2021

FRAMEWORK AGREEMENT ON THE SUPPLY AND PRICING OF GENERIC, BIOSIMILAR, AND HYBRID MEDICINES

13 DECEMBER 2021

FINAL

FRAMEWORK AGREEMENT ON THE SUPPLY AND PRICING OF GENERIC, BIOSIMILAR, AND HYBRID MEDICINES

INTRODUCTION

Medicines For Ireland (**MFI**), for and on behalf of the member companies of MFI, the Department of Health (**DoH**), the Department of Public Expenditure and Reform (**DPER**) and the Health Service Executive (**HSE**) (hereinafter, the "**Parties**") have agreed on the terms of this Framework Agreement on the supply and pricing of non-originator, generic, biosimilar, and hybrid medicines as set out below (the **Agreement**). This Agreement will come into effect on 1st December 2021, save where specified in the Agreement.

It is intended that patients and prescribers have access to a range of generic, biosimilar, and hybrid medicines reimbursed under the Schemes, used according to best practice, while also delivering better value for money for both the individual patient and the State.

In entering this agreement, the State aims to ensure reduced prices, improved access, and security of supply for generic, biosimilar, and hybrid medicines.

The State intends that sufficient administrative resources are in place to ensure timely processing of pricing and reimbursement applications for new products, subject to compliance with this pricing framework.

1. INTERPRETATION

1.1

Unless otherwise defined in this Agreement or unless the context otherwise requires, words and expressions defined in the Health (Pricing and Supply of Medical Goods) Act 2013 (as may be amended from time to time) ("**the 2013 Act**") shall have the same meanings in this Agreement.

1.2

In this Agreement the following expressions shall, unless the context otherwise requires, have the following meanings:

> **"Available for Supply"** means a Medicinal Product in respect of which a Marketing Authorisation has been issued by the HPRA or the European Commission and which is available for sale and supply in the State

"**Biologic Medicine(s)**" means Medicine(s) that are biological medicinal product(s) as defined in Annex I of Directive 2001/83/EEC in respect of which a Marketing Authorisation has been issued by the HPRA or the European Commission

"**Biosimilar Medicine(s)**" means biological medicinal product(s) that contain a version of the active substance of a Biologic Medicine, and which are similar to other Biologic Medicines in terms of quality characteristics, biological activity, safety, and efficacy, and in respect of which a Marketing Authorisation has been issued by the HPRA or the European Commission

"**Exchange Rate"** means the applicable currency exchange rates published by the Central Bank of Ireland on the date(s) of relevant assessment

"**Generic Medicine(s)**" means generic medicinal product(s) as defined in Article 10(2)(b) of EC Directive 2001/83/EC in respect of which a Marketing Authorisation has been issued by the HPRA or the European Commission

"**Hospital Medicine(s)**" means Medicines which are supplied to, or reimbursed by, the HSE or Relevant Agencies otherwise than for the purposes of the Relevant Schemes

"**HPRA**" means the Health Products Regulatory Authority

"**Hybrid Medicine(s)**" means a medicinal product which although similar to a reference medicinal product has been authorised in accordance with the hybrid abridged procedure under Article 10(3) of Directive 2001/83/EC in circumstances where:

- the strict definition of a generic medicinal product as defined in Article 10(2)(b) of EC Directive 2001/83/EC is not met;
- the bioavailability studies cannot be used to demonstrate bioequivalence; or
- there are changes in the active substance(s), therapeutic indications, strength, pharmaceutical form or route of administration compared to the reference medicinal product;

including, for the avoidance of doubt, where it has been authorised by the HPRA under the national procedure by reference to Article 10(3) of Directive 2001/83/EC in accordance with the Medicinal Products (Control of Placing on the Market) Regulations 2007 (as amended);

and for the avoidance of doubt, Hybrid Medicine does not include the original reference medicinal product relied upon in any such said hybrid abridged procedure

"Marketing Authorisation" means an authorisation to place a medicine on the market as issued by the HPRA or the European Commission to an "authorisation holder", as defined in section 2 of the 2013 Act

"**Medicine(s)"** means any patent-protected, off-patent, or non-patented Medicinal Products, excluding blood products, vaccines, and non-reimbursable

non-prescription products, without prejudice to clause 13.2, and in respect of which a Marketing Authorisation has been issued

"**Medicinal Product(s)"** means "medicinal products" as defined in Directive 2001/83/EC (as amended) as:

a) Any substance or combination of substances presented as having properties for treating or preventing disease in human beings; or

b) Any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting, or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis"

"**New Medicine(s)**" means any Medicine(s) with a Marketing Authorisation introduced in the State after the commencement of this Agreement, during the Term, in respect of which a Supplier submits an application to the HSE pursuant to section 18 of the 2013 Act requesting their addition to the Reimbursement List or in respect of which a Supplier makes an application to the HSE to have it/them priced as a Hospital Medicine

"**Price**" means the ex-factory price (otherwise known as the price-to-wholesaler) of a Medicine as determined in accordance with this Agreement, exclusive of Value Added Tax (VAT)

"**Relevant Agency(ies)**" means State-funded hospitals (including any hospital groups) providing hospital services, including hospitals providing services on behalf of the HSE pursuant to section 38 of the Health Act, 2004 and any other publicly-funded entities and State agencies in each case whose functions include the provision of Medicinal Products and any reference in this Agreement to a "supply to the HSE and Relevant Agencies" shall mean a supply of Medicines to the HSE and/or any of the Relevant Agencies otherwise than for the purposes of the Relevant Schemes

"**Relevant Schemes"** shall have the meaning attributed to that expression in the 2013 Act

"Reimbursement List" means the reimbursement list established under Part 4 of the 2013 Act

"**State**" means Ireland

"Supplier(s)" means the MFI member company(ies), including Manufacturers, importers, or their agents

"Term" means, subject as provided in Clause 3, the period referred to in Clause 3

1.3

Except to the extent that the context requires otherwise, any reference in this Agreement to: -

1.3.1 any statute shall include any order made or regulation issued thereunder, any statutory modification or re-enactment thereof from time to time in force, and, unless otherwise stated, any reference to a statute shall be a reference to a statute of Ireland

1.3.2 the singular shall include the plural and vice versa.

1.4

The headings to the clauses and sub-clauses of this Agreement are inserted for convenience of reference only and shall not form part of or affect the construction or interpretation of any provision of this Agreement.

1.5

In this Agreement references to Clauses and Schedules are references to Clauses hereof and Schedules hereto, references to sub-clauses or paragraphs are, unless otherwise stated, references to sub-clauses of the clause or paragraphs of the Schedule in which the reference is contained.

2. SCOPE OF AGREEMENT

2.1

This Agreement applies solely to such Medicines of Suppliers included on the Reimbursement List and/or supplied to, or reimbursed by, the HSE and/or any of the Relevant Agencies and, for the avoidance of doubt, includes New Medicines approved during the Term.

2.2

This Agreement has been entered into by MFI for and on behalf of and with the authority of the Suppliers.

2.3

The Parties enter this Agreement in good faith with the intention of implementing the within terms. However, it is hereby declared that in entering into this Agreement the Parties do not intend to create legal relations and/or legitimate expectations (or similar) and this Agreement shall not constitute a binding agreement and/or the creation of any legitimate expectation(s) (or similar) enforceable by or against any of the Parties hereto (including, for the avoidance of doubt, any Supplier).

3. TERM OF AGREEMENT

This Agreement shall commence on 1st December 2021 and shall continue in force until 30th November 2025, after which date all obligations under this Agreement shall cease unless continued by mutual agreement of the parties, given to each other in advance. The Parties agree that negotiations on any successor or replacement Agreement should begin at least 6 months before the expiry of the Term.

4. STATUTORY OBLIGATIONS AND EU COOPERATION

4.1

The Parties acknowledge that the terms of this Agreement will not supersede any of the Parties legal obligations including, without limitation, those arising under any statute or regulation or by the operation of law.

4.2

It is acknowledged by the Parties to this Agreement that the Suppliers and the HSE have respective statutory obligations, responsibilities, and powers, as the case may be, in respect of the pricing and reimbursement of Medicines pursuant to, among other legal provisions, the 2013 Act and nothing herein shall be deemed or construed as in any way fettering or limiting the exercise by the Suppliers and/or HSE of their respective rights thereunder.

4.3

For the avoidance of doubt and notwithstanding any other provision of the Agreement, the Parties agree that this Agreement constitutes an agreement within the meaning and for the purposes of section 21 (2) (g) of the 2013 Act.

4.4

This Agreement is entered into without prejudice to the Parties obligations and commitments under EU law including, without limitation, procurement obligations.

4.5

This Agreement will not prevent the State entering into arrangements with other EU Member States, including without limitation, to jointly procure medical countermeasures under EU Decision 1082/2013/EU.

4.6

Nothing in this Agreement shall prevent the State cooperating with other EU Member States and the European Commission.

5. GENERAL PRICING

Medicines normally reimbursable in the schemes at the date of commencement of this Agreement will, provided that they conform with this Agreement and the reimbursement criteria as defined under the Health Act 2013, pursuant to EC Directive 89/105/EC, remain reimbursable in the schemes for the duration of the Agreement.

5.1 No Price Increase

5.1.1 Save for such price increases as may be agreed by the HSE with a Supplier pursuant to Sub-Clauses 13.3 and/or 13.4, the Price of each Medicine will not be increased during the Term.

5.1.2 For the avoidance of doubt, any Medicinal Product which at any point during the Term no longer falls within the definition of Medicine shall, notwithstanding same, continue to be subject to Sub-Clause 5.1.1.

6. PROPOSED PRICING OF NEW MEDICINES

6.1 Scope

This Clause 6 applies to the proposed price submitted by a Supplier in any application to the HSE for the addition of a new medicine, including new presentations and applications of branded or other generics, biosimilars, and hybrids to the Reimbursement List or to have a new medicine priced as a hospital medicine.

For the avoidance of doubt, an application for the addition of a new medicine to the Reimbursement List shall be made in accordance with the relevant provisions of the 2013 Act.

6.2 Reimbursement listing

New generic, biosimilar, and hybrid medicines, including new presentations, indications, and branded or other generics, granted a marketing authorisation by the HPRA or European Commission will become reimbursable in the schemes, within 60 days of the date of the reimbursement application, subject to the requirements and procedures of this Agreement

6.3 Value and needs assessment

The HSE reserves the right to assess new and existing technologies (pharmaceuticals, diagnostics, and devices) or to determine the cost effectiveness of products.

Assessments will be conducted in accordance with the agreed Irish Health Technology Assessment Guidelines as set out by the Health Information and Quality Authority (HIQA) from time to time.

7. PRICING PROCEDURES FOR GENERIC MEDICINES

7.1 Scope

This Clause 7 shall apply to branded and other Generic Medicines. That is, excluding Biosimilar and Hybrid Medicines.

7.2 Maximum Supplier Proposed Price

7.2.1 The price that a Supplier shall submit to the HSE in respect of a new medicine for which an application is made for its addition to the Reimbursement List or to have it priced as a Hospital Medicine shall be no greater than 40% of the 1st of October 2021 price of the equivalent branded original medicines.

These are the maximum acceptable prices – manufacturers may supply at lower prices provided this is notified to the HSE so that it maintains an up-to-date reimbursement list.

7.2.2 Where a new medicine in respect of which application is made for its addition to the Reimbursement List or to be priced as a Hospital Medicine does not have an equivalent originator medicine available in the market, the Supplier shall propose a price which shall be considered by the HSE in accordance with the 2013 Act.

8. PRICING OF BIOSIMILAR MEDICINES

8.1 Scope

The provisions of this clause apply to Biosimilar Medicines. That is, excluding Generic and Hybrid medicines.

8.2 Maximum Supplier Proposed Price

8.2.1 On 1st of March 2022, the Price of each existing biosimilar medicine shall be reduced to 55% of the 31st of July 2016 price of the reference originator. The HSE shall notify the Supplier of this reduced price not less than 28 days before the 1st of March 2022.

8.2.2 The price that a Supplier shall submit to the HSE in respect of a new medicine for which an application is made for its addition to the Reimbursement List or to have it priced as a Hospital Medicine shall be no greater than 55% of the 1st of October 2021 price of the equivalent branded original medicines.

These are the maximum acceptable prices – manufacturers may supply at lower prices provided this is notified to the HSE so that it maintains an up-to-date reimbursement list.

8.2.3 Where a new medicine in respect of which application is made for its addition to the Reimbursement List or to be priced as a Hospital Medicine does not have an

equivalent originator medicine available in the market, the Supplier shall propose a price which shall be considered by the HSE in accordance with the 2013 Act.

9. PRICING PROCEDURES FOR HYBRID MEDICINES

9.1 Scope

This Clause 9 shall apply to Hybrid Medicines. That is, excluding Generic and Biosimilar Medicines.

9.2 Maximum Supplier Proposed Price

9.2.1 On 1st of March 2022, the Price of each existing Hybrid medicine shall be reduced to 50% of the original ex-factory price of the reference originator. The HSE shall notify the Supplier of this reduced price not less than 28 days before the 1st of March 2022.

9.2.2 The price that a Supplier shall submit to the HSE in respect of a new medicine for which an application is made for its addition to the Reimbursement List or to have it priced as a Hospital Medicine shall be no greater than 50% of the 1st of October 2021 price of the reference originator.

These are the maximum acceptable prices – manufacturer may supply at lower prices provided this is notified to the HSE so that it maintains an up-to-date reimbursement list.

9.2.3 Where a new medicine in respect of which application is made for its addition to the Reimbursement List or to be priced as a Hospital Medicine does not have an equivalent originator medicine available in the market, the Supplier shall propose a price which shall be considered by the HSE in accordance with the 2013 Act.

10. SUPPLY TO HSE AND RELEVANT AGENCIES

10.1

The supply of Medicines delivered to the HSE, and Relevant Agencies, shall be at the Price[1] where:

(i) an order with a minimum value of €634.57 (excluding VAT) is given to the nominated distributor of an individual Supplier, or
(ii) where the order is placed directly with the Supplier.

10.2 Special Supply Arrangements

10.2.1 The HSE (and relevant agencies) reserves the right at all times to procure by tender or to enter into special arrangements for supply to the HSE and Relevant Agencies with individual Suppliers, manufacturers, or agents, designed to secure more favourable terms than those referred to in Sub-Clause 10.1 above.

10.2.2 Where a manufacturer chooses to supply direct, delivery will be at the price to wholesaler.

10.2.3 Supply arrangements existing at the commencement of this Agreement between individual hospitals and manufacturers (or their agents) shall remain in place until such time as the HSE or the individual hospital (or hospital group) agrees a change with the relevant manufacturer (or their agents).

11. CONTINUITY OF SUPPLY

11.1 Scope

Continuity of supply is recognised by all Parties to this Agreement as crucially important to the effective operation of arrangements for the supply of Medicines to patients in the State. Equally, it is recognised that from time-to-time interruptions to supply may arise, which are outside the control of the Supplier.

11.2 Shortages, Discontinuations, and Transfers of Marketing Authorisation

(a) Foreseeable or Prolonged Stock Shortages

For the avoidance of doubt, a medicines shortage is when the supply of a medicinal product is inadequate to meet the needs of patients, as defined in the HPRA Medicines Shortages Framework[2].

(i) Suppliers who experience foreseeable or prolonged stock shortages, or the possibility of such shortages, must notify the HSE as soon as they become aware of the problem.

1 "**Price**" as defined in this Agreement means the ex-factory price (otherwise known as the price-to-wholesaler) of a Medicine as determined in accordance with this Agreement, exclusive of Value Added Tax.
2 https://www.hpra.ie/docs/default-source/default-document-library/medicine-shortages-framework.pdf?sfvrsn=0

(ii) The supplier shall endeavour to source, within the notice period, an alternative supply.

(b) Discontinuation of Medicines

In the interest of an uninterrupted supply of Medicines to patients, Suppliers who intend to discontinue supplying particular Medicines to the Irish market must provide the following notice to the HSE of their intention to do so:

(i) A notice period of at least 12 months must be given for the discontinuation of Medicines for which there is no reimbursable therapeutic alternative for approved indications.

(ii) A notice period of at least 3 months must be given for the discontinuation of Medicines for which there is a reimbursable therapeutic alternative for approved indications.

(c) Transfer of a Marketing Authorisation to another Supplier

All transfers of Marketing Authorisations of medicines within the scope of this agreement (Section 2.1) must be notified to the HSE.

Where the transfer of a Marketing Authorisation is likely to materially change the arrangements for the supply of a Medicine, the original Marketing Authorisation holder must provide at least 3 months' notice to the HSE of the transfer of the Marketing Authorisation.

The original Marketing Authorisation holder must make the new Marketing Authorisation holder aware of the terms (including the pricing terms) of this Agreement.

11.3

In all cases relating to withdrawal of a Medicine, Suppliers must complete and return the HSE Product Withdrawal Form (as may be amended from time to time).

11.4

The provisions of this Clause shall operate in the context of the obligations placed on Marketing Authorisation holders and distributors by Article 81 of Directive 2001/83/EC as amended by Directive 2004/27/EC which states that:

> *"… The holder of a marketing authorisation for a medicinal product and the distributors of the said medicinal product actually placed on the market in a Member State shall, within the limits of their responsibilities, ensure appropriate and continued supplies of that medicinal product to pharmacies and persons authorised to supply medicinal products so that the needs of the patients in the Member States in question are covered."*

11.5

All the notification forms can be found on www.hse.ie

11.6

Where a supplier is in breach of this Clause, it shall be required to either source and supply alternative equivalent products at the same price as the unavailable product or reimburse the HSE any difference in cost arising from the shortage.

The HSE will consult MFI in relation to any such cases, if so requested by a manufacturer.

12. SHORT SHELF-LIFE PRODUCTS

12.1

Suppliers shall use best endeavours to ensure that all Medicines supplied to the HSE, and Relevant Agencies, shall have a minimum shelf life of 12 months.

12.2

Medicines with a remaining shelf life of less than 12 months may only be supplied subject to the agreement that unused date-expired quantities can be refunded promptly.

12.3

The HSE or Relevant Agency in receipt of such short-dated stock will take all reasonable steps to make use of the stock in a timely fashion, so as to minimise waste and handling in the system.

12.4

Without prejudice to Sub-Clause 12.2, the HSE and MFI shall endeavour to develop arrangements to minimise waste that may arise in the high-tech drugs scheme. Such arrangements may involve consultation with other relevant supply chain stakeholders and in any event shall be subject to the Guidelines on Good Distribution Practice[3] and any other quality requirements.

[3] https://www.ema.europa.eu/en/human-regulatory/post-authorisation/compliance/good-distribution-practice

13. ADMINISTRATION OF THE AGREEMENT

13.1 General

The terms of this Agreement will not supersede the HSE's public procurement obligations, including those applicable under the EU Procurement Directives

13.2 Vaccines and Blood Products

This Agreement will not prevent arrangements being made with any Supplier for the supply of vaccines, blood products, or similar products to the HSE and/or Relevant Agencies.

13.3 Price Modulation

13.3.1 Medicine price modulation will be permitted under the Agreement, on an exceptional basis and on condition that any such medicine price modulation will be demonstrably cost neutral for the State in each year of this Agreement.

13.3.2 The HSE may require audited documentation of any price modulation and shall have the sole discretion to accept, reject, or seek variation in any modulation application and to seek an appropriate refund if the terms of this Clause are not adhered to.

13.4 Exceptional Circumstances

13.4.1 Where a Supplier considers itself to be disproportionately prejudiced by the terms of this Agreement, direct representations may be made to the HSE by that Supplier for variation of any term of this Agreement including its price terms.

13.4.2 In the interests of continuity of supply, where it becomes uneconomic for a Supplier to supply a particular Medicine under the terms of this Agreement, direct representations may be made by the Supplier to the HSE for variation of any term of this Agreement, in relation to that Medicine, including its price terms.

13.4.3 Where representations are made to the HSE under this Clause, the applicant would be encouraged to make their submission within the first 6 months of the application year with a view to making the decision within 180 days, for implementation in the following budget year. The HSE shall have the final decision on whether to vary the terms of this Agreement in any case but will consult with the Supplier before reaching its decision. In considering a request under this Clause, the HSE shall have regard in reaching its decision to any price modulation requested or applied under Sub-Clause 13.3.

13.5 Provision of Information

13.5.1 MFI shall immediately notify the HSE in writing of all changes to its member companies during the Term.

13.5.2 Where practicable all New Medicines intended to be submitted for addition onto the Reimbursement List in accordance with the 2013 Act, or for which a pricing application as a Hospital Medicine is to be made, shall be notified to the HSE by the Supplier in the preceding year as part of the exercise of examining the pipeline of new medicines (known between the Parties as the "new medicines horizon scan").

13.6 Acknowledgement

The Parties acknowledge that the mechanisms for the pricing of Medicines set out in this Agreement are mutually agreed between them and that decisions arising thereunder do not constitute decisions under or pursuant to section 21 of the 2013 Act.

13.7 Oversight of Agreement

The Parties agree to meet annually on dates to be agreed between the Parties to review and discuss any issues arising from the operation of the Agreement.

In Witness whereof this Agreement has been entered into by the Parties on the _____day of December 2021.

SIGNED BY
for and on behalf of the Parties:

The State Negotiation Team (DoH, D/PER, HSE)	**The Heath Service Executive (HSE)**	**Medicines For Ireland (MFI)**	**Medicines For Ireland (MFI)**
Signature:	*Signature*:	*Signature*:	*Signature*:
_____	_____	_____	_____
Name: Fergal Goodman	**Name:** Paul Reid	**Name:** David Delaney	**Name:** Padraic O'Brien
Title: Assistant Secretary, DoH	**Title:** CEO, HSE	**Title:** Company Director, MFI	**Title:** Chairperson, MFI

2021

FASPM 2021 -2025: Supporting Materials

13 DECEMBER 2021

SCHEDULE 1

Processes for

The Assessment and Selection of Best Value Biologic Medicines

1. Each January the HSE will publish a list by ATC/ INN from which it may initiate a BVB or BVM process in that calendar year. This may include a revisiting and review of previous BVB or BVM processes. The MMP have previously indicated that colony –stimulating factors, erythropoietins, and fertility medicines are therapeutic areas under consideration.

2. The HSE will give a month's notice to each supplier of initiating a BVB or BVM process for a particular INN

3. The BVB or BVM process will follow that already set out in the MMP Roadmap for the prescribing of best value medicines in the Irish healthcare setting

    a. Six weeks formal consultation phase
    b. Review period (typically two months but may require longer)
    c. Publication of Prescribing and Cost Guidance to relevant stakeholders

4. A number of Criteria may be considered by the MMP in identifying BVB or BVM medicine(s) including

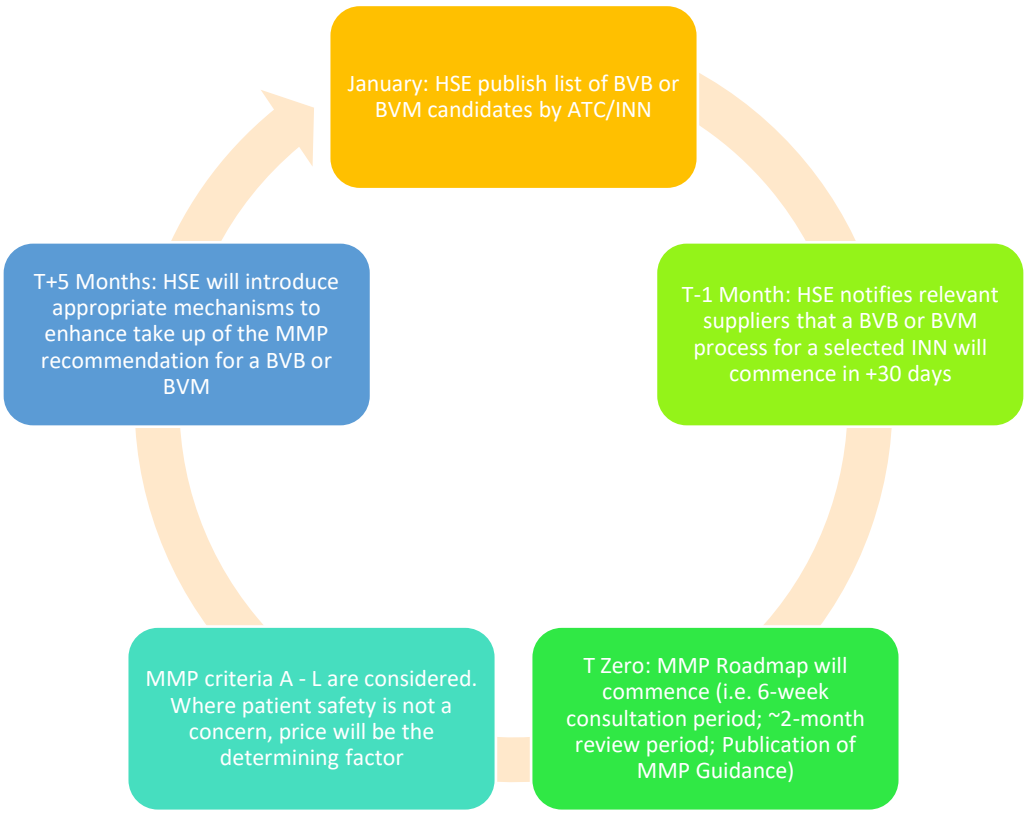
    a. Acquisition cost
    b. Therapeutic Indications
    c. Formulation Considerations
    d. Product Range including pack sizes and strengths available
    e. Product stability including storage requirements
    f. Administration devices
    g. Patient factors
    h. Expenditure in the therapeutic area and potential for cost efficiencies
    i. Clinical Guidelines
    j. Security of Supply to the Irish Market
    k. Utilisation and clinical experience with the biological medicine
    l. Any other relevant factors with respect to the particular INN

5. Where the MMP is satisfied that all other factors are similar and comparable such that patient safety is not a concern, price will be the determining factor

6. The HSE will publish the MMP recommendation for a BVB or BVM and introduce as appropriate mechanisms to enhance take up of the MMP recommendation for a BVB or BVM.

7. The HSE is satisfied to have multiple suppliers within a therapeutic arena.

Figure 1: Illustrative process flow



T = time point, e.g., T minus 1 is one month before a key point; T Zero is a key point; T+5 Months is 5 months after T Zero