

SCHEDULES

SCHEDULE 13

Section 169

THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

Constitution

- 1 The Family Health Services Appeal Authority (“the FHSAA”) consists of—
 - (a) a President,
 - (b) one or more Deputy Presidents, and
 - (c) a number of other members,all appointed by the Lord Chancellor on terms determined by him.
- 2 The number of the other members must be determined by the Lord Chancellor after consulting the Secretary of State.
- 3 A person appointed as the President must have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), and a person appointed as a Deputy President must have a 7 year general qualification.
- 4 The qualifications which the other members must have in order to be eligible for appointment must be determined by the Lord Chancellor.
- 5 Each person appointed under paragraph 1—
 - (a) must hold and vacate office in accordance with the terms of his appointment, and
 - (b) may be removed from office by the Lord Chancellor, with the concurrence of the Lord Chief Justice, on grounds of incapacity or misbehaviour.
- 6 (1) The other members must include at least one—
 - (a) health care professional of each description prescribed under section 91, 106 and 123, provided that each such health care professional is included in a list under one of those sections,
 - (b) optometrist or medical practitioner providing general ophthalmic services under the National Health Service (Wales) Act 2006 (c. 42), and
 - (c) registered pharmacist—
 - (i) providing or assisting in the provision of pharmaceutical services under this Act or the National Health Service (Wales) Act 2006, or
 - (ii) providing or performing local pharmaceutical services under this Act or the National Health Service (Wales) Act 2006.
- (2) The other members must also include—
 - (a) such number of persons with a 7 year general qualification (construed as in paragraph 3) as the Lord Chancellor considers appropriate bearing in mind the requirements of paragraph 9, and

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- (b) a number of lay persons who do not fall within sub-paragraph 6(1)(a) to (c) and who possess such qualifications and experience as the Lord Chancellor considers appropriate.

Procedure

- 7 The procedure of the FHSAA is as it determines, subject to the following.
- 8 The functions of the FHSAA must be exercised by panels consisting—
- (a) in the case of functions referred to in section 169(3), of such one or more members as the President may choose, and
 - (b) in the case of other functions, of three members chosen by the President, and, in either case, the President may include himself (or, in the case of a one-member panel, may constitute the panel).
- 9 Subject to paragraph 10, at least one member of each panel (or, in the case of a one-member panel, that member) must have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)).
- 10 (1) In the case of a panel constituted for the purposes—
- (a) of section 158 or 159, or
 - (b) of regulations under section 91, 106 or 123, containing provision corresponding to the sections mentioned in paragraph (a),
- one member of the panel must have the qualification mentioned in paragraph 9.
- (2) Unless the President decides otherwise, in relation to such a panel—
- (a) if the practitioner is a health care professional of a description prescribed under section 91, 106 or 123, one member of the panel must be a health care professional of the same description,
 - (b) if the practitioner is of a description referred to in paragraph 6(1)(b) or (c), one member of the panel must be a practitioner of that description, and
 - (c) the third member must neither fall within any of sub-paragraphs (a) to (c) of paragraph 6(1) nor have a legal qualification.
- 11 Where a panel has more than one member—
- (a) the President must nominate one of the members as chairman,
 - (b) decisions must be taken by a majority of votes, and
 - (c) if there is a tie the chairman has a second vote as a casting vote.
- 12 The FHSAA must—
- (a) give notice of a panel’s decision and of the reasons for it to each party to the proceedings, and
 - (b) publish each decision of a panel falling within paragraph 13 in such way as the FHSAA considers appropriate,
- and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the FHSAA considers it appropriate to include.
- 13 The following decisions fall within this paragraph—
- (a) a decision on national disqualification (see section 159),
 - (b) a decision to allow an appeal brought by virtue of section 158(2)(a), (b) or (c), and
 - (c) such other decisions as may be prescribed.

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- 14 The FHSAA may publish a decision not falling within paragraph 13.
- 15 The Lord Chancellor may make rules as to—
- (a) the composition of panels,
 - (b) the allocation to panels of cases, or of particular proceedings in any case, and
 - (c) the procedure to be followed by a panel in considering any matter before it.
- 16 The Lord Chancellor must make rules—
- (a) giving each party to proceedings before a panel the opportunity of putting his case at a hearing,
 - (b) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party), and
 - (c) securing that any hearing is held in public unless the practitioner asks for it to be in private (a request which the panel must consider but need not grant).
- 17 Rules under this Schedule may, in particular, make provision—
- (a) as to the carrying out by a Deputy President of functions of the President,
 - (b) as to how, and as to the time within which, an application to the FHSAA must be made, or an appeal to the FHSAA must be brought (so far as the matter is not provided for in or by virtue of this or any other Act),
 - (c) for a period which must elapse before an application, or a further application, may be made under section 158(5)(a), or under any provision of regulations under section 91, 106, 123 or 146 corresponding to that provision,
 - (d) as to the matters referred to in paragraph 12,
 - (e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing the appeal or application if the failure to comply was without reasonable excuse),
 - (f) empowering a panel to require persons to attend and give evidence or produce documents,
 - (g) about the admissibility of evidence, and
 - (h) enabling the panel to administer oaths.
- 18 No person may be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales.

Miscellaneous

- 19 (1) The President must, in respect of each period of 12 months beginning on 1st April, prepare a written report about the FHSAA's activities during that period.
- (2) He must send a copy of the report to the Lord Chancellor, the Secretary of State and the Welsh Ministers.
- (3) After consulting the Lord Chancellor and the Welsh Ministers, the Secretary of State may give directions to the President as to subjects with which the report must deal.
- 20 The President must arrange such training for himself and the other members of the FHSAA as he considers appropriate.

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Interpretation

21 In this Schedule—

“practitioner” means the person whose case is before the FHSAA,
“prescribed” means prescribed by the Lord Chancellor in rules.

Interpretation: Provisions under the National Health Service (Wales) Act 2006 (c. 42)

22 In this Schedule—

- (a) references to section 91 include references to section 49 of the National Health Service (Wales) Act 2006,
- (b) references to section 106 include references to section 63 of that Act,
- (c) references to section 158 include references to section 114 of that Act, and
- (d) references to section 159 include references to section 115 of that Act.