

## SCHEDULE 12

Regulation 37(2)

### APPEALS

#### **PART 1**

##### General

**1.** In this Schedule—

“appeal” means an appeal under regulation 37;

“appellant” means a person who has brought an appeal;

“appointed person” means a person appointed in accordance with paragraph 2;

“hearing” means a hearing to which Part 2 of this Schedule applies; and

“the parties” means the appellant and the competent authority.

**2.** The Secretary of State must direct that an appeal be determined by a person whom the Secretary of State appoints for the purpose and the Secretary of State must notify the parties in writing of the name of the appointed person.

**3.** Before the determination of an appeal, the appointed person must ask the parties whether they wish to appear and be heard on the appeal and—

(a) the appeal may be determined without a hearing of the parties if both of them express a wish not to be heard; or

(b) the appointed person must, if either party expresses a wish to appear and be heard, afford both of them an opportunity of so doing, in which case the provisions of Part 2 of this Schedule apply.

**4.** An appointed person may give such directions as the appointed person considers are appropriate to give effect to the determination.

**5.** The Secretary of State may pay to an appointed person such remuneration and allowances as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

#### **PART 2**

##### Hearing

**6.—(1)** Subject to the following sub-paragraphs of this paragraph, a date, time and place for the holding of the hearing must be fixed by the appointed person, who must give not less than 28 days' notice in writing of such date, time and place to the parties.

(2) With the consent of the parties, the appointed person may give such lesser period of notice as is agreed with the parties and in that event the appointed person may specify a date for service of the statement referred to in paragraph 7(1) later than the date determined in accordance with that paragraph.

(3) Where it becomes necessary or advisable to vary the date, time or place fixed for the hearing, the appointed person must give such notice of the variation as may appear to the appointed person to be reasonable in the circumstances.

**7.—(1)** Not later than 21 days before the date of the hearing, or such later date as the appointed person may specify in accordance with paragraph 6(2), the competent authority must serve on the

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appellant a written statement of any submission which the competent authority proposes to put forward at the hearing and supply a copy of the statement to the appointed person.

(2) Where the competent authority intends to refer to or put in evidence documents (including photographs and plans) at the hearing—

- (a) the statement of the competent authority must be accompanied by a list of those documents together with a written notice stating the times and place at which the documents may be inspected by the appellant; and
- (b) the competent authority must afford the appellant a reasonable opportunity to inspect and, where practicable, to take copies of those documents.

(3) If so required by the appointed person, the appellant must—

- (a) serve on the competent authority and on the appointed person, within such time before the hearing as the appointed person may specify, a written statement of the submissions which the appellant proposes to put forward at the hearing accompanied by a list of any documents (including photographs and plans) which the appellant intends to refer to or put in evidence at the hearing; and
- (b) afford the competent authority a reasonable opportunity to inspect and, where practicable, to take copies of those documents.

**8.—**(1) The parties are entitled to appear at the hearing.

(2) Any other person may appear at the discretion of the appointed person provided that the person has, not later than seven days before the date of the hearing, served on the competent authority a statement of the person's proposed submissions.

(3) The competent authority must send a copy of every statement served on it in accordance with subparagraph (2) to the appointed person and to the appellant.

(4) A body corporate may appear by its clerk or secretary or by any other officer appointed for the purpose by that body, or by counsel or a solicitor.

(5) A person may appear in person or be represented by counsel, a solicitor or any other person.

(6) Where there are two or more persons having a similar interest in the subject matter of the hearing, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested.

**9.—**(1) All hearings must be held in private.

(2) Except as otherwise provided in this Part, the procedure of the hearing is to be such as the appointed person determines and the appointed person must state at the commencement of the hearing the procedure which, subject to consideration of any submission by the parties, it is proposed to adopt.

(3) Unless in a particular case the appointed person, with the consent of the appellant, otherwise determines, the appellant must be heard first and must have the right of final reply.

(4) The parties must be entitled to make an opening statement, call evidence and cross-examine persons giving evidence but any other person appearing at the hearing may only do so to the extent permitted by the appointed person.

(5) Subject to sub-paragraph (6), any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the hearing and that facilities be afforded to take or obtain copies of those documents.

(6) The appointed person may not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest.

(7) The appointed person may allow the parties to alter or add to the submissions contained in any statement served under paragraph 7(1) or (3), or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between them, but must (if necessary, by adjourning the hearing) give the other party an adequate opportunity of considering any such fresh submission or document.

(8) If any person entitled to appear at the hearing fails to appear, the appointed person may proceed with the hearing.

(9) The appointed person is entitled to take into account any written representations or statements received by the appointed person before the hearing from any person, subject to disclosure of such representations or statements at the hearing.

(10) The appointed person may from time to time adjourn the hearing, and where this occurs, must give reasonable notice to every person entitled or permitted to appear at the hearing of the date, time and place of the adjourned hearing.

**10.—**(1) Where, after the hearing, the appointed person proposes to take into consideration—

- (a) any new evidence, including expert opinion on a matter of fact; or
- (b) any new issue of fact, not being a matter of government policy or a matter affecting the safety of the State,

which was not raised at the hearing and which the appointed person considers to be material to a decision, the appointed person must not come to a decision without first notifying the parties of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations on the new evidence or new issue of fact in writing within 21 days or of asking within that time for the re-opening of the hearing.

(2) If the appointed person thinks fit, the appointed person may cause the hearing to be re-opened and must cause it to be re-opened if asked to do so in accordance with sub-paragraph (1).

(3) Where a hearing is re-opened, paragraph 6(1) applies as it applied to the original hearing.

**11.** The appointed person must notify the decision on the appeal, and the reasons for the decision, in writing to the parties and to any person who, having appeared at the hearing, has asked to be notified of the decision.

**Changes to legislation:**

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