
STATUTORY INSTRUMENTS

2001 No. 3750

NATIONAL HEALTH SERVICE, ENGLAND

**The Family Health Services Appeal
Authority (Procedure) Rules 2001**

<i>Made</i>	- - - -	<i>22nd November</i> <i>2001</i>
<i>Laid before Parliament</i>		<i>23rd November 2001</i>
<i>Coming into force</i>	- -	<i>14th December 2001</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 126(4) of and Schedule 9A to the National Health Service Act 1977(1) and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(2) hereby makes the following Rules:

PART I
GENERAL

Citation, commencement and extent

1.—(1) These Rules may be cited as the Family Health Services Appeal Authority (Procedure) Rules 2001 and shall come into force on 14th December 2001.

(2) These Rules extend to England only.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—
“the 1977 Act” means the National Health Service Act 1977(3);

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- (1) 1977 c. 49. Section 126(4) of the National Health Service Act 1977 (“the 1977 Act”) was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 65(2) by the Health Act 1999 (c. 8) (“the 1999 Act”), Schedule 4, paragraph 37(6) and by the Health and Social Care Act 2001 (c. 15), (“the 2001 Act”), Schedule 5, paragraph 5(13). Schedule 9A was inserted into the 1977 Act by the 2001 Act, section 27(4). The amendments to the 1977 Act made by the 2001 Act extend to England only.
- (2) 1992 c. 53. A reference to the Family Health Services Appeal Authority was substituted in Schedule 1, paragraph 33, by the 2001 Act, Schedule 5, paragraph 10.
- (3) c. 49.

- “allocation to a panel” shall be construed in accordance with rule 31;
- “applicant” and “application” shall be construed in accordance with paragraph (2);
- “appellant” means a person who makes an appeal to the FHSAA against a disputed decision;
- “appropriate professional registration body” means the General Medical Council, the General Dental Council, the General Optical Council or the Royal Pharmaceutical Society of Great Britain, as the case may be;
- “Chairman” means the chairman of a panel to which a case has, or to which particular proceedings in a case have, been allocated;
- “contingent removal decision” means a decision by the FHSAA under section 49M(4) of the 1977 Act(4) that a practitioner be removed contingently from a Health Authority list;
- “decision” (except in the expression “disputed decision”) means any decision of a panel except where the context otherwise provides;
- “directions” shall be construed in accordance with rules 31 to 33;
- “disputed decision” means the decision of a Health Authority which is the subject of an appeal under section 49M of the 1977 Act or under the relevant FHS regulations;
- “the FHSAA” means the Family Health Services Appeal Authority established under section 49S of the 1977 Act(5);
- “FHS Regulations” means any regulations conferring a right of appeal to the FHSAA under—
- (a) section 29B of the 1977 Act(6) (vacancies for medical practitioners),
 - (b) section 36 of the 1977 Act (regulations about general dental services),
 - (c) section 39 of the 1977 Act (regulations about general ophthalmic services),
 - (d) section 42 of the 1977 Act (regulations about pharmaceutical services),
 - (e) section 43 of the 1977 Act (persons authorised to provide pharmaceutical services),
 - (f) section 43ZA of the 1977 Act(7) (conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists),
 - (g) section 43D of the 1977 Act(8) (supplementary lists relating to the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services),
 - (h) section 28DA of the 1977 Act(9) (lists of persons who may perform personal medical services or personal dental services), or
 - (i) section 8ZA of the National Health Service (Primary Care) Act 1997(10) (services lists: lists of persons who may perform personal medical services or personal dental services);
- “an FHS regulations appeal” means an appeal made under FHS regulations against a disputed decision;
- “hearing” means a sitting of a panel for the purpose of enabling the panel in question to reach or announce a decision;
- “member” means a member of the FHSAA other than the President or any Deputy President;
- “notice of appeal” shall be construed in accordance with rule 6;

(4) Sections 49F to 49R were inserted into the 1977 Act by section 25 of the 2001 Act.

(5) Section 49S was inserted in to the 1977 Act by section 27(1) of the 2001 Act. The FHSAA’s office is at 30 Victoria Avenue, Harrogate HG1 5PR.

(6) Sections 29B, 36, 39, 42 and 43 of the 1977 Act were amended by section 20 of the 2001 Act.

(7) Section 43ZA was inserted into the 1977 Act by section 21 of the 2001 Act.

(8) Section 43D was inserted into the 1977 Act by section 24 of the 2001 Act.

(9) Section 28DA was inserted into the 1977 Act by section 26(1) of the 2001 Act.

(10) Section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46) was inserted by section 26(2) of the 2001 Act.

“notice of application” shall be construed in accordance with rule 16;

“party” means an appellant, or a respondent Health Authority under Part II or, an applicant or a respondent under Part III, as the case may be, and “parties” shall be construed accordingly;

“the President” means the President of the FHSAA and includes any Deputy President;

“professional registration number” means the number against a person’s name in the register of the appropriate professional registration body;

“the register” means any register kept by the FHSAA in which details concerning appeals, applications, replies and decisions are kept;

“reply” shall be construed in accordance with rule 12 or rule 23, as the case may be;

“representative” means a person, other than Counsel, whom a party instructs to assist him in relation to an appeal or an application (as the case may be), whether or not that person is legally qualified;

“respondent” (except in the expression “respondent Health Authority”) means the respondent to an application;

“respondent Health Authority” means the Health Authority which made a disputed decision.

(2) In these Rules, except where the context otherwise requires—

(a) “applicant” means—

(i) a Health Authority which makes an application to the FHSAA for an order that a suspension be extended in accordance with section 49I(6)(b) of the 1977 Act,

(ii) a Health Authority which makes an application to the FHSAA under section 49N(4) of the 1977 Act for a national disqualification to be imposed on a practitioner, or

(iii) a Health Authority which makes, or a practitioner who makes an application under section 49M(5)(a) of the 1977 Act following a decision of the FHSAA that the practitioner be removed contingently,

as the case may be;

(b) “application”, except in the expression “application for directions” shall be construed accordingly; and

(c) in Part III to Part V in relation to a Health Authority, the words “he”, “his” or “himself” shall, where relevant be construed as applying to that Authority.

(3) In these Rules, unless the context otherwise requires, a reference—

(a) to a numbered Part is to the Part bearing that number;

(b) to a numbered rule is to the rule bearing that number; and

(c) to a numbered paragraph in a rule is to the paragraph bearing that number in that rule.

Carrying out of President’s functions by Deputy President

3. Any functions of the President under these Rules may be carried out by any Deputy President.

Appeals and applications

4. In these Rules, Part II applies only to appeals and Part III applies only to applications.

PART II

APPEALS TO THE FHSAA

(A)

MAKING AN APPEAL TO THE FHSAA

Time period in which an FHS regulations appeal must be made

5. An appellant who makes an FHS regulations appeal must do so within the period of 28 days beginning with the date on which the Health Authority gave him notice of the disputed decision.

Notice of appeal

6.—(1) An appellant shall make his appeal to the FHSAA by giving notice of appeal in writing in accordance with the following paragraphs.

(2) The notice of appeal shall state—

- (a) the name and address of the appellant,
- (b) his professional registration number where applicable,
- (c) that the notice is a notice of appeal,
- (d) the date of the disputed decision against which the appeal is brought,
- (e) the full name and address of the Health Authority which gave the disputed decision,
- (f) a concise statement of the grounds of the appeal,
- (g) the name and address of his representative (if any) and whether the FHSAA should correspond with that representative concerning the appeal instead of with the appellant.

(3) The appellant shall attach to his notice of appeal a copy of the disputed decision together with two copies of any documents on which he proposes to rely for the purposes of his appeal.

(4) The appellant or his representative shall sign the notice of appeal.

(5) The appellant must send or deliver his notice of appeal to the FHSAA.

Amendment of appeal and delivery of supplementary grounds of appeal

7.—(1) The appellant may, at any time before he is notified of the date of the hearing of his appeal, amend his notice of appeal, deliver a supplementary statement of grounds of appeal or send to the FHSAA any other documents on which he proposes to rely.

(2) The appellant may amend any notice of appeal or supplementary statement, with the leave of the panel to which the case has been allocated, at any time after he has been notified of the date of the hearing of the appeal, or at the hearing itself and the panel may grant such leave on such terms as it thinks fit.

(3) The appellant shall send a copy of every amendment and supplementary statement to the FHSAA.

Application by appellant for directions

8. The appellant may apply in writing to the FHSAA for directions to be given as to any matter relating to the hearing of his appeal.

Withdrawal of appeal

9. The appellant may—
- (a) at any time before the hearing of the appeal withdraw his appeal by sending to the FHSAA a notice stating he withdraws his appeal, signed by him or by his representative;
 - (b) at the hearing of the appeal, with the leave of the panel, withdraw his appeal.

Notice of hearing to appellant

10.—(1) The FHSAA shall serve on the appellant a notice informing him of the time and place of any oral hearing which is to be held.

(2) Such notice shall include guidance regarding the rules of evidence and procedure which apply to the hearing.

(3) When the appellant receives the notice of the time and place of hearing, he shall inform the FHSAA whether or not he intends to attend or be represented at the hearing and whether or not he intends to call any witnesses and where he does intend to call witnesses he shall provide their names and addresses to the FHSAA.

(4) If the appellant does not intend to attend or be represented at the hearing, he may send to the FHSAA additional written representations in support of his appeal.

Representation at hearing

11. At the hearing of an appeal or any other hearing in connection with an appeal including a hearing for directions, the appellant may conduct his case himself (with assistance from his representative if he wishes) or may appear and be represented by his representative or by Counsel.

(B)

REPLYING TO AN APPEAL

Action by a respondent Health Authority on receipt of a notice of appeal

12.—(1) Where a respondent Health Authority receive a copy of a notice of appeal from the FHSAA in accordance with rule 29(3) they shall reply in accordance with the following paragraphs.

(2) The respondent Health Authority shall send or deliver to the FHSAA a written reply acknowledging service upon them of the notice of appeal and stating—

- (a) the appellant's professional registration number where applicable;
- (b) whether or not they intend to oppose the appeal and if so, enclosing a brief statement of the grounds on which they rely in opposing the appeal; and
- (c) where they intend to instruct a representative in relation to the appeal, the name and address of their representative and whether such address is their address for service for the purposes of the appeal.

(3) The respondent Health Authority shall include with their reply a statement summarising the facts relating to the disputed decision, and shall send or deliver their reply to the FHSAA together with a copy of any document on which they propose to rely.

(4) Every such reply shall be signed by an officer of the respondent Health Authority who is authorised to sign such documents or by their solicitor and shall be delivered to the FHSAA not later than 21 days after the date on which the copy of the notice of appeal was received by the Health Authority from the FHSAA.

(5) The respondent Health Authority may include in their reply, or by way of a separate notice to the FHSAA, a request for further particulars of the appeal.

Amendment of reply and application for directions by respondent Health Authority

13.—(1) The respondent Health Authority may at any time before they are notified of the date of the hearing of the appeal amend their reply or deliver a supplementary statement by way of reply.

(2) The respondent Health Authority may amend any reply or supplementary statement with the leave of the panel to which the case has been allocated at any time after they have been notified of the date of the hearing of the appeal or at the hearing itself and the panel may grant such leave on such terms as it thinks fit.

(3) The Health Authority may apply in writing to the FHSAA for directions to be given as to any matter relating to the hearing of the appeal.

(4) The Health Authority shall send a copy of every amendment and supplementary statement to the FHSAA.

Representation at, and action of the respondent Health Authority on notification of, hearing

14.—(1) At the hearing of an appeal or any other hearing in connection with that appeal including a hearing for directions, the respondent Health Authority may conduct their case themselves (with assistance from their representative if they wish) or may appear and be represented by their representative or by Counsel.

(2) When they receive a notice of the time and place of the hearing of the appeal, the respondent Health Authority shall inform the FHSAA whether or not they intend to attend or be represented at the hearing, and whether or not they intend to call witnesses and where they do intend to call witnesses, they shall supply their names and addresses to the FHSAA.

(3) If the Health Authority do not intend to attend or be represented at the hearing, they may send to the FHSAA additional written representations in support of their reply.

PART III

APPLICATIONS TO THE FHSAA

(A)

MAKING AN APPLICATION

Applications in respect of contingent removal decisions

15.—(1) The following paragraphs apply to any application under section 49M(5)(a) of the 1977 Act in respect of a contingent removal decision.

(2) Subject to paragraph (4), the first application in respect of such a decision shall not be made until three months have elapsed since the contingent removal decision was made.

(3) Subject to paragraph (4), any further application in respect of the same contingent removal decision shall not be made until six months have elapsed since the FHSAA gave its last decision in respect of such application or further application.

(4) Where the parties wish to apply jointly to the FHSAA with a view to seeking—

- (a) the same variation of conditions,
- (b) the same imposition of different conditions, or
- (c) for the contingent removal to be revoked,

the application shall be treated as being made by the Health Authority and may be made after a period of one month has elapsed since the FHSAA gave its decision in respect of an application to which either paragraph (2) or (3) applied.

Applications to the FHSAA

16.—(1) An applicant shall make an application in accordance with the following paragraphs.

(2) The application shall be in writing and shall state—

- (a) the name and address of the applicant and, where relevant, his professional registration number,
- (b) the name and address or addresses of the respondent and, where relevant, his professional registration number,
- (c) a concise statement of the grounds on which the application is made, and
- (d) the name and address of the representative of the applicant, if any, and whether the FHSAA should correspond with the representative concerning the application instead of with the applicant.

(3) The applicant or his representative shall sign the notice of application and shall send or deliver the application to the FHSAA within any time limit specified by or under the 1977 Act.

(4) The FHSAA shall acknowledge receipt of the application and shall inform the applicant or the applicant's representative of any further steps which must be taken to enable the FHSAA to decide the application and the time and place of any hearing in respect of the application.

Documents and other material to accompany application

17.—(1) The applicant shall send or deliver to the FHSAA with the application a copy of every document on which he intends to rely for the purposes of the application.

(2) The FHSAA may, on such terms as it thinks fit, excuse the applicant from providing any document required to be furnished under paragraph (1) where that document or a copy is already held by the FHSAA.

Amendment of application and delivery of supplementary statement

18.—(1) The applicant may, at any time before being notified of the date of the hearing of the application, amend the application or deliver a supplementary statement in relation to that application.

(2) The applicant may amend the application or supplementary statement with the leave of the panel at any time after being notified of the date of the hearing of the application, or at the hearing itself, and the panel may grant such leave on such terms as it thinks fit.

(3) The applicant shall send a copy of every amendment and supplementary statement to the FHSAA.

Application for directions

19.—(1) The applicant may apply to the FHSAA for directions to be given by a panel in respect of any matter relating to the hearing of the application.

(2) An application for directions shall be made in writing to the FHSAA.

Withdrawal of application

20. The applicant may—

- (a) at any time before the hearing of the application withdraw his application by sending to the FHSAA a notice stating that he withdraws it, signed by him or by his representative,
- (b) at the hearing of the application, with the leave of the panel, withdraw the application.

Action of applicant on receipt of notice of hearing

21.—(1) The FHSAA shall serve on the applicant a notice giving the time and place of any oral hearing which is to be held.

(2) When the applicant receives the notice of the time and place of hearing, he shall inform the FHSAA whether or not he intends to be represented at the hearing and whether or not he intends to call witnesses, and where he does intend to call witnesses, he shall supply their names and addresses to the FHSAA.

(3) If the applicant does not intend to attend or be represented at the hearing, he may send to the FHSAA additional written representations in support of his application.

Representation at hearing

22. At the hearing of an application or any other hearing in connection with that application, including a hearing for directions, the applicant may conduct his case himself (with assistance from his representative if he wishes) or may appear and be represented by his representative or by Counsel.

(B)

REPLYING TO AN APPLICATION

Action by respondent on receipt of notice of application

23.—(1) A person who receives from the FHSAA a copy of an application against him in accordance with rule 29(3) (“the respondent”) shall send or deliver to the FHSAA a written reply acknowledging receipt of that application and setting out—

- (a) his full name and address and, where applicable, his professional registration number;
- (b) the professional registration number of the applicant, where applicable;
- (c) whether or not he intends to resist the application and if so, a concise statement of the grounds on which he relies in resisting it;
- (d) the name and address and the profession of his representative, if any, and whether the FHSAA should send notices concerning the application to the representative instead of to the respondent.

(2) The respondent may include in his reply a request for further particulars of the application.

(3) Every such reply shall be signed by the respondent or his representative and shall be delivered to the FHSAA not later than 21 days after the date on which the notification of the application was sent to him by the FHSAA.

(4) A reply which is received by the FHSAA after the time appointed by this rule which contains reasons on which the respondent relies for justifying the delay shall be deemed to include an application for an extension of the time so appointed.

(5) A respondent who has not delivered a written reply shall not be entitled to take any part in the proceedings before the panel on the application except—

- (a) to apply for an extension of time for presenting a reply;
- (b) to apply for a direction that the applicant provide further particulars relevant to the application;
- (c) to be called as a witness by another party; and

(d) to be sent a copy of a decision or corrected decision.

Documents and other material to accompany reply

24.—(1) The respondent shall send or deliver to the FHSAA with his reply a copy of every document on which he intends to rely at the hearing of the application.

(2) The FHSAA may, on such terms as it thinks fit, excuse the respondent from providing any document required to be furnished under paragraph (1) where that document, or a copy of it, is already held by the FHSAA.

Amendment of reply and delivery of supplementary statement

25.—(1) The respondent may, at any time before he is notified of the date of the hearing of the application, amend his reply or deliver a supplementary statement by way of reply.

(2) The respondent may amend any reply or supplementary statement with the leave of a panel at any time after he has been notified of the hearing of the application or at the hearing itself.

(3) The respondent shall send a copy of every amendment and supplementary statement to the FHSAA.

Application for directions

26.—(1) The respondent may apply to the FHSAA for directions to be given by a panel as to any matter relating to the hearing of the application for disqualification.

(2) An application for directions shall be made in writing to the FHSAA.

Action of respondent on receipt of notice of hearing

27.—(1) The FHSAA shall serve on a respondent who opposes the application a notice informing him of the time and place of any oral hearing which is to be held and such notice will include guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When the respondent receives the notice of the time and place of hearing, he shall inform the FHSAA whether or not he intends to attend or be represented at the hearing, and whether he intends to call witnesses, and where he does intend to call witnesses he shall supply their names and addresses to the FHSAA.

(3) If the respondent does not intend to attend or be represented at the hearing, he may send to the FHSAA additional written representations in support of his reply.

Representation at hearing

28. At the hearing of an application or any other hearing in connection with that application, including a hearing for directions, the respondent may conduct his case himself (with assistance from his representative if he wishes) or may appear and be represented by his representative or by Counsel.

PART IV

GENERAL MATTERS RELATING TO CASES

(A)

ACKNOWLEDGEMENT AND REGISTRATION ETC.

Acknowledgement and registration of appeal or application and service of documents by FHSAA

29.—(1) Upon receiving a notice of appeal or notice of application, as the case may be, the FHSAA shall provided that the notice of appeal was given or the notice of application was made within the time described in rule 5 or 15 or in the 1977 Act as appropriate—

- (a) send to the appellant or the applicant an acknowledgement of its receipt which shall include a notice that advice in relation to the proceedings may be obtained from the FHSAA,
- (b) enter particulars of it in the register, and
- (c) inform the appellant or the applicant in writing of the case number of the appeal or application entered in the register (which shall thereafter constitute the title of the proceedings).

(2) Upon receiving a reply from a respondent the FHSAA shall—

- (a) send the respondent an acknowledgement of its receipt;
- (b) enter particulars of the reply in the register; and
- (c) inform the respondent of the case number of the appeal or application, as the case may be.

(3) Subject to paragraph (4) the FHSAA shall serve forthwith a copy of any document submitted by a party in connection with an appeal or an application on the other party in the case, provided that if any document is sent or delivered to the FHSAA after a time prescribed in these Rules other than in rule 5 or 15, the FHSAA may defer service pending a decision by a panel for the extension of the time limit in question.

(4) If any document supplied to the FHSAA by a party in an appeal or an application contains any matter that relates to—

- (a) a person’s intimate personal or financial circumstances,
- (b) is commercially sensitive,
- (c) consists of information communicated or obtained in confidence, or
- (d) considerations of national security are involved,

and for that reason the party seeks to restrict its disclosure, that party shall inform the FHSAA of that fact and of the reasons for seeking such a restriction.

(5) In any case falling within paragraph (4) the FHSAA shall serve the copies as provided in this rule only in accordance with directions given by the panel to which the case is allocated.

(6) In this rule, “respondent” includes a respondent Health Authority.

(B)

PREPARATION FOR HEARING BY A PANEL

Composition of panels in certain cases

30. The President shall ensure that in the case of—

- (a) an FHS regulations appeal, or

(b) an application for an order under section 49I(6)(b) of the 1977 Act, the composition of any panel to which the case or any proceedings in such a case is allocated under rule 31 is in accordance with paragraph 10(a) and (b) of Schedule 9A to that Act as if the panel were one constituted for the purposes of section 49M or 49N of the 1977 Act.

Allocation to a panel and directions

31.—(1) Subject to the following paragraphs, the President shall allocate a case to a panel after the FHSAA has received a reply to an appeal under Part II or to an application under Part III, as the case may be.

(2) Where a party to an appeal or an application makes an application for directions before the case has been allocated to a panel, the President may allocate such an application to any panel.

(3) Where a case has been allocated to a panel in accordance with paragraph (1), any proceedings in that case, including any application for directions by a party shall be dealt with by that panel, except where in the President's opinion, including for reasons of urgency, the matter should be dealt with by another panel and the President shall allocate that matter to another panel accordingly.

Directions in respect of hearings

32.—(1) Subject to rule 31(3) and paragraph (2) below the panel to which a case has been allocated may at any time, on the application for directions of a party or of its own motion, give such directions as are necessary to enable the parties to prepare for the hearing or to assist the panel to which the case is allocated to determine the issues.

(2) In exercising the powers conferred by this rule the panel shall take into account the need to protect any matter referred to in rule 29(4).

(3) An application by a party for directions shall be made in writing to the FHSAA and, unless it is accompanied by the written consent of the other party, shall be served by the FHSAA on the other party.

(4) If the other party objects to the directions sought, the panel shall, if it considers it necessary for the determination of the application, give the parties an opportunity of appearing before it.

(5) Directions shall, where appropriate, include a statement of the possible consequences for the appeal or application, as provided by rule 36, of a party's failure to comply with any requirement within the time allowed by the panel.

Further directions

33. The panel may give directions requiring any party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal or application.

Disclosure of documents and other material

34.—(1) Subject to paragraph 18 of Schedule 9A to the 1977 Act the panel may require a person to deliver to the FHSAA any document or class of documents which it is in the power of that person to deliver.

(2) The FHSAA shall, subject to rule 29(4), make such provision as it thinks necessary to supply copies of any document obtained under this rule to the other party to the proceedings, and it shall be a condition of such supply that a party shall use such a document only for the purposes of the appeal or application.

Summoning of witnesses

35.—(1) The panel may by summons require any person in England to attend as a witness at a hearing of an appeal or application at such time and place as may be specified in the summons and, at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal or application, subject to paragraph 18 of Schedule 9A to the 1977 Act.

(2) No person shall be required to attend in obedience to such a summons unless—

- (a) he has been given at least seven days' notice of the hearing or, if less than seven days, he has informed the FHSAA that he accepts such notice as he has been given; and
- (b) his reasonable expenses have been tendered by the FHSAA.

Failure to comply with certain directions

36.—(1) Subject to paragraph (2), if any directions given to a party under this Part are not complied with by such a party without reasonable excuse, the panel may, before or at the hearing—

- (a) dismiss the whole or any part of the appeal or application,
- (b) strike out the whole or part of a respondent Health Authority's, or respondent's reply and
- (c) where appropriate, direct that a respondent Health Authority shall be debarred from contesting an appeal altogether or, as the case may be, that a respondent shall be debarred from contesting an application altogether.

(2) A panel shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with that direction giving an opportunity to show cause why it should not do so.

Varying or setting aside directions

37.—(1) Where a person to whom a direction is given under this Part had no opportunity to object to the making of such direction, he may apply to have it varied or set aside.

(2) Where such an application is made it shall be considered by the panel which gave the direction and it shall not be varied or set aside without notifying the party which applied for the direction and considering any representations made by that party.

(C)

DETERMINATION OF APPEALS OR APPLICATIONS BY PANELS

Powers to determine an appeal or application without a hearing

38.—(1) The panel may, if the parties so agree in writing, determine an appeal or application, or any particular issue, without an oral hearing.

(2) The panel may determine an appeal or application on the basis of the documents provided by the appellant under rules 6 and 7 or by the applicant under rules 16 to 18, as the case may be, without an oral hearing where—

- (a) no reply is received by the FHSAA within the time appointed under rule 12 or rule 23, or
- (b) the respondent Health Authority or the respondent states in writing that he does not resist, or withdraws his reply, to the appeal or application.

(3) The provisions of paragraph (2) of rule 40 and of paragraph (6) of rule 41 shall apply in respect of the determination of an appeal or application, or any particular issue, under this rule.

Hearings to be in public and exceptions

39.—(1) All hearings by a panel shall be in public except where a practitioner (as defined in paragraph 21 of Schedule 9A to the 1977 Act) has asked for the hearing be in private and the panel considers that it is reasonable in all the circumstances for that hearing to be held in private.

(2) The following persons shall be entitled to attend the hearing of an appeal or an application, whether or not it is in private—

- (a) the President or any member of the FHSAA, notwithstanding that he is not a member of the panel for the purpose of the hearing,
- (b) a member of the Council on Tribunals,

but such persons may not take part in the proceedings or in the making of any decision by a panel.

(3) A panel, with the consent of the parties, may permit any other person to attend the hearing of an appeal or application which is held in private.

Failure of parties to attend hearing

40.—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the panel may—

- (a) unless it is satisfied that there is reasonable excuse for such absence, hear and determine the appeal or application, as the case may be in the party's absence; or
- (b) adjourn the hearing.

(2) Before determining any appeal or application in the absence of a party, the panel shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal or application and any reply shall be treated as representations in writing.

Procedure at hearing

41.—(1) At the beginning of the hearing the Chairman shall explain to the parties the order of proceedings which the panel proposes to adopt.

(2) Subject to this rule, the panel shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.

(3) The parties shall be heard in such order as the panel shall determine and they shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the panel both on the evidence and generally on the subject matter of the appeal or the application, as the case may be.

(4) Where the hearing is in public the panel may direct—

- (a) that the identity of a witness (other than a party) may, if the interests of justice require it, not be disclosed to the public; or
- (b) where in the panel's opinion it is strictly necessary, that some part of the hearing be held in private.

(5) Evidence before the panel may be given orally or, if the panel so directs, by written statement, but the panel may at any stage of the proceedings require the personal attendance of any maker of a written statement.

(6) The panel may receive evidence of any fact which appears to it to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(7) At any hearing the panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, notice of application,

or his reply in either case and, in respect of an appellant, to adduce any evidence not presented to the respondent Health Authority before or at the time it took the disputed decision.

(8) The panel may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decision of panel

42.—(1) The decision of the panel may be given orally at the end of the hearing or reserved.

(2) All decisions of a panel shall be recorded forthwith in a document which records the relevant party's professional registration number, where applicable, and save in the case of a decision by consent, shall also contain a statement of the reasons (in summary form) for its decision, and that document shall be signed and dated by the Chairman.

(3) Subject to paragraph (4), every document referred to in this rule shall be entered in the register and the FHSAA shall send a copy of the entry to each party.

(4) Where any such document refers to any evidence that has been heard in private or when a witness has given evidence in circumstances of anonymity as provided for under rule 41(4), it shall be entered in the register as the panel may direct, but copies of the complete document shall be sent to the parties together with a copy of the entry.

(5) Every copy of an entry sent to the parties under this rule shall be accompanied by a notification of their rights under section 11 of the Tribunals and Inquiries Act 1992 relating to appeals from decisions of the FHSAA and of the time within which and place at which such appeal shall be made.

(6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the appellant, or the applicant Health Authority, as the case may be.

Review of a panel's decision

43.—(1) Subject to the following paragraphs, if, on the application of a party or of its own motion, a panel is satisfied that—

- (a) its decision was wrongly made as a result of an error made by the panel;
- (b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear;
- (c) new evidence has become available since the conclusion of the hearing to which the decision relates the existence of which could not have been reasonably known of or foreseen; or
- (d) the interests of justice require,

the panel may review and, by certificate under the Chairman's hand, set aside or vary the decision of the panel in question.

(2) An application by a party for the purposes of paragraph (1) shall be made to the FHSAA not later than fourteen days after the date on which the decision was sent to the parties in accordance with rule 42 and shall be in writing, stating the grounds in full.

(3) The parties shall have an opportunity to be heard on any application for review under this rule and the review shall, subject to rule 45, be determined by the panel which decided the case.

(4) Where for any reason it is not practicable for the review to be carried out by the same panel, the President shall allocate the matter to another panel.

(5) If, having reviewed the decision, the decision is set aside, the panel shall substitute such decision as it thinks fit or order a rehearing before it.

(6) The certificate of the Chairman as to the setting aside or variation of a panel's decision under this rule shall be sent to the President who shall ensure that such correction as may be necessary is made in the register and that a copy of the entry so corrected is sent to each of the parties.

(7) Where a decision is reviewed the FHSAA shall serve a copy of that revised decision on the parties as soon as practicable thereafter.

(8) Where a copy of the original decision has already been sent to any person or body referred to in rule 47, the President shall ensure that the person or body in question is notified immediately of the revised decision.

Miscellaneous powers of panel

44.—(1) A panel may, if it thinks fit—

- (a) dismiss the proceedings if the appellant or the applicant, as the case may be, shall at any time give notice of the withdrawal of the appeal or the application;
- (b) if both the parties agree in writing upon the terms of a decision to be made by the panel, decide accordingly (and in making any such decision, it shall not be necessary for the panel to give reasons).

(2) Subject to paragraph (3), at any stage of the proceedings a panel may direct that—

- (a) there be struck out or amended any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious; or
- (b) there be struck out any appeal or any application for want of prosecution.

(3) Before making any direction under paragraph (2) the panel shall give notice to the party against whom it is proposed that any such direction should be made giving him an opportunity to show cause why it should not be made.

Irregularities

45.—(1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any directions before the panel has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the panel, the panel may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks fit to cure or waive the irregularity before reaching its decision.

PART V

MISCELLANEOUS

Publication of certain decisions by FHSAA

46. For the purposes of paragraph 13(c) of Schedule 9A to the 1977 Act the FHSAA shall publish any decision by a panel—

- (a) which upholds on appeal a Health Authority's decision under an FHS regulation not to include a person in a list, or to include that person subject to conditions, or
- (b) not to allow an appeal brought by virtue of section 49M(2)(a), (b) or (c) of the 1977 Act.

Copies of decisions sent to certain persons or bodies

47.—(1) The FHSAA may send a copy of any decision within either paragraph 13(a) or (b) of Schedule 9A to the 1977 Act, or rule 46, to any of the following persons or bodies—

- (a) the Secretary of State,
- (b) the National Assembly for Wales,
- (c) the Scottish Executive,
- (d) the Northern Ireland Executive Committee,
- (e) the Registrar of the appropriate professional registration body.

(2) The FHSAA may send a copy of such a decision to any other person or body which, in its opinion, should be made aware of that decision.

22nd November 2001

Irvine of Lairg, C

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision about the proceedings of the Family Health Services Appeal Authority (“the FHSAA”), which is established with effect from 14th December 2001 by section 49S of and Schedule 9A to the National Health Service Act 1977 (“the 1977 Act”) inserted by section 27 of the Health and Social Care Act 2001.

Part I makes provision in respect of the citation and commencement of the Rules, and interpretation (rules 1 to 4).

Part II makes provision in respect of appeals to the FHSAA against certain decisions taken by Health Authorities.

In Part II(A), which applies to the appellant, there is provision for time limits within which certain appeals must be made (rule 5), for the giving of notice of appeal (rule 6), the amendment of an appeal and the adding of supplementary grounds to an appeal (rule 7), for the appellant to apply for directions in his case (rule 8), for the appellant to withdraw his appeal (rule 9), for the FHSAA to give the appellant notice of the hearing (rule 10) and about representation of the appellant at a hearing (rule 11).

In Part II(B), which applies to a respondent Health Authority, the action to be taken in replying to an appeal is set out (rule 12). Provision is made for the respondent to amend a reply and to seek directions from the FHSAA in relation to the case (rule 13) and about notice in respect of a hearing and representation at a hearing (rule 14).

Part III makes provision in respect of three kinds of applications (defined in rule 2(2)) by Health Authorities to the FHSAA. The third of these can also be made by a person who is the subject of a decision of the FHSAA under section 49M of the 1977 Act.

In Part III(A), which applies to the applicant, there is a time period which must have elapsed before an application can be made in respect of a contingent removal under section 49M(5) of the 1977 Act (rule 15). The procedure for making an application is set out (rule 16) and the documents and other material which are to accompany an application are specified (rule 17). Provision is made for the amendment of an application and the delivery to the FHSAA of any supplementary statements (rule 18), making applications for directions (rule 19), and the withdrawal of an application (rule 20). The actions an applicant must take when notified of a hearing date are specified (rule 21) and provision is made in respect of the representation of an applicant at a hearing (rule 22).

In Part III(B), which applies to the respondent to an application, provision is made for the action to be taken on receipt from the FHSAA of a notice of application and the documents and other material to accompany any reply (rules 23 and 24), the amendment of any reply and delivery of any supplementary statement (rule 25), the making of applications for directions about the case (rule 26), the action to be taken by the respondent when notified of a hearing date and about representation at the hearing (rules 27 and 28).

Part IV makes provision for general matters which relate to all cases, whether they are appeals or applications. Part IV(A) deals with acknowledgement and registration of appeals and applications by the FHSAA, Part IV(B) deals with preparation by a panel for hearing and Part IV(C) deals with determinations of appeals or applications by panels.

In Part IV(A) there is provision for the FHSAA to acknowledge and register appeals and applications (rule 29 only).

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In Part IV(B) the composition of panels in certain cases is specified (rule 30), provision is made about the allocation of cases to panels and the giving of directions by a panel (rules 31 and 32), the giving of further directions (rule 33), the disclosure of documents and other material (rule 34), the summoning of witnesses (rule 35), the effect of failure to comply with certain directions (rule 36) and the varying or setting aside of directions (rule 37).

In Part IV(C) provision is made for a panel to determine a case without a hearing in certain circumstances (rule 38), for hearings to be in public subject to certain exceptions (rule 39), the effect of the failure of a party to attend a hearing (rule 40), the procedure to be followed at a hearing (rule 41), the decision of a panel (rule 42), the review of a panel's decision in certain circumstances (rule 43), additional miscellaneous powers of panels (rule 44) and the curing of irregularities by a panel (rule 45).

Part V contains further miscellaneous provisions. The FHSAA may publish certain decisions under the Rules in addition to those referred to in paragraph 12(b) of Schedule 9A to the 1977 Act (rule 46) and may send copies of any decisions to certain persons or bodies (rule 47).