

## SCHEDULE 3

### Appeals to the Secretary of State

## PART 3

### Determination of appeals

#### **Flexibility with regard to the manner of determining appeals**

7.—(1) Except in so far as these Regulations provide to the contrary, the Secretary of State is to determine the appeal to which a valid notice of appeal under regulation 45, 63 or 77, or under paragraph 30, 32(5) or 36 of Schedule 2, relates in such manner (including with regard to procedures) as the Secretary of State sees fit.

(2) The Secretary of State may determine the appeal without hearing any oral representations, if the Secretary of State considers that oral representations are unnecessary.

(3) Where appropriate, the Secretary of State may, if the Secretary of State thinks fit, consider 2 or more appeals together and in relation to each other, but where the Secretary of State does so, the Secretary of State must give notice of the Secretary of State's intention to do so to—

- (a) the NHSCB;
- (b) the appellants; and
- (c) any other person notified in relation to the appeals under Part 2.

#### **Oral hearings**

8.—(1) If the Secretary of State does decide to hear oral representations, the Secretary of State must give not less than 14 days notice of the time and place at which the oral representations are to be heard to—

- (a) the NHSCB;
- (b) the person who made the original application to which the appeal relates;
- (c) if a person other than that applicant is bringing the appeal, the person bringing the appeal;
- (d) any Local Pharmaceutical Committee whose area includes all or part of the area, or in whose area is the location or are the premises, to which the decision relates;
- (e) any Local Medical Committee whose area includes all or part of the area, or in whose area is the location or are the premises, to which the decision relates; and
- (f) any additional presenters,

and they (or their duly authorised representatives) are to be the only persons entitled to make oral representations at the hearing.

(2) For these purposes, a person (P) is an “additional presenter” if—

- (a) P was notified of the appeal under Part 2 and has made written representations in accordance with paragraph 3(2), 4(3) or 5(3), which—
  - (i) indicated that, if there were to be an oral hearing in relation to the appeal, P would wish to make oral representations at that hearing, and
  - (ii) identified a matter about which the Secretary of State considers it would be desirable to hear further evidence from P at the oral hearing; and

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- (b) the Secretary of State is satisfied that P made a reasonable attempt to express P's views on the appeal adequately in P's written representations.

### **Decisions of the Secretary of State**

9.—(1) On determining an appeal relating to a valid notice under paragraph 30 or 36, the Secretary of State may—

- (a) if the appeal is an appeal to which paragraph 30 or 36(1)(a) of Schedule 2 applies (that is, against a decision to grant or refuse a routine or excepted application)—
  - (i) confirm the decision of the NHSCB,
  - (ii) quash the decision and redetermine the application, or
  - (iii) quash the decision and remit the matter to the NHSCB for it to redetermine the application, where the Secretary of State considers that there should be a (further) notification under paragraph 19 of Schedule 2, subject to such directions as the Secretary of State considers appropriate; or
- (b) if the appeal is an appeal to which paragraph 32(5) or 36(1)(b) to (f) applies—
  - (i) confirm the decision of the NHSCB, or
  - (ii) substitute for that decision any decision that the NHSCB could have taken when it took that decision.

(2) If the Secretary of State grants or confirms the grant of a routine application, the Secretary of State may direct the NHSCB—

- (a) to impose a condition under paragraph 33, in circumstances where the NHSCB could have imposed such a decision if it had granted the application; or
- (b) to take such action under regulation 50(4) or (5) as the Secretary of State thinks fit.

(3) On determining an appeal relating to a valid notice under regulation 45, the Secretary of State may—

- (a) confirm the decision or determination of the NHSCB;
- (b) substitute for that decision or determination any decision or determination that the NHSCB could have taken when it took that decision or made that determination; or
- (c) quash the decision or determination of the NHSCB and remit the matter to it for it to redetermine the decision or determination, subject to such directions as the Secretary of State considers appropriate.

(4) On determining an appeal relating to a valid notice under regulation 63, the Secretary of State may—

- (a) in the case of decision or determination mentioned in regulation 63(1)(a), (b), (e) or (f)—
  - (i) confirm the decision or determination of the NHSCB,
  - (ii) substitute for that decision or determination any decision or determination that the NHSCB could have taken when it took that decision or made that determination, or
  - (iii) quash the decision or determination of the NHSCB and remit the matter to it for it to redetermine the decision or determination, subject to such directions as the Secretary of State considers appropriate; or
- (b) if the appeal is against a decision to grant or refuse an application for outline consent or premises approval—
  - (i) confirm the decision of the NHSCB,
  - (ii) quash the decision of the NHSCB and redetermine the application, or

- (iii) quash the decision of the NHSCB and remit the matter to it for it to redetermine the application, subject to such directions as the Secretary of State considers appropriate.
- (5) On determining an appeal relating to a valid notice under regulation 77, the Secretary of State may—
  - (a) confirm the decision of the NHSCB; or
  - (b) substitute for that decision any decision that the NHSCB could have taken when it took that decision.
- (6) If the Secretary of State grants or confirms the grant of an application for—
  - (a) outline consent, the Secretary of State may direct the NHSCB to take such action under regulation 53(3) as the Secretary of State thinks fit; or
  - (b) premises approval, the Secretary of State may direct the NHSCB to take such action under regulation 57 as the Secretary of State thinks fit.

#### **Notification of decisions and subsequent action by the NHSCB**

**10.**—(1) Once the Secretary of State has determined the appeal, the Secretary of State must notify the following—

- (a) the NHSCB;
- (b) the person who made the original application to which the appeal relates;
- (c) if a person other than that person brought the appeal, the person who brought the appeal; and
- (d) any person who made written representations relating to the application pursuant to the notification under Part 2,

and must include with that notification a statement of the reasons for the Secretary of State's decision and the Secretary of State's findings of fact.

(2) If the Secretary of State has granted or confirmed the grant of a routine or excepted application—

- (a) the NHSCB must send to the applicant a template of the notice of commencement referred to in paragraph 29; and
  - (b) the time periods in paragraphs 31, 32 and 34 thereafter apply as if the references to the applicant being sent notices of the NHSCB's decision were reference to the applicant being notified by the Secretary of State under paragraph (3).
- (3) If the Secretary of State has granted or confirmed the grant of—
- (a) a routine application, the NHSCB must proceed as soon as is practicable to take such action under regulation 50(4) or (5) as it thinks fit, subject to any directions of the Secretary of State under paragraph 9(2)(b);
  - (b) an application for outline consent, the NHSCB must proceed as soon as is practicable to make a determination under regulation 53(3), subject to any directions of the Secretary of State under paragraph 9(6)(a); or
  - (c) an application for premises approval, the NHSCB must proceed as soon as is practicable take such action under regulation 57 as it thinks fit, subject to any directions of the Secretary of State under paragraph 9(6)(b).

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### **Effect of decisions by the Secretary of State**

**11.** For the purposes of these Regulations, the Secretary of State's decision becomes the NHSCB's decision on the matter (but no further appeal to the Secretary of State on that decision is possible), unless the Secretary of State's decision is overruled by a court.