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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 32**

**The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011**

**Amendment to Schedule 3**

**8.**—(1) Schedule 3 (the Board) is amended as follows.

(2) In paragraph 1(1) (receipt and notification of applications) for “The Board shall” to “of the application to” substitute—

“The Board shall within 10 working days of receiving an application to which regulation 5(10) applies, or receiving further information submitted under regulation 5(2E) (whichever is the later), give written notice of the application to”.

(3) After paragraph 2 (public consultation) insert—

**“Dispensing 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.”.

(4) In paragraph 3(1) (matters to which the Board shall have regard in considering an application)

—  
(a) in paragraph (d) omit “and”;

(b) for paragraph (e) substitute—

“(e) any responses received in the 60 days following consultation in accordance with paragraph 2; and

(f) the pharmaceutical care services plan.”.

(5) For paragraph 4 (notification of decisions) substitute—

“**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 and the reasons for it, 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 and the reasons for it.”.

(6) In paragraph 5 (appeals)—

(a) after sub-paragraph (2) insert—

“(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.”;
- (b) for sub-paragraph (3) substitute—
- “(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.”;
- (c) in sub-paragraph (4) from “appointed” to the end, substitute “together with the decision of the Board on the application”;
- (d) for sub-paragraph (5) substitute—
- “(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.”;
- (e) for sub-paragraph (7) substitute—
- “(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.”;
- (f) omit sub-paragraph (8).
- (7) After paragraph 5 insert—

### **“Form 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.

(4) The Administrative Justice and Tribunals Council or its Scottish Committee shall be given not less than 14 days notice of any Panel hearing and a member of the Council or its Scottish Committee shall be entitled to be present at any such hearing.

(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 mentioned in paragraph 1 who makes written representations to the Board about the application.”.