

## SCHEDULE 1

Regulation 14(4)

### Biocidal products appeals

## PART 1

### DEFINITIONS AND ARRANGEMENTS FOR AN APPEAL

1. In this Schedule—
  - (a) “appeal” means an appeal under regulation 14;  
“appellant” means a person who has brought an appeal;  
“appointed person” means a person appointed in accordance with paragraph 2;  
“appropriate person” has the same meaning as it has in regulation 14(8);  
“hearing” means a hearing to which Part 2 of this Schedule applies;  
“the parties” means the appellant and the competent authority;
  - (b) a reference to “government department” includes, in the case of an appeal relating to a decision of the competent authority—
    - (i) in or as regards Scotland, a reference to the Scottish Administration or any part thereof; and
    - (ii) in or as regards Wales, a reference to the Welsh Ministers;
  - (c) a reference to a numbered sub-paragraph is a reference to the sub-paragraph so numbered in the paragraph in which that reference occurs.
2. The appropriate person must—
  - (a) direct that an appeal shall be determined by a person appointed by the appropriate person for that purpose; and
  - (b) 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 if the parties express a wish not to be heard;
  - (b) the appointed person must, if either of the parties 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 shall apply.
4. An appointed person may give such directions as that appointed person thinks appropriate to give effect to a determination.
5. The appropriate person may pay to an appointed person such remuneration and allowances as the appropriate person may determine.

## PART 2

### APPEAL PROCEDURES

6. An appeal brought pursuant to regulation 14(1)(q) must be heard in private.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

7.—(1) Subject to the following sub-paragraphs of this paragraph, a date, time and place for the holding of the hearing shall be fixed, and may be varied, by the appointed person, who must give not less than 42 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 shall be agreed with the parties, and in that event, the appointed person may specify a date for service of the statement referred to in paragraph 8(1) later than the date determined in accordance with that paragraph.

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

(4) Without prejudice to sub-paragraphs (1) to (3), the appointed person may require the competent authority to take one or more of the following steps, namely—

(a) to serve such notice of the hearing, in such form and on such persons or classes of persons as the appointed person may direct;

(b) to give such other notice of the hearing, in such form as the appointed person may direct, and the requirements as to the period of notice contained in sub-paragraph (1) shall not apply to any such notices.

8.—(1) Not later than 28 days before the date of the hearing, or such later date as the appointed person may specify in accordance with paragraph 7(2), the competent authority must serve on the appellant a written statement of any submission which the competent authority proposes to put forward at the hearing and shall supply a copy of the statement to the appointed person.

(2) Where a government department has expressed in writing to the competent authority a view in support of the decision of the competent authority and the competent authority proposes to rely on such expression of view in its submission at the hearing, the competent authority must include the expression of view in its statement and must supply a copy of the statement to the government department concerned.

(3) Where the competent authority intends to refer to, or put in evidence at the hearing, documents (including photographs), the statement of the competent authority must be accompanied by a list of such documents, together with a written notice stating the times and place at which the documents may be inspected by the appellant; and the competent authority shall afford the appellant a reasonable opportunity to inspect and, where practicable, to take copies of the documents.

(4) 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; and such statement must be accompanied by a list of any documents (including photographs) 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 such documents as are referred to in paragraph (a).

9.—(1) The parties shall be entitled to appear at the hearing.

(2) Any other person may appear at the discretion of the appointed person provided that that person has, not later than 7 days before the date of the hearing, served on the competent authority a statement of that person's proposed submissions.

(3) The competent authority must send a copy of every statement served on the competent authority in accordance with sub-paragraph (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 Scottish partnership (other than a limited liability partnership), may appear by a partner or other person in charge, or locally in charge, of the partnership's affairs.

(6) A person may appear on that person's own behalf or be represented by counsel, a solicitor or any other person.

(7) 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.

**10.**—(1) Where a government department has expressed in writing to the competent authority a view in support of the decision of the competent authority and the competent authority has included this view in the statement referred to in paragraph 8(1), the appellant may apply in writing to the appointed person, not later than 14 days before the date of the hearing, for a representative of the government department concerned to be made available at the hearing.

(2) The appointed person must send an application made to the appointed person under sub-paragraph (1) to the government department concerned, who must make a representative of the department available to attend the hearing.

(3) A representative of a government department who, in pursuance of this paragraph, attends a hearing, shall be called as a witness by the competent authority and shall state the reasons for the view expressed by the representative's department and included in the statement of the competent authority under paragraph 8(1) and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in sub-paragraph (3) shall require a representative of a government department to answer any question which, in the opinion of the appointed person, is directed to the merits of government policy or to matters which affect the safety of the State, and the appointed person must disallow any such question.

**11.**—(1) Except as otherwise provided in this Part of this Schedule, the procedure at the hearing must—

- (a) be determined at the discretion of the appointed person, subject to consideration of any submission by the parties at the commencement of the hearing; and
- (b) be communicated by the appointed person to the parties at the commencement of the hearing.

(2) Unless in any particular case the appointed person, with the consent of the appellant, otherwise determines—

- (a) in the case of an appeal to the Secretary of State, the appellant shall be heard first and shall have the right of final reply; and
- (b) in the case of an appeal to the Secretary of State and the Scottish Ministers, or the Secretary of State and the Welsh Ministers, acting jointly—
  - (i) the appellant shall be heard first;
  - (ii) the other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine; and
  - (iii) any closing statements shall be made in the same order, unless the appointed person otherwise determines.

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(4) Subject to sub-paragraph (5), 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 that person to take or obtain copies of those documents.

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

(6) The appointed person may allow the competent authority or the appellant, or the parties, to alter or add to the submissions contained in any statement served under paragraph 8(1) or (4), 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 the parties, but must (if necessary by adjourning the hearing) give the appellant or the competent authority, as the case may be, an adequate opportunity of considering any such fresh submission or document.

(7) If any person entitled to appear at the hearing fails to appear, the appointed person may proceed with the hearing at the appointed person's discretion.

(8) The appointed person shall be 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.

(9) The appointed person may from time to time adjourn the hearing, and where the appointed person does so, shall give reasonable notice to every person entitled or permitted to appear at the hearing of the date, time and place of the adjourned hearing.

**12.—**(1) Where, after the close of 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 the 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 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 the hearing is re-opened, paragraphs 7(1) and 7(4) apply as they applied to the original hearing with the substitution in paragraph 7(1) of “28” for “42”.

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