

## SCHEDULE 10

Regulation 36(4)

### APPEALS

#### PART I

**1.** In this Schedule—

- (a) “appeal” means an appeal under regulation 36;  
“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 36;  
“hearing” means a hearing to which Part II of this Schedule applies;  
“the parties” means the appellant and the Ministers;
- (b) a reference to “government department” includes, in the case of an appeal relating to a decision of the Ministers in or as regards Scotland, a reference to the Scottish Administration or any part thereof; and
- (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 shall direct that an appeal shall be determined by a person appointed by him for the purpose and the appropriate person shall notify the parties in writing of the name of the appointed person.

**3.** Before the determination of an appeal, the appointed person shall 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 as aforesaid;
- (b) the appointed person shall, 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 II of this Schedule shall apply.

**4.** An appointed person may give such directions as he thinks appropriate to give effect to his determination.

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

#### PART II

**6.** An appeal brought pursuant to regulation 36(1)(j) shall be heard in private.

**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 shall 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 he 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.

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(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 him to be reasonable in the circumstances.

(4) Without prejudice to the foregoing provisions of this paragraph, the appointed person may require the Ministers 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 he may direct;

(b) to give such other notice of the hearing and in such form as he 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 Ministers shall serve on the appellant a written statement of any submission which the Ministers propose 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 Ministers a view in support of the decision of the Ministers and the Ministers propose to rely on such expression of view in their submission at the hearing, the Ministers shall include the expression of view in their statement and shall supply a copy of the statement to the government department concerned.

(3) Where the Ministers intend to refer to, or put in evidence at the hearing, documents (including photographs), the statement of the Ministers shall 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 Ministers 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 shall—

(a) serve on the Ministers and on the appointed person, within such time before the hearing as the appointed person may specify, a written statement of the submissions which he proposes to put forward at the hearing; and such statement shall 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 Ministers a reasonable opportunity to inspect and, where practicable, to take copies of such documents as are referred to in the foregoing provision.

**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 he has, not later than 7 days before the date of the hearing, served on the Ministers a statement of his proposed submissions.

(3) The Ministers shall send a copy of every statement served on them 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 person may appear on his own behalf 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.

**10.—(1)** Where a government department has expressed in writing to the Ministers a view in support of the decision of the Ministers and the Ministers have 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 shall send an application made to him under sub-paragraph (1) to the government department concerned who shall 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 Ministers and shall state the reasons for the view expressed by his department and included in the statement of the Ministers 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 the last foregoing paragraph 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 shall disallow any such question.

**11.—(1)** Except as otherwise provided in this Part of this Schedule, the procedure at the hearing shall be such as the appointed person shall in his discretion determine and the appointed person shall state at the commencement of the hearing the procedure which, subject to consideration of any submission by the parties, he proposes to adopt.

(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, 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.

(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 him to take or obtain copies thereof.

(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 Ministers 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 shall (if necessary by adjourning the hearing) give the appellant or the Ministers, 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 his discretion.

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(8) The appointed person shall be entitled (subject to disclosure thereof at the hearing) to take into account any written representations or statements received by him before the hearing from any person.

(9) The appointed person may from time to time adjourn the hearing, and where he 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 he considers to be material to his decision, he shall 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 thereon in writing within 21 days or of asking within that time for the re-opening of the hearing.

(2) If he thinks fit, the appointed person may cause the hearing to be re-opened and shall 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) shall apply as they applied to the original hearing with the substitution in paragraph 7(1) of “28” for “42”.

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