SCHEDULE 3

Regulation 5(10)

THE BOARD

Receipt and notification of applications

1.—[F1(1) Upon receipt of an application to which regulation 5(10) applies, or receiving further information submitted under regulation 5(2E), the Board shall—

(a) assess whether the boundaries of the neighbourhood within which the applicant intends to provide pharmaceutical services, or any part of it, falls within a controlled locality; and

(b) within 10 working days of an assessment being made, give written notice of the application and any assessment that it is within a controlled locality to—

(i) the Area Pharmaceutical Committee;

(ii) the Area Medical Committee;

(iii) any person whose name is included in the pharmaceutical list or the provisional pharmaceutical list and whose interests may, in the opinion of the Board, be significantly affected if the application were granted;

(iv) any Board whose boundary is within two kilometres of the proposed premises; and

(v) any nominated community representative that covers the neighbourhood within which the applicant intends to provide pharmaceutical services, or any part of it,

and any person or body so notified may, within 30 days from the date on which the notification was sent to such person or body, make written representations about the application to the Board.**]**

(2) Any Board which is notified under sub-paragraph (1)(d) above shall, within 5 working days, give written notice of the application to–

(a) its Area Pharmaceutical Committee;

(b) its Area Medical Committee;

(c) any person whose name is included in its pharmaceutical list or the provisional pharmaceutical list and whose interests may, in the opinion of the said Board be significantly affected if the application were granted,

and any person so notified may, within 30 days from the date on which the notification was sent to the said Board, make written representations to the Board to whom the application was made.

(3) Any notice given under sub-paragraph (1) or (2) above shall include a statement of the right to make representations in accordance with that sub-paragraph.

Textual Amendments

F1 Sch. 3 para. 1(1) substituted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(2)** (with reg. 14)

Commencement Information

I1 Sch. 3 para. 1 in force at 1.7.2009, see **reg. 1**

[F2Applications relating to areas of a prescribed description

1A.—(1) For the purpose of section 27(4)(d) of the Act, a controlled locality is an area within a Health Board, which is remote or rural in character, and which is served by a dispensing doctor.

(2) The boundary of a controlled locality area is that of the dispensing doctor's practice area under sub-paragraph (1) on the day before the day on which the application under regulation 5(2) is made.

(3) Upon identifying any areas which are a controlled locality in accordance with this paragraph, the Board must, as soon as reasonably practicable—

(a) give written notice to the dispensing doctor serving that controlled locality and to the person or body listed at paragraph 1 informing them of the identification of the controlled locality;

(b) delineate the boundaries of the controlled locality on a map; and

(c) record that controlled locality in its pharmaceutical care services plan.

Textual Amendments

F2 Sch. 3 paras. 1A, 1B inserted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(3)** (with reg. 14)

Review of controlled locality

1B.—(1) The Board shall, subject to sub-paragraph (2) and regulation 5(10B), no earlier than 3 years from the date of notification of a controlled locality in accordance with paragraph 1A, review that controlled locality designation.

(2) If the Board is satisfied that within that 3 year period there has been a substantial change in circumstances in relation to the controlled locality area then it may reconsider the controlled locality designation.

(3) Following a review, prior to a decision to keep or change the controlled locality designation, the Board must, as soon as practicable, give written notice to the dispensing doctor serving that controlled locality and to the persons or body mentioned in paragraph 1 informing them of—

(a) the proposal and the reasons for it; and

(b) their right, within 30 days from the date on which the notification was sent, to make written representations about that change to the Board containing a statement of reasons why that proposal should be reconsidered.

(4) Following consideration of any representations received in accordance with sub-paragraph (3) the Board must make their final decision and where applicable—

(a) delineate on a map the new boundaries of the controlled locality; or

(b) remove from the map, the delineated boundary of an area that has ceased to be a controlled locality.**]**

Textual Amendments

F2 Sch. 3 paras. 1A, 1B inserted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(3)** (with reg. 14)

Public consultation

F3 2. . . . . . .

Textual Amendments

F3 Sch. 3 para. 2 omitted (28.6.2014) by virtue of The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(4)** (with reg. 14)

Commencement Information

I2 Sch. 3 para. 2 in force at 1.7.2009, see **reg. 1**

[F4Dispensing doctor notification

2A. The Board shall, at the same time as giving written notice of the application under paragraph 1(1), give written notice of the application to any dispensing doctor who dispenses from premises in the neighbourhood to which the application relates.**]**

Textual Amendments

F4 Sch. 3 para. 2A inserted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(3)** (with reg. 10)

[F5Determination of applications

3.—(1) In considering an application to which regulation 5(10)(a) applies, the Board shall have regard to—

(a) the pharmaceutical services already provided in the neighbourhood of the premises named in the application by persons whose names are included in a pharmaceutical list;

(b) pharmaceutical services to be provided in the neighbourhood at these premises by any person whose name is included in the provisional pharmaceutical list;

(c) any representations received by the Board under paragraph 1;

(d) any information available to the Board which, in its opinion, is relevant to consideration of the application;

(e) the consultation analysis report submitted in accordance with regulation 5A;

(f) the pharmaceutical care services plan; and

(g) the likely long term sustainability of the pharmaceutical services to be provided by the applicant.

(2) The Board may, if it considers that oral representations are unnecessary, determine the application without hearing oral representations.

(3) In any case in which the Board decides to hear oral representations, the Board must—

(a) give the applicant and any person from whom it received representations under paragraph 1 reasonable notice of the meeting at which such representations are to be heard;

(b) permit the applicant and any person making representations at the hearing to be assisted by another person;

(c) permit the applicant or any person making representations at the hearing either to—

(i) speak to their own representations; or

(ii) nominate the person assisting them to speak on their behalf; and

(d) confirm that any person assisting the applicant or any person making representations at the hearing is not appearing in the capacity of counsel, solicitor or paid advocate.

(4) The Board shall, subject to sub-paragraph (5), make a determination on the application within 6 weeks of the date that they received the consultation analysis report under regulation 5A.

(5) A 6 week determination period under sub-paragraph (4) may be extended in exceptional circumstances and in such an event the Board must inform the applicant and any person or body notified under paragraph 1 or 2A, of the extended time period and the reasons for it.

(6) The Board's determination of an application must include—

(a) a summary of the consultation analysis report submitted in accordance with regulation 5A;

(b) an explanation of how the consultation analysis report was taken into account in arriving at the decision, with regard to the tests under regulation 5(10), as applicable; and

(c) the reasons for its decision.

(7) The functions of the Board under this paragraph shall be exercised on its behalf by the Pharmacy Practices Committee in accordance with Part I of Schedule 4.**]**

Textual Amendments

F5 Sch. 3 para. 3 substituted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(5)** (with reg. 14)

Commencement Information

I3 Sch. 3 para. 3 in force at 1.7.2009, see **reg. 1**

Notification of decisions

[F6**4.**—(1) The Board shall, within 5 working days of having been notified in accordance with paragraph 6 of Part I of Schedule 4, intimate the decision on the application **[**F7and the information required under paragraph 3(6)**]**, and any right of appeal applicable under paragraph 5, to the applicant and the persons or bodies mentioned in paragraph 1.

(2) The Board shall within 5 working days of such intimation publish on its website the decision on the application **[**F7and the information required under paragraph 3(6)**].]**

Textual Amendments

F6 Sch. 3 para. 4 substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(5)** (with reg. 10)

F7 Words in sch. 3 para. 4 substituted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(6)** (with reg. 14)

Commencement Information

I4 Sch. 3 para. 4 in force at 1.7.2009, see **reg. 1**

Appeals

5.—(1) Subject to sub-paragraph (2) the applicant or any person mentioned in paragraph 1 may appeal against the decision of the Board on the application, and must give notice of any such appeal

to the Board within 21 days from the date on which notification of the Board's decision was sent to the applicant or person mentioned in paragraph 1.

(2) Any person mentioned in paragraph 1 who was notified of an application under that paragraph but made no written representations to the Board about it shall not be entitled to appeal against a decision of the Board in relation to that application.

[F8(2A) The grounds of appeal are limited to where the circumstances in sub-paragraph (2B) have occurred or where the Board has erred in law in its application of the provisions of these Regulations.

(2B) The circumstances are—

(a) there has been a procedural defect in the way the application has been considered by the Board;

(b) there has been a failure by the Board to properly narrate the facts or reasons upon which their determination of the application was based; or

(c) there has been a failure to explain the application by the Board of the provisions of these Regulations to those facts.**]**

[F9(3) Any notice of appeal under this paragraph shall contain a concise statement detailing the circumstances in sub-paragraph (2B) or other points of law in respect of which the appellant contends that the decision of the Board is erroneous.**]**

(4) The Board shall refer a notice of appeal under this paragraph to the chair of the National Appeal Panel **[**F10together with the decision of the Board on the application**]**.

[F11(5) The Chair, after considering the notice of appeal and the decision of the Board, shall—

(a) dismiss the appeal, if the Chair is of the opinion that:

(i) the notice discloses no reasonable grounds of appeal; or

(ii) the appeal is otherwise frivolous or vexatious; or

(b) remit the decision back to the Board for reconsideration if the Chair is of the opinion that any of the circumstances in sub-paragraph (2B) have occurred,

and the Chair's decision is final.**]**

(6) In any other case the National Appeal Panel shall be convened in accordance with Part II of Schedule 4 and the said Panel shall thereafter determine the appeal.

[F12(7) Where the Chair remits an application back to the Board for reconsideration—

(a) the Chair shall give to the Board such advice as appears to the Chair to be desirable with a view to remedying the defect or failure that has led to the decision to remit;

(b) the Chair shall send a copy of the remitted application and the advice issued to the Scottish Ministers; and

(c) the Board shall reconsider the application.**]**

[F13(7A) The National Appeal Panel shall, subject to sub-paragraph (7B), make a decision under sub-paragraph (5) or a determination under sub-paragraph (6) within 3 months of the date of receipt of a notice of appeal under sub-paragraph (4).

(7B) The 3 month period in sub-paragraph (7A) may be extended in exceptional circumstances and in such an event the National Appeal Panel must inform the interested parties of the extended time period and the reasons for it.

(7C) In this paragraph "interested parties" means the appellant, the applicant and any person mentioned in paragraph 1 who makes written representations to the Board about the application.**]**

F14(8) . . . . . .

Textual Amendments

F8 Sch. 3 para. 5(2A)(2B) inserted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(6)(a)** (with reg. 10)

F9 Sch. 3 para. 5(3) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(6)(b)** (with reg. 10)

F10 Words in sch. 3 para. 5(4) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(6)(c)** (with reg. 10)

F11 Sch. 3 para. 5(5) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(6)(d)** (with reg. 10)

F12 Sch. 3 para. 5(7) substituted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(6)(e)** (with reg. 10)

F13 Sch. 3 para. 5(7A)-(7C) inserted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(7)** (with reg. 14)

F14 Sch. 3 para. 5(8) omitted (1.4.2011) by virtue of The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(6)(f)** (with reg. 10)

Commencement Information

I5 Sch. 3 para. 5 in force at 1.7.2009, see **reg. 1**

[F15Form of Appeal

6.—(1) If it appears to the National Appeal Panel that an appeal can properly be determined without a hearing, it may determine the appeal without a hearing.

(2) If the National Appeal Panel determines that a hearing is required, it shall take place at such time and place as the National Appeal Panel may direct and notice shall be sent by post to the interested parties and the Board not less than 14 days before the date fixed for the hearing.

(3) The interested parties may attend and be heard in person or be represented by counsel or a solicitor or other representative at the hearing and the Board may attend and be represented at the hearing by any duly authorised official or by counsel or a solicitor.

F16(4) . . . . . .

(5) Subject to the provisions of these Regulations, the National Appeal Panel shall determine an appeal (including its procedure) as it thinks fit and its decision in respect of an appeal shall be final.

(6) In this paragraph "interested parties" means the appellant, the applicant and any person **[**F17or body**]** mentioned in paragraph 1 who makes written representations to the Board about the application.**]**

Textual Amendments

F15 Sch. 3 para. 6 inserted (1.4.2011) by The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I. 2011/32), regs. 1, **8(7)** (with reg. 10)

F16 Sch. 3 para. 6(4) omitted (19.9.2013) by virtue of The Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013 (S.I. 2013/2042), art. 1(2), **Sch. para. 79(a)**

F17 Words in sch. 3 para. 6(6) inserted (28.6.2014) by The National Health Service (Pharmaceutical Services) (Scotland) (Miscellaneous Amendments) Regulations 2014 (S.S.I. 2014/148), regs. 1(1), **8(8)** (with reg. 14)

Changes to legislation:
There are currently no known outstanding effects for the The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, SCHEDULE 3.