



Energy Act 2004

2004 CHAPTER 20

PART 3

ENERGY REGULATION

CHAPTER 4

FURTHER PROVISIONS ABOUT REGULATION

Appeals from GEMA decisions

173 Appeals to the Competition Commission

- (1) An appeal shall lie to the Competition Commission from a decision by GEMA to which this section applies.
- (2) This section applies to a decision by GEMA if—
 - (a) it is a decision relating to a document by reference to which provision is made by a condition of a gas or electricity licence;
 - (b) that document is designated for the purposes of this section by an order made by the Secretary of State;
 - (c) the decision consists in the giving or refusal of a consent by virtue of which the document has effect, or would have had effect, for the purposes of the licence with modifications or as reissued; and
 - (d) the decision is not of a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.
- (3) An appeal against a decision may be brought under this section only by—
 - (a) a person whose interests are materially affected by it; or
 - (b) a body or association whose functions are or include representing persons in respect of interests of theirs that are so affected.

Status: This is the original version (as it was originally enacted).

- (4) The permission of the Competition Commission is required for the bringing of an appeal under this section.
- (5) The Competition Commission may refuse permission only on one of the following grounds—
 - (a) that the appeal is brought for reasons that are trivial or vexatious;
 - (b) that the appeal has no reasonable prospect of success.
- (6) Before making an order under this section, the Secretary of State must consult—
 - (a) GEMA; and
 - (b) such other persons as he considers appropriate.
- (7) An order excluding decisions from the right of appeal under this section may provide—
 - (a) for the exclusion to apply only in such cases as may be determined in accordance with the order; and
 - (b) for a determination in accordance with the order to be made by such persons, in accordance with such procedures, and by reference to such matters and the opinions of such persons (including GEMA), as may be provided for in the order.
- (8) An order made by the Secretary of State under this section is subject to the negative resolution procedure.
- (9) In this section—
 - “consent” includes an approval or direction;
 - “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

174 Procedure on appeals

- (1) The functions of the Competition Commission with respect to appeals under section 173 of this Act are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (c. 41) (manner in which general functions are to be carried out).
- (2) Instead, Schedule 22 (procedure on appeals) has effect.

175 Determination of appeals

- (1) This section applies to every appeal brought under section 173 of this Act.
- (2) In determining the appeal the Competition Commission must have regard, to the same extent as is required of GEMA, to the matters to which GEMA must have regard—
 - (a) in the carrying out of its principal objectives under section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objectives and general duties);
 - (b) in the performance of its duties under those sections; and
 - (c) in the performance of its duties under sections 4AB and 4A of that Act of 1986 and sections 3B and 3C of the 1989 Act (environmental and health and safety considerations).

- (3) In determining the appeal the Competition Commission—
 - (a) may have regard to any matter to which GEMA was not able to have regard in the case of the decision appealed against; but
 - (b) must not, in the exercise of that power, have regard to any matter to which GEMA would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The Competition Commission may allow the appeal only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
 - (a) that GEMA failed properly to have regard to the matters mentioned in subsection (2);
 - (b) that GEMA failed properly to have regard to the purposes for which the relevant condition has effect;
 - (c) that GEMA failed to give the appropriate weight to one or more of those matters or purposes;
 - (d) that the decision was based, wholly or partly, on an error of fact;
 - (e) that the decision was wrong in law.
- (5) Where the Competition Commission does not allow the appeal, it must confirm the decision appealed against.
- (6) Where it allows the appeal, it must do one or more of the following—
 - (a) quash the decision appealed against;
 - (b) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the Competition Commission;
 - (c) where it quashes the refusal of a consent, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given.
- (7) A person shall not be directed under subsection (6) to do anything that he would not have power to do apart from the direction.
- (8) A person to whom a direction is given under subsection (6) must comply with it; and such a direction given to a person other than GEMA shall be enforceable as if it were an order of the High Court or (in Scotland) of the Court of Session.
- (9) The decision of the Competition Commission on the appeal—
 - (a) must be contained in an order made by the Commission;
 - (b) must set out the reasons for the decision;
 - (c) takes effect at the time specified in the order or determined in accordance with provision set out in that order;
 - (d) must be notified by the Commission to the persons who (within the meaning of Schedule 22) were parties to the appeal; and
 - (e) must be published by the Commission in such manner as it considers appropriate for bringing it to the attention of other persons likely to be affected by it.
- (10) The Competition Commission may exclude from what it publishes under subsection (9)(e) any information which it is satisfied is—
 - (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;

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- (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.

(11) In this section—

“consent” includes an approval or direction; and

“the relevant condition”, in relation to a decision, means the licence condition the provisions of which have effect by reference to the document to which the decision relates.

176 Specialist members of Competition Commission

The Competition Commission’s functions with respect to appeals under section 173 of this Act shall be treated as included in—

- (a) the functions for the purposes of which members of the Competition Commission are appointed under subsection (1) of section 104 of the Utilities Act 2000 (c. 27) (specialist members); and
- (b) the functions for the purposes of which the members appointed under that subsection before the commencement of this section were appointed.