

SCHEDULES

SCHEDULE 22

Section 174

PROCEDURE FOR APPEALS UNDER SECTION 173

Application for permission to bring appeal

- 1 (1) An application for permission to bring an appeal may be made only by sending a notice to the Commission requesting the permission.
- (2) Only a person who will be entitled under section 173 to bring the appeal if permission is granted may apply for permission.
- (3) Where GEMA publishes a decision to which section 173 applies, an application for permission is not to be made after the end of fifteen working days following the earliest day on which the decision was published.
- (4) An application for permission must be accompanied by all such information as may be required by appeal rules.
- (5) Those rules may require information contained in the application to be verified by a statement of truth.
- (6) The applicant must send GEMA—
 - (a) a copy of his application; and
 - (b) such other information as may be required by appeal rules.
- (7) The applicant must also send a copy of that application and of that information to—
 - (a) such persons (apart from GEMA) as appear to him to be affected by the decision appealed against; and
 - (b) such other persons as GEMA may require him to keep informed about his appeal.
- (8) The Commission's decision on an application for permission must be made before the end of ten working days following the day on which it received it.
- (9) The Commission's decision whether to grant permission is to be taken by an authorised member of the Commission.
- (10) A decision to grant permission may be made subject to conditions.
- (11) Those conditions may include—
 - (a) conditions which limit the matters that are to be considered on the appeal in question;
 - (b) conditions for the purpose of expediting the determination of the appeal; and
 - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

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- (12) Where a decision is made to grant or to refuse an application for permission, the Commission must notify the decision—
- (a) to the applicant;
 - (b) to GEMA; and
 - (c) to each person who was sent a copy of the application in accordance with sub-paragraph (7).

Addition of parties to appeal

- 2 (1) This paragraph applies if—
- (a) before the end of twenty working days following the day of the making of an application for permission to bring an appeal, or
 - (b) within such longer period as an authorised member of the Commission may allow,
- a person falling within sub-paragraph (2) gives notice to the Commission asking to become a party to the appeal.
- (2) A person falls within this sub-paragraph if he—
- (a) is not the applicant for permission; but
 - (b) is a person who would have been entitled, at the time of the application, to make his own application to the Commission for permission to bring an appeal against the decision in question.
- (3) A person who gives a notice asking to become a party to an appeal must send GEMA—
- (a) a copy of the notice; and
 - (b) such other information as may be required by appeal rules.
- (4) That person must also send a copy of the notice and of that information to—
- (a) such persons (apart from GEMA) as appear to him to be affected by the decision appealed against; and
 - (b) such other persons as GEMA may require him to keep informed about his appeal.
- (5) An authorised member of the Commission may, on behalf of the Commission, give a direction that a person who has asked in accordance with this paragraph to become a party to an appeal is to be a party to that appeal.
- (6) A member of the Commission is not to give a direction under this paragraph if he considers that it would prevent the determination of the appeal within the period allowed by paragraph 6 to do so.
- (7) Where a direction is given under this paragraph—
- (a) the application for permission, and
 - (b) if permission is or has been granted, the appeal brought by the applicant and any other appeals that are considered with it,
- are to proceed (subject to any direction under sub-paragraph (8)(b)) as if the intervener had joined with the applicant in making that application and bringing the appeal.
- (8) A direction under this paragraph—

- (a) does not allow the intervener to rely on grounds of appeal not contained in the appellant’s application for permission to bring an appeal;
 - (b) may allow the intervener to become a party to the appeal for the purpose of opposing it; and
 - (c) may be given subject to conditions.
- (9) The conditions of a direction under this paragraph may include—
- (a) conditions which limit the matters that are to be considered on the appeal in question;
 - (b) conditions for the purpose of expediting the determination of the appeal.

Suspension of decision

- 3 (1) Where permission has been granted to bring an appeal against a decision to give a consent, an authorised member of the Commission may, on behalf of the Commission, direct that, pending the determination of the appeal—
- (a) the consent is not to have effect; or
 - (b) the consent is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where—
- (a) an application for its exercise has been made by the applicant for permission or by another person with interests or functions that entitle him, or would have entitled him, to appeal against the decision;
 - (b) the applicant for the exercise of the power would incur significant costs if the consent were to have effect, or to continue to have effect, before the determination of the appeal; and
 - (c) the balance of convenience does not otherwise require effect to be given to the consent pending that determination.
- (3) That power is exercisable at any time before the determination of the appeal.
- (4) A person making an application under this paragraph must notify GEMA.
- (5) Before determining whether to grant an application under this paragraph, the authorised member of the Commission must give GEMA an opportunity of making representations about the matter.
- (6) In this paragraph “consent” includes an approval or direction.

Time limit for representations and observations by GEMA

- 4 (1) Where GEMA wishes to make representations or observations to the Commission about—
- (a) a decision in respect of which permission to bring an appeal has been granted,
 - (b) GEMA’s reasons for that decision, or
 - (c) the grounds on which an appeal is being brought against that decision,
- it must do so before the end of fifteen working days following the day of the making of the application for permission to bring the appeal.
- (2) Where more than one application for permission to bring an appeal was made in accordance with paragraph 1 in respect of the same decision, that period of fifteen

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working days begins to run from the end of the day of the making of the last of those applications to be made.

- (3) GEMA must send a copy of its representations and observations to every person who received a copy of—
- (a) the application for permission to bring the appeal; or
 - (b) a notice by which a person asked to become a party to the appeal.

Consideration and determination of appeal by group

- 5 (1) The following functions of the Commission must be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman—
- (a) considering an appeal;
 - (b) determining an appeal; and
 - (c) giving directions and taking other steps to give effect to the Commission’s determination on an appeal.
- (2) A group must consist of three members of the Commission.
- (3) The Chairman must appoint one of the members of a group to be its chairman.
- (4) The Chairman may select a member of the Commission to replace another as a member of a group if—
- (a) the person being replaced has ceased to be a member of the Commission;
 - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform his duties as a member of the group; or
 - (c) it appears to the Chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group.
- (5) The replacement of a member of a group does not prevent the group from continuing after his replacement with anything begun before it.
- (6) In selecting members of a group (whether originally or by way of replacement) the Chairman must ensure that at least one of the group’s members is a person appointed to the Commission under section 104(1) of the Utilities Act 2000 (c. 27) (specialist members).
- (7) The persons who may be selected by the Chairman to be (or to replace) a member of a group, or who may be appointed by him to be the chairman of a group, include himself.
- (8) A decision of a group is effective if, and only if—
- (a) all the members of the group are present when it is made; and
 - (b) at least two members of the group are in favour of the decision.

Timetable for determination of appeal

- 6 (1) The group with the function of determining an appeal must determine that appeal before the end of thirty working days following the last day for the making of representations or observations by GEMA in accordance with paragraph 4.

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- (2) If the group with the function of determining an appeal is satisfied that there are good reasons for departing from the normal requirements, it may (on one occasion only) extend that period of thirty working days by not more than ten more working days.
- (3) The Commission must ensure that an extension under sub-paragraph (2) is notified to every party to the appeal.

Matters to be considered on appeal

- 7 The group with the function of determining an appeal, if it thinks it necessary to do so for the purpose of securing the determination of the appeal within the period allowed by paragraph 6, may disregard—
 - (a) all matters raised by the appellant or an intervener that were not raised by him at the time of his application for permission to bring the appeal or in his request under paragraph 2; and
 - (b) all matters raised by GEMA that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 4.

Production of documents

- 8 (1) The Commission may, by notice, require a person to produce to the Commission the documents specified or otherwise identified in the notice.
- (2) The power to require the production of a document is a power to require its production—
 - (a) at the time and place specified in the notice; and
 - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document that he could not be compelled to produce in civil proceedings in the High Court or Court of Session.
- (4) The Commission may take copies of a document produced to it under this paragraph.
- (5) A notice for the purposes of this paragraph may be issued on the Commission's behalf by any member of the Commission or by its secretary.

Oral hearings

- 9 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
 - (a) by a person considering an application for permission to bring an appeal;
 - (b) by a person considering an application for a direction under paragraph 2 or 3; or
 - (c) by a group with the function of determining an appeal;and, for that purpose, such a person or group may administer oaths.
- (2) The Commission may, by notice, require a person—
 - (a) to attend at a time and place specified in the notice; and
 - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).

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- (3) At any oral hearing the person or group conducting the hearing may require—
 - (a) the applicant, or the appellant or any intervener, if he is present at the hearing, or
 - (b) a person attending the hearing as a representative of a person mentioned in paragraph (a) or of GEMA,
 to give evidence or to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If a person is not present at a hearing to be subjected to a requirement under sub-paragraph (3)—
 - (a) the Commission is not required to give notice to him under sub-paragraph (2); and
 - (b) the person or group conducting the hearing may determine the application or appeal without hearing his evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which he could not be compelled to give in civil proceedings in the High Court or Court of Session.
- (7) Where a person is required under this paragraph to attend at a place more than ten miles from his place of residence, the Commission must pay him the necessary expenses of his attendance.
- (8) A notice for the purposes of this paragraph may be issued on the Commission’s behalf by any member of the Commission or by its secretary.

Written statements

- 10 (1) The Commission may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
 - (a) a person who is considering, or is to consider, an application for a direction under paragraph 3; or
 - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
 - (a) to specify the time and place at which it is to be produced; and
 - (b) to require it to be verified by a statement of truth;
 and a statement produced in accordance with this paragraph must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which he could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.
- (4) A notice for the purposes of this paragraph may be issued on the Commission’s behalf by any member of the Commission or by its secretary.

Defaults in relation to evidence

- 11 (1) If a person (“the defaulter”)—
 - (a) fails to comply with a notice or other requirement issued or imposed under paragraph 8, 9 or 10,

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- (b) in complying with a notice under paragraph 10, makes a statement that is false in any material particular, or
- (c) in providing information otherwise verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

a member of the Commission may certify the failure, or the fact that such a false statement has been made, to the High Court or the Court of Session.

- (2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph; and if, after having heard—
 - (a) any witness against or on behalf of the defaulter, and
 - (b) any statement in his defence,it is satisfied that the defaulter did, without reasonable excuse, refuse or otherwise fail to comply with the notice or other requirement, or made the false statement, that court may punish him as if he had been guilty of contempt of court.
- (3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).
- (4) A person who wilfully alters, suppresses or destroys a document that he has been required to produce under paragraph 8 is guilty of an offence and shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Appeal rules

- 12 (1) The Commission may make rules regulating the conduct and disposal of appeals under section 173.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing; or
 - (b) the making of representations or observations at such a hearing.
- (3) The Commission must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (4) Before making rules under this paragraph, the Commission must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

Costs

- 13 (1) A group that determines an appeal must make an order requiring the payment to the Commission of the costs incurred by the Commission in connection with the appeal.
- (2) Where the appeal is allowed, the order must require those costs to be paid by GEMA.

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- (3) Where the appeal is dismissed, the order must require those costs to be paid by the appellant but, if there is more than one appellant—
- (a) may provide that only such one or more of the appellants as may be specified in the order is to be liable for the costs; and
 - (b) may determine the proportions in which the appellants so specified are to be so liable.
- (4) In sub-paragraph (3) references to an appellant do not include references to an intervener.
- (5) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another in respect of costs incurred by that other party in connection with the appeal.
- (6) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of five days beginning with the day after the making of the order.
- (7) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (6) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

The Secretary of State's power to modify time limits

- 14 (1) The Secretary of State may by order modify any period specified in this Schedule as the period within which anything must be done.
- (2) An order under this paragraph is subject to the negative resolution procedure.

Interpretation of Schedule

- 15 (1) In this Schedule—
- “appeal” means an appeal under section 173;
 - “appeal rules” means rules under paragraph 12;
 - “authorised member of the Commission”, in relation to a power exercisable in the case of an appeal or an application for permission to bring an appeal, means—
 - (a) the Chairman;
 - (b) a member of the Commission authorised by the Chairman to exercise that power; or
 - (c) the chairman of the group which has, or (if permission is granted) will have, the function of determining the appeal;
 - “the Chairman” means the Chairman of the Commission;
 - “the Commission” means the Competition Commission;
 - “a group” means a group selected in accordance with paragraph 5;
 - “intervener” means a person who has become a party to an appeal in pursuance of a direction under paragraph 2;
 - “statement of truth” means a statement that the person producing the document believes the facts stated in the document to be true;
 - “working day” means any day other than—
 - (a) Saturday or Sunday;

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- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971 (c. 80).

- (2) References in this Schedule to a party to an appeal are references to—
- (a) the appellant;
 - (b) an intervener; or
 - (c) GEMA.