the BGFA has been given effect in NI law on or before 31 December 2020.

N/A. We are about to consult on proposals to amend the terms of service for chemists as set out in Schedule 2 to the Pharmaceutical Services Regulations (Northern Ireland) 1997 which may potentially lead to legislative change.

(iii) Was the Northern Ireland law that protects the right underpinned by EU law on 31 December 2020?

For example, was the domestic law originally made to implement EU law?

Alternatively, domestic law may pre-date the relevant EU law although it is now considered a measure which implements EU law. For example, FETO predates the Equal Treatment Framework Directive but is relied upon as implementing this Directive.

For the purposes of Article 2 of The Windsor Framework, EU law includes¹:

- *The foundational treaties of the EU: TEU and TFEU;*
- *The EU Charter of Fundamental Rights;*
- *The General Principles of EU law. These are principles that have been developed by the CJEU through its caselaw. For example, fundamental rights, proportionality, legal certainty, transparency and the precautionary principle;*
- *EU legislation, such as Directives, Regulations and Decisions; and*
- *International agreements to which the EU is party.*

¹ Article 2(a), Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020 (The Withdrawal Agreement)

(iv) Has that underpinning been removed, in whole or in part, following withdrawal from the EU?

N/A. We are about to consult on proposals to amend the terms of service for chemists as set out in Schedule 2 to the Pharmaceutical Services Regulations (Northern Ireland) 1997 which may potentially lead to legislative change.

Has the requirement to comply with or give effect to the underpinning EU law been removed?

N/A

(v) Would any proposed new policy or legislation result in a diminution in enjoyment of this right?

Will there be a reduction to, rollback of, or regression in the protection of rights in place on 31 December 2020?

Where new policy or legislation repeals, revokes, suspends, disapplies or deletes protections, such changes might point to a diminution of the right.

Whether there could be a 'diminution in enjoyment of this right' is something that needs to be considered on a case-by-case basis.

Please see Annex B for further information on this topic.

N/A

(vi) Would the diminution not have occurred had the UK remained in the EU?

An EU Member State must follow and implement all EU law and must disapply domestic law where that law is in conflict with EU law.

N/A