The Pharma Legal Handbook

United Kingdom

Regulatory, Pricing and Reimbursement Overview · Preclinical and Clinical Trial Requirements · Marketing, Manufacturing, Packaging and Labeling Advertising · Traditional Medicines and OTC Products · Product Liability · Patents and Trademarks · Regulatory Reforms

PHARMA BOARDROOM

United Kingdom

The Pharma Legal Handbook answers essential questions about this environment for pharmaceuticals in the United Kingdom. It is a must have for any company operating in the country or looking to enter the market.

Prepared in association with CLYDE & CO, a rapidly expanding global law firm, it should answer any questions linked to Regulation, Pricing, Clinical and Preclinical Trials, Marketing, Manufacturing, Trademarks and Patents.

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A FINGER ON THE PULSE OF HEALTHCARE

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01 REGULATORY, PRICING, AND REIMBURSEMENT OVERVIEW

1. What are the regulatory authorities with jurisdiction over drugs, biologicals, and medical devices in your country?

Although the United Kingdom (UK) is negotiating its withdrawal from the European Union (EU), as of now, the UK remains a member of the EU and so subject to all EU legislation, including that on medicines and medical devices. Running in parallel to, and closely aligned with the EU legislation and bodies, are the UK's national legislation and bodies. Both systems are described below. As the regulation of veterinary medicines is similar to that for human medicines, this Handbook will focus on human medicines only.

The EU legal framework is based on Regulation (EC) No. 726/2004 (as amended), which established the European Medicines Agency (EMA). The EMA has been operating for over 24 years and acts as the European regulatory authority with jurisdiction over drugs (human and veterinary), biologicals and medical devices across the EU. However, EU-wide marketing authorisations for medicines are actually granted by the European Commission, on the EMA's advice, rather than by the EMA itself. Within the EMA, the Committee for Medicinal Products for Human Use (CHMP) is responsible for the evaluation of medicines for human use under the centralised procedure (discussed in the answer to **Question 3**) as well as providing advice to companies developing new medicines and preparing scientific guidelines and regulatory guidance for applicants for marketing authorisations.

The UK's domestic regulatory authority is the Medicines and Healthcare Products Regulatory Agency (MHRA), which was established in 2003. It is a government agency and is responsible for regulating medicinal products (for human and veterinary use) and medical devices in the UK as well as blood and blood products and generally regulating the pharmaceutical market in the UK (e.g. through manufacturers and wholesalers licences, the regulation of clinical trials conducted in the UK and the investigation of breaches of licences and of harmful incidents with associated enforcement powers). There are two independent bodies of experts that advise the MHRA, the Commission on Human Medicines and the Committee on the Safety of Devices.

If and when the UK leaves the EU, the MHRA will become the sole authority for the UK.

2. What is the regulatory framework for the authorization, pricing, and reimbursement of drugs, biologicals, and medical devices?

Under the EU legal framework, healthcare can be split into two major groups: **(i)** pharmaceuticals (including drugs and biologicals); and **(ii)** medical devices. The legal requirements for the authorisation of pharmaceuticals and medical devices are very different, even though the overall aim of the regulatory regimes for both categories is to ensure that products are safe and effective for patient consumption or use.

(a) Authorisation

(i) Medicines

As said above, the main EU legislation that governs the licensing (and monitoring) of medicines is Regulation (EC) No. 726/2004 (as amended) and Directive 2001/83/EC. The latter is implemented in the UK through the Human Medicines Regulations 2012 (SI 2012/1916) (as amended) (HMR), which also consolidates much of the prior legislation relating to medicines including relevant parts of the Medicines Act 1968. The HMR therefore governs matters such as the authorisation, manufacturing, importation, distribution, supply and advertising of medicines as well as pharmacovigilance.

(ii) Medical Devices

Generally medical devices cannot be marketed in the UK (or in the EU) without a CE mark. However, the EU legislative framework for medical devices has recently been revamped through Regulation (EU) 2017/745 on Medical Devices (EU MDR) and Regulation 2017/746 on In Vitro Diagnostic Medical Devices (EU IVDR), both of which came into force on 25 May 2017. They are subject to 3- and 5-year transitional periods respectively, during which time devices can be placed on the market either under the existing legislation or under the Regulations. The existing legislation being replaced by these Regulations is, for medical devices, Council Directives 93/42/EEC (medical devices) and 90/385/EEC (active implantable medical devices), and, for in vitro devices, Directive 98/79/EC and Commission Decision 2010/227/EU (collectively the "Medical Devices Directives"). The Medical Devices Directives were mostly transposed into UK law through the Medical Devices Regulations 2002 (SI 2002/618, as amended) (UK MDR).

(b) Pricing and Reimbursement

(i) Medicines

While manufacturers can be said generally to have freedom of pricing, there are a number of tools used to ensure value for money and cost control for medicine pricing. Thus, for branded medicines supplied through the UK's National Health System (NHS), price is regulated by either the Voluntary Scheme for Branded Medicines Pricing And Access (the "Voluntary Scheme"), which applies for 5 years from 1 January 2019 replacing the prior 5-year voluntary schemes known collectively as the Pharmaceutical Price Regulation Scheme, or by what is known as the "Statutory Scheme", the current version of which came into effect on 1 April 2018. These pricing schemes are discussed further in the answer to **Question 12** and reimbursement in the answer to **Question 13**.

The above schemes do not apply to medicines that are supplied on private (i.e. non-NHS) prescriptions or that are otherwise supplied outside the NHS system (described in the answer to **Question 10**).

The price of unbranded generic drugs is set by the Drug Tariff. This is a monthly price list produced by the NHS of the drugs and devices that have been approved for reimbursement. The prices are set by the NHS

Prescription Services by a number of mechanisms, typically by reference to competing products.

The Health Service Medical Supplies (Costs) Act 2017 was introduced to give the government additional powers to control the price of drugs, particularly unbranded generic products, and so prevent manufacturers from de-branding in order to significantly increase prices.

(ii) Medical devices

A medical device manufacturer is generally free to set its own price for its product (subject to negotiation with the NHS) unless the device falls within one of the 4 categories that are covered by Part IX of the Drug Tariff. Part IX covers dressings, incontinence devices, stoma devices and chemical reagents. The "entry price" for Part IX devices will generally be set by reference to similar products, though the manufacturer can make representations as to why the price should be different and for annual price increases. The actual price paid by dispensers such as pharmacies, doctors etc. to the manufacturer (or wholesaler) can be negotiated but the Drug Tariff price, and the fact that a patient would need to pay privately for any device costing more than that, means that the Drug Tariff price will generally be followed.

3. What are the steps to obtaining authorization to develop, test, and market a product?

(a) Clinical Trials & Investigations

(i) Medicines

The authorisation of clinical trials for medicines is discussed in Chapter 2.

(ii) Medical devices

Medical devices are divided into Classes I, IIa, IIb and III on a risk-based system with the criteria for classification being set out in Annex IX of Council Directive 93/42/EEC. Class I are low risk, Classes IIa and IIb medium risk and Class III high risk. The higher the risk, the more rigorous the assessment required.

Thus Class I products may only require a clinical evaluation (as also set out in the Medical Devices Directives). The evaluation is aimed at demonstrating the safety and performance of the device when used as intended, without being unduly burdensome, and the results are set out in a report for use in support of the CE marking. Evaluations should, though, be repeated periodically throughout the life cycle of the device.

Other Class I devices and higher risk Classes require a clinical investigation as part of the process for obtaining a CE mark. The requirements for a clinical investigation are set out in the Medical Devices Directives and are to assess the safety and clinical performance of the device and whether it is suitable for the intended purpose and populations. A clinical investigation should be notified to the MHRA at least 60 days before it is due to start. The MHRA will assess the safety and performance of the device and the design of the proposed clinical investigation and at the end of its 60-day assessment period will notify the applicant whether the investigation can proceed or not.