

## SCHEDULE 4

Regulations 14, 25, 35 and 54

### Appeals to the Welsh Ministers

## PART 1

### Preliminary matters

#### General principles

1. Except in so far as these Regulations provide to the contrary, the Welsh Ministers may determine an appeal submitted to them in such manner as they think fit and may, in particular—

- (a) consider all information available to them which, in their opinion, is relevant to the determination of an appeal;
- (b) consider two or more appeals together and in relation to each other (but they are not obliged to do so where the Local Health Board has determined two or more applications together and in relation to each other) but where they intend to do so they must give notice of that intention to each appellant and those given notice of each appeal in accordance with this Schedule;
- (c) where in accordance with sub-paragraph (b) the Welsh Ministers consider two or more appeals to which regulation 15(2) applies together and in relation to each other, they may refuse an appeal (notwithstanding the fact that they would if determining the appeal in isolation grant it) where the number of appeals is such, or the circumstances in which they are made are such, that to grant all of them or more than one of them, would prejudice the proper provision of primary medical services, pharmaceutical services or dispensing services in the controlled locality within which the premises specified in the appeal are situated;
- (d) remit an appeal submitted to them to a Local Health Board for re-determination in cases where the information that the applicant is required to provide in accordance with Schedule 2 was incomplete;
- (e) dismiss an appeal if they are of the opinion that the notice of appeal—
  - (i) is not valid because it does not comply with the requirements of this Schedule,
  - (ii) does not disclose any reasonable grounds of appeal, or
  - (iii) is otherwise vexatious or frivolous.

#### Oral hearings

2.—(1) The Welsh Ministers may require an oral hearing to be held if they consider that it is necessary to hear oral representations before determining an appeal submitted to them.

- (2) If the Welsh Ministers decide to hold an oral hearing, they must—
- (a) appoint one or more persons to hear and to report to them on the appeal,
  - (b) give not less than 14 days' notice of the time and place of the hearing to the appellant and to any person sent a copy of the notice of appeal under paragraph 4 or 7,
  - (c) advise the appellant who has been given notice of the hearing, and
  - (d) advise those notified that they may make oral representations relating to the appeal at the hearing.

*Status: This is the original version (as it was originally made).*

(3) Any person mentioned in sub-paragraph (2) wishing to make oral representations at the hearing may be assisted in the presentation of their representations by another person and may be represented by that other person at the hearing, including where the person notified under sub-paragraph (2) is unable to attend the hearing in person.

(4) The person or persons appointed by the Welsh Ministers to hear the appeal may determine the procedure to be followed at the hearing.

(5) The Welsh Ministers are not bound by any recommendations arising from an oral hearing.

## PART 2

### Appeals against decisions determining controlled localities

#### **Right of appeal to the Welsh Ministers**

3.—(1) Where a Local Health Board has decided that an application by a Local Medical Committee or a Local Pharmaceutical Committee cannot be considered by virtue of regulation 13(3) (areas that are controlled localities), the applicant may submit a notice of appeal against that decision to the Welsh Ministers.

(2) Where a Local Health Board has determined under regulation 13(2) whether or not any particular area within the area for which it is established is, because it is rural in character, a controlled locality or part of a controlled locality, the persons entitled to submit a notice of appeal against that determination to the Welsh Ministers are—

- (a) the Local Medical Committee,
- (b) the Local Pharmaceutical Committee, and
- (c) any person included in a pharmaceutical list maintained by the Local Health Board, any provider of local pharmaceutical services under a pilot scheme or any provider of primary medical services in the area for which the Local Health Board is established and who were given notice of the determination by the Local Health Board under paragraph 7(1) of Schedule 3.

(3) Where a Local Health Board has determined that it should or should not postpone the making or termination of arrangements, as mentioned in paragraph 6(b) of Schedule 3, those that may submit a notice of appeal against that determination to the Welsh Ministers are—

- (a) the Local Medical Committee,
- (b) the Local Pharmaceutical Committee, and
- (c) any person included in a pharmaceutical list maintained by the Local Health Board, any provider of local pharmaceutical services under a pilot scheme or any provider of primary medical services in the area for which the Local Health Board is established and who were given notice of the determination by the Local Health Board under paragraph 7(1) of Schedule 3.

(4) A notice of appeal is valid if—

- (a) it is submitted by a person with the right of appeal under sub-paragraph (1), (2) or (3),
- (b) it is sent to the Welsh Ministers within 30 days of the date on which notice of the decision being appealed was sent by the Local Health Board to the person making the appeal, and
- (c) it contains a statement of the grounds of appeal.

### **Notification of appeals**

4.—(1) The Welsh Ministers must on receipt of a notice of appeal submitted under paragraph 3(1) send a copy of the notice to the Local Health Board.

(2) The Welsh Ministers must on receipt of a notice of appeal submitted under paragraph 3(2) or 3(3) send a copy of the notice to—

- (a) the Local Health Board, and
- (b) those persons to whom the Local Health Board has given notice of its determination under paragraph 7(1) of Schedule 3.

(3) Those sent a copy of the notice of appeal under sub-paragraphs (1) to (3) must, at the same time, be informed by the Welsh Ministers—

- (a) that they may within 30 days of the date on which the notice of appeal was sent to them, make representations on the appeal in writing to the Welsh Ministers, and
- (b) of the circumstances in which the Welsh Ministers may require an oral hearing to be held.

### **Decision on appeals**

5.—(1) The Welsh Ministers must after reaching a decision on an appeal submitted under paragraph 3 give written notice of their decision together with the reasons for it to those persons sent a copy of the notice of appeal under paragraph 4.

(2) The Welsh Ministers—

- (a) must, where they allow an appeal against a decision by a Local Health Board that an application cannot be considered by virtue of regulation 13(3), either—
  - (i) themselves determine the question of whether or not the particular locality is or is part of a controlled locality, or
  - (ii) remit the question to the Local Health Board for determination,
- (b) may, where the Local Health Board, on determining the application, considered the imposition of conditions under paragraph 6 of Schedule 3, themselves consider whether to impose conditions,
- (c) may, where the Local Health Board, on determining the application, has not considered the imposition of conditions under paragraph 6 of Schedule 3 either—
  - (i) themselves consider whether to impose conditions, or
  - (ii) remit the question to the Local Health Board for determination,
- (d) may, where the Local Health Board, on determining the application, considered the question whether to postpone the making or termination of arrangements under regulation 26 (or equivalent provision under the GMS Regulations) for the provision by a doctor or a GMS contractor of pharmaceutical services or dispensing services to patients, themselves postpone, for such period as they think fit, the making or termination of such arrangements, or
- (e) must, where the Local Health Board, did not consider the question whether to postpone the making or termination of arrangements under regulation 26 (or equivalent provision under the GMS Regulations) for the provision by a doctor or a GMS contractor of pharmaceutical services or dispensing services to patients, remit the question to the Local Health Board for determination.

## PART 3

### Appeals against decisions for inclusion in or amendment to pharmaceutical lists and dispensing doctor lists

#### **Right of appeal to the Welsh Ministers**

6.—(1) For applications to which paragraph 8(1)(a) and (c) of Schedule 3 apply, the persons entitled to submit a notice of appeal against the decision of the Local Health Board to the Welsh Ministers are—

- (a) the applicant;
- (b) any of the following who made representations on the application to the Local Health Board under paragraph 8(3) of Schedule 3—
  - (i) any person included in a pharmaceutical list,
  - (ii) any person who has been granted preliminary consent for inclusion in a pharmaceutical list,
  - (iii) any provider of local pharmaceutical services under a pilot scheme, and
  - (iv) where the premises specified in an application are in a controlled locality, any person who is a provider of primary medical services or who is included in the dispensing doctor list.

(2) In the case of an application determined under regulation 22 (applications involving a change of ownership), the persons entitled to submit a notice of appeal to the Welsh Ministers are—

- (a) the applicant, and
- (b) any of the following who were, under paragraph 14(2) of Schedule 3, given notice of the Local Health Board's decision on the application—
  - (i) any person included in a pharmaceutical list,
  - (ii) any person who has been granted preliminary consent for inclusion in a pharmaceutical list,
  - (iii) any provider of local pharmaceutical services under a pilot scheme, and
  - (iv) where the premises specified in the application are in a controlled locality, any person who is a provider of primary medical services or who is included in the dispensing doctor list.

(3) A notice of appeal is valid if—

- (a) it is submitted by a person with the right of appeal under sub-paragraph (1) or (2),
- (b) it is sent to the Welsh Ministers within 30 days of the date on which notice of the decision being appealed was sent by the Local Health Board to the person making the appeal, and
- (c) it contains a statement of the grounds of appeal which do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which the Local Health Board undertook that assessment.

#### **Notification of appeals**

7.—(1) The Welsh Ministers must, on receipt of a notice of appeal submitted under paragraph 6(1), send a copy of the notice to—

- (a) the applicant, if the applicant has not submitted the notice of appeal,
- (b) the Local Health Board, and

- (c) those notified of and who made representations on the application under paragraph 8(3) of Schedule 3.
- (2) The Welsh Ministers must, on receipt of a notice of appeal submitted under paragraph 6(2), send a copy of the notice to—
  - (a) the applicant, if the applicant has not submitted the notice of appeal,
  - (b) the Local Health Board, and
  - (c) those given notification of the Local Health Board's decision under paragraph 14(2) of Schedule 3.
- (3) The persons to whom a copy of the notice of appeal is sent under this paragraph must, at the same time, be informed by the Welsh Ministers—
  - (a) that they may, within 30 days of the date on which the notice of appeal was sent to them, make representations on the appeal in writing to the Welsh Ministers,
  - (b) of the circumstances in which the Welsh Ministers may require an oral hearing to be held, and
  - (c) where the Welsh Ministers intend to consider two or more appeals together and in relation to each other, of that intention.

#### **Decision on appeals**

- 8.**—(1) On determining an appeal made under paragraph 6, the Welsh Ministers must either—
- (a) allow the appeal, or
  - (b) confirm the decision of the Local Health Board.
- (2) In the case where the premises specified in an application that is subject to appeal are in a controlled locality, the Welsh Ministers—
- (a) may, where the Local Health Board, on determining the application, considered whether to impose conditions under paragraph 13 of Schedule 3 or regulation 17(6)(b), themselves consider whether to impose conditions to postpone, for such period as they think fit, the making or termination of such arrangements, or
  - (b) must, where the Local Health Board on determining the application has not considered whether to impose conditions under paragraph 13 of Schedule 2 or regulation 17(6)(b) either—
    - (i) themselves consider whether to impose conditions, or
    - (ii) remit the question to the Local Health Board for determination.
- (3) The Welsh Ministers must after reaching a decision on an appeal, including the imposition of conditions under sub-paragraph (2), give written notice of their decision together with the reasons for it to those persons sent a copy of the notice of appeal under paragraph 7.

#### **Effect of decisions by the Welsh Ministers**

- 9.** For the purposes of these Regulations, the Welsh Ministers' decision becomes the Local Health Board's decision on the matter (but no further appeal to the Welsh Ministers on that decision is possible, unless the Welsh Ministers' decision is overruled by a court).