

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 4: Further Provisions about Regulation

Section 175: Determination of appeals

436. This section sets out how the Competition Commission is to reach its decisions on appeals and what it must do on reaching a decision.
437. Subsection (2) provides that in determining the appeal the Competition Commission must have regard, to the same extent as GEMA, to the statutory duties which are placed on GEMA. Subsection (3) provides that the Competition Commission must not have regard to any matter which GEMA was not entitled to have regard to when making its decision, though it may consider fresh evidence if GEMA would have been entitled to have regard to it had it had the opportunity to do so. Subsection (4) provides that the Competition Commission may allow the appeal only if it is satisfied: that GEMA failed to have proper regard to the applicable code objectives, or to the regulator's statutory obligations, or failed to give the proper weight to one or more of the above; that the decision was based on an error of fact and/or that the decision was wrong in law.
438. Subsection (6) provides that if the appeal is successful then the Competition Commission must do one or more of the following: (i) quash the decision, (ii) remit it to GEMA with directions for reconsideration and determination or, (iii) if it is quashing a refusal of consent, give appropriate directions for securing that the relevant condition has effect as if the consent had been given.
439. Subsection (9) sets out the way in which the Competition Commission is required to publish its decision, including the reasons for the decision.
440. Subsection (10) allows the Commission to exclude certain information from the reasons for its decision on the grounds of confidentiality when publishing its decision for the attention of persons beyond the parties under subsection (9).