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STATUTORY INSTRUMENTS

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**2013 No. 349**

**The National Health Service (Pharmaceutical and  
Local Pharmaceutical Services) Regulations 2013**

**PART 8**

Dispensing doctors

**Appeals against decisions under Part 8**

**63.**—(1) A person with appeal rights (as provided for in this regulation) may appeal to the Secretary of State against the following decisions by the NHSCB—

- (a) a decision under regulation 48(5)(b) to require a dispensing doctor to undertake to provide pharmaceutical services, in respect of which the only person with appeal rights is the dispensing doctor;
- (b) a decision under regulation 50 requiring the termination of arrangements to provide pharmaceutical services, subject to any postponement of the discontinuation, in respect of which the only people with appeal rights are—
  - (i) the dispensing doctor who is being required to terminate arrangements, subject to any postponement of the discontinuation, and
  - (ii) if there is any postponement of the discontinuation, the NHS pharmacist listed in relation to any pharmacy premises, the presence of which, or the choice of a patient to obtain services from which, led to the determination by the NHSCB;
- (c) a decision to refuse an application for—
  - (i) outline consent under regulation 51,
  - (ii) premises approval under regulation 51, 54 or 55, or
  - (iii) temporary premises approval under regulation 58,in respect of which the only person with appeal rights is the applicant;
- (d) a decision to grant an application for—
  - (i) outline consent under regulation 51, or
  - (ii) premises approval under regulation 51, 54 or 55,in respect of which the only person with appeal rights is a person who has third party appeal rights;
- (e) a determination of—
  - (i) a change to a provisional date under regulation 53(10), or
  - (ii) whether outline consent is to come into effect under regulation 53(13),in respect of which the only person with appeal rights is the person to whom the relevant outline consent was granted; and

- (f) a decision to impose, or a failure to impose, conditions under regulation 57, in respect of which the only people with appeal rights are—
  - (i) the dispensing doctor, and
  - (ii) an NHS pharmacist or LPS chemist who has third party appeal rights in relation to the related application for premises approval,

provided they notify the Secretary of State with a valid notice of appeal within 30 days of the date on which the person bringing the appeal was notified of the decision that is being appealed.

(2) A notice of appeal under paragraph (1) is only valid if it includes a concise and reasoned statement of the grounds of appeal.

(3) For the purposes of paragraph (1)(d) or (f), a person (P1) has third party appeal rights if—

- (a) P1 was a person whom the NHSCB was required to notify about the relevant application for outline consent or premises approval by virtue of P1 being—
  - (i) included in a pharmaceutical list,
  - (ii) entitled to be included in a pharmaceutical list because of the grant of a routine or excepted application but not (yet) included,
  - (iii) an LPS chemist with whom the NHSCB has made arrangements for the provision of any local pharmaceutical services, or
  - (iv) (except in relation to paragraph (1)(f)), a provider of primary medical services, or any other person on the dispensing doctors list for the area of the relevant HWB if there is one (being a performer but not a provider of primary medical services),
 and a person whose interests might, in the opinion of the NHSCB, be significantly affected by the decision;
- (b) P1 made representations in writing about the application under regulation 52(4); and
- (c) subject to sub-paragraph (5), the NHSCB is satisfied, having regard to those representations in writing and any oral representations made at any oral hearing, that P1—
  - (i) made a reasonable attempt to express P1's grounds for opposing the application adequately in P1's representations, and
  - (ii) has grounds for opposing the application, which—
    - (aa) do not amount to a challenge to the legality or reasonableness of the relevant pharmaceutical needs assessment, or to the fairness of the process by which that assessment was undertaken, and
    - (bb) are not vexatious or frivolous.

(4) If the NHSCB considers that a person notified under regulation 52(1) to (3) is a person with third party appeal rights, it must notify that person of that fact when it notifies that person of a decision (D1) in respect of which that person may be able to exercise those rights.

(5) A person to whom paragraph (3)(a) and (b) applies (P2) who is not notified by the NHSCB that they are person with third party appeal rights may appeal to the Secretary of State against the determination (D2) by the NHSCB that it is not satisfied as mentioned in sub-paragraph (3)(c), provided that P2—

- (a) notifies the Secretary of State within 30 days of the date on which that person was notified of the NHSCB's decision that P2 wishes to appeal against both D1 and D2; and
- (b) includes within that notification concise and reasoned statements of P2's grounds of appeal against both D1 and D2,

and if the appeal against D2 is successful, P2 is a person with third party appeal rights in relation to D1 for the purposes of this regulation.

(6) Schedule 3 has effect in relation to appeals to the Secretary of State against decisions under this Part (as it does in relation to appeals against decisions under Parts 2 to 5, 7, 10 and 12 and Schedule 2).