STATUTORY INSTRUMENTS

# 2011 No. 2704

# The Electricity and Gas (Internal Markets) Regulations 2011

## PART 9

Licence modification procedure

**Amendment of licence modification provisions in the Gas Act 1986**

**41.**—(1) The Gas Act 1986 [M1] is amended as follows.

(2) Section 23 (modification by agreement) [M2] is amended as set out in paragraphs (3) to (5).

(3) For the heading and subsections (1) to (4) substitute—

"**Modification of conditions of licences**

**23.**—(1) The Authority may make modifications of—

(a) the conditions of a particular licence;

(b) the standard conditions of licences of any type under section 7, 7ZA, or 7A(1) or (2) [M3].

(2) Before making any modifications under this section, the Authority must give notice—

(a) stating that it proposes to make modifications;

(b) setting out the proposed modifications and their effect;

(c) stating the reasons why it proposes to make the modifications; and

(d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under subsection (2) must be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and

(b) by sending a copy of the notice to—

(i) each relevant licence holder,

(ii) the Secretary of State,

(iii) the Health and Safety Executive, and

(iv) the Council.

(4A) The Authority must consider any representations which are duly made.".

(4) In subsection (5), for "in the notice under subsection (3) above" substitute " by virtue of subsection (2)(d) ".

(5) For subsections (6) to (13) substitute—

"(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

(7) The Authority must—

(a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,

(b) state the effect of the modifications,

(c) state how it has taken account of any representations duly made, and

(d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

(8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 4A) [M4].

(9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.

(10) In this section "relevant licence holder"—

(a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—

(i) which is to be modified by the inclusion of any new standard condition, or

(ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or

(b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.".

(6) After section 23 insert—

"**23A Modification of conditions under section 23: supplementary**

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 23.

(2) If the conditions modified are standard conditions, the Authority must—

(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and

(b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under section 23 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 4A in relation to the decision to which the modification relates.".

(7) After section 23A, insert—

*"Appeal from decisions of the Authority*

**23B Appeal to the Competition Commission**

(1) An appeal lies to the Competition Commission ("the Commission") against a decision by the Authority to proceed with the modification of a condition of a licence under section 23.

(2) An appeal may be brought under this section only by—

(a) a relevant licence holder (within the meaning of section 23);

(b) any other person who holds a licence of any type under section 7, 7ZA, or 7A(1) or (2) whose interests are materially affected by the decision;

(c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);

(d) the Council in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the Commission is required for the bringing of an appeal under this section.

(4) The Commission may refuse permission to bring an appeal only on one of the following grounds—

(a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;

(b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;

(c) in relation to an appeal brought by the Council, that the interests of the consumers represented are not materially affected by the decision;

(d) in relation to any appeal—

(i) that the appeal is brought for reasons that are trivial or vexatious;

(ii) that the appeal has no reasonable prospect of success.

(5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

**23C Procedure on appeal to Commission**

(1) The functions of the Commission with respect to appeals under section 23B 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 (manner in which general functions are to be carried out) [M5].

(2) Instead, Schedule 4A to this Act has effect.

**23D Determination by Commission of appeal**

(1) This section applies to every appeal brought under section 23B.

(2) In determining an appeal the Commission must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

(a) in the carrying out of its principal objective under section 4AA [M6];

(b) in the performance of its duties under that section; and

(c) in the performance of its duties under sections 4AB and 4A [M7].

(3) In determining the appeal the Commission—

(a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but

(b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The Commission may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

(a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);

(b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);

(c) that the decision was based, wholly or partly, on an error of fact;

(d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 23(7)(b) [M8];

(e) that the decision was wrong in law.

(5) To the extent that the Commission does not allow the appeal, it must confirm the decision appealed against.

**23E Commission's powers on allowing appeal**

(1) This section applies where the Commission allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the Commission must do one or more of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission;

(c) substitute the Commission's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) If the appeal is in relation to any other decision, the Commission must do one or both of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission.

(4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under that subsection must comply with it.

(6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.

(7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the Commission's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this section and sections 23F and 23G any reference to a party to an appeal is to be read in accordance with Schedule 4A.

**23F Time limits for Commission to determine an appeal**

(1) The Commission must—

(a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;

(b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.

(3) This subsection applies where—

(a) the Commission has received representations on the timing of the determination from a party to the appeal; and

(b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).

(4) Where subsection (3) applies, the Commission must—

(a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;

(b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.

(5) Where subsection (3) applies, the Commission must also—

(a) inform the parties to the appeal of the time limit for determining the appeal, and

(b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(6) In this section "price control decision" is to be read in accordance with section 23E.

(7) References in this section to the permission date are to the date on which the Commission gave permission to bring the appeal in accordance with section 23B(3).

**23G Determination of appeal by Commission: supplementary**

(1) A determination by the Commission on an appeal—

(a) must be contained in an order made by the Commission;

(b) must set out the reasons for the determination;

(c) takes effect at the time specified in the order or determined in accordance with provision made in the order;

(d) must be notified by the Commission to the parties to the appeal;

(e) must be published by the Commission—

(i) as soon as reasonably practicable after the determination is made;

(ii) in such manner as the Commission considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The Commission may exclude from publication under subsection (1)(e) any information which it is satisfied is—

(a) commercial information, the disclosure of which would, or might in the Commission's opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or

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

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the Commission made by virtue of subsection (1)(a).

(4) The steps must be taken—

(a) if a time is specified in (or is to be determined in accordance with) the order, within that time;

(b) in any other case, within a reasonable time.

(5) Subsections (2) to (4) of section 23A [M9] apply where a condition of a licence is modified in accordance with section 23E as they apply where a condition of a licence is modified under section 23.".

(8) After Schedule 4 [M10], insert the Schedule set out in Schedule 5.

(9) Omit sections 24 to 26A (modification references to the Competition Commission) [M11].

**Marginal Citations**

**M1** 1986 c. 44.

**M2** Section 23 was substituted by section 10(1) of, and paragraph 21 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 82(2) to (4) of the Utilities Act 2000 (c. 27); and by section 150(8) and (9) of the Energy Act 2004 (c. 20).

**M3** Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2), 76(1) to (6), and 108 of, and paragraphs 1 and 4 of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by sections 149(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004. Section 7A was inserted by section 6(1) of the Gas Act 1995 and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000; and by section 149(1) and (7) of the Energy Act 2004.

**M4** Schedule 4A is inserted by regulation 41(8) of these Regulations.

**M5** 1998 c. 41. Amendments to Part 2 of Schedule 7 have been made that are not relevant for these purposes.

**M6** Section 4AA was inserted by section 4 of the Utilities Act 2000 (c. 27) and subsequently amended by section 406(1) of, and paragraph 81 of Schedule 17 to, the Communications Act 2003 (c. 21); by sections 83(a) and (b), 149(1) and (8)(a), 178 and 179(2) and (3)(d) of the Energy Act 2004 (c. 20); by sections 83(1)(a) to (d), 102(1) to (3) and (7) and 108 of, and Schedule 6 to, the Energy Act 2008 (c. 32); and by section 16(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7) and (8) of the Energy Act 2010 (c. 27).

**M7** Section 4AB was inserted by section 10 of the Utilities Act 2000 (c. 27) and subsequently amended by section 63(1) of, and paragraphs 4 and 5 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Section 4A was inserted by section 2 of the Gas Act 1995 (c. 45) and was subsequently amended by article 2 of, and the Schedule to, S.I. 2000/3343.

**M8** Section 23(7)(b) is inserted by regulation 41(5) of these Regulations.

**M9** Section 23A is inserted by regulation 41(6) of these Regulations.

**M10** 1986 c. 44. Amendments to Schedule 4 have been made that are not relevant for these purposes.

**M11** Section 24 was amended by section 54(3) of, and paragraph 10(2) of Schedule 10 to, the Competition Act 1998 (c. 41); by article 20(a) and (b) of S.I. 1999/506; by section 10(1) of, and paragraph 22(1) to (6) of Schedule 3 to, the Gas Act 1995 (c. 45); by sections 3(2), 83(1) and 108 of, and paragraphs 1 and 8(1) to (4) of Part 1 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); by section 278 of, and paragraph 15(1) and (3)(a) and (b) of Schedule 25 and Schedule 26 to, the Enterprise Act 2002 (c. 40); and by section 149(1) and (9) of the Energy Act 2004 (c. 20). Sections 24A and 24B were inserted by section 278(1) of, and paragraph 15(1) and (4) of Schedule 25 to, the Enterprise Act 2002. Section 25 was amended by section 10(1) of, and paragraph 23(1), (3), (4) and (5)(a) and (b) of Schedule 3 to, the Gas Act 1995; by sections 54(3) and 74(3) of, and paragraph 10(3) of Schedule 10 and Part 1 of Schedule 14 to, the Competition Act 1998; by article 20(b) of S.I. 1999/506; by section 3(2) of the Utilities Act 2000; and by section 278 of, and paragraph 15(1) and (5)(a) and (b) of Schedule 25 to, the Enterprise Act 2002. Section 26 was amended by article 20(b) of S.I. 1999/506; by section 10(1) of, and paragraph 24(1) to (4) of Schedule 3 to, the Gas Act 1995; by sections 3(2) and 83(2) and (3) of the Utilities Act 2000; and by section 150(8) and (9) of the Energy Act 2004. Section 26A was inserted by section 83(4) of the Utilities Act 2000 and subsequently amended by section 278(1) of, and paragraph 15(1) and (6)(a) and (b) of Schedule 25 to, the Enterprise Act 2002; and by section 150(10) of the Energy Act 2004.

### Transitional and savings provision for the Gas Act 1986 in relation to modification of licence conditions, references to the Competition Commission and Competition Commission membership

**42.**—(1) The following provisions apply notwithstanding any amendment or repeal of any enactment made by this Part of these Regulations.

(2) Paragraphs (3) to (5) apply where—

(a) the Authority has made a reference under section 24 of the 1986 Act before the operative date, but

(b) the Commission has not made a report on that reference before that date.

(3) Sections 24 to 25 of the 1986 Act are to continue in force on and after the operative date in relation to the reference until—

(a) the Commission has made a report on that reference; and

(b) any actions required or permitted under those sections in connection with the reference have been taken.

(4) Any persons who are, immediately before the operative date, members of the Commission by virtue of section 104(1)(a) of the 2000 Act [M12] are to continue as members of the Commission on and after the operative date for the purpose of performing functions of the Commission—

(a) in relation to that section as amended by this Part of these Regulations; and

(b) in relation to the reference mentioned in paragraph (2).

(5) Any persons who are, immediately before the operative date, members of a group selected under section 104(2) of the 2000 Act are to continue as members of the group on and after the operative date for the purpose of performing functions of the Commission in relation to the reference mentioned in paragraph (2).

(6) Paragraphs (7) and (8) apply where—

(a) the Authority has given notice under section 23(3) of the 1986 Act [M13] before the operative date; and

(b) the period specified in the notice by virtue of section 23(3)(c) of that Act has not ended before that date.

(7) On and after the operative date the notice is to be treated for the purposes of sections 23 to 23G of, and Schedule 4A to, the 1986 Act [M14] as if it were a notice given under section 23(2) of that Act.

(8) Any representations or objections made in accordance with section 23(3) of the 1986 Act in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with section 23(2)(d) of that Act.

(9) The following references to provisions of the 1986 Act are to those provisions as amended or inserted by this Part of these Regulations—

(a) the references in paragraph (7);

(b) the reference to section 23(2)(d) in paragraph (8).

(10) In this regulation—

(a) "the Authority" means the Gas and Electricity Markets Authority;

(b) "the Commission" means the Competition Commission;

(c) "the operative date" means the date on which these Regulations come into force;

(d) "the 1986 Act" means the Gas Act 1986;

(e) "the 2000 Act" means the Utilities Act 2000.

**Marginal Citations**

**M12** 2000 c. 27. Section 104 was amended by section 53(1)(a) and (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 (c. 37) and by article 11 of, and paragraph 4(a) and (b) of Part 1 of the Schedule to, S.I. 2005/3172.

**M13** Section 23 was substituted by section 10(1) of, and paragraph 21 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 82(2) to (4) of the Utilities Act 2000 (c. 27); and by section 150(8) and (9) of the Energy Act 2004 (c. 20).

**M14** By virtue of regulation 42(9) of these Regulations references to sections 23 to 23G and Schedule 4A are references to those sections or Schedule as amended or inserted by these Regulations. Section 23 is amended by regulation 41(3) to (5) of these Regulations. Section 23A is inserted by regulation 41(6) of these Regulations. Sections 23B to 23G are inserted by regulation 41(7) of these Regulations. Schedule 4A is inserted by regulation 41(8) of these Regulations.

### Amendment of licence modification provisions in the Electricity Act 1989

**43.**—(1) The Electricity Act 1989 [M15] is amended as follows.

(2) Omit section 11 (modification by agreement) [M16].

(3) Section 11A (modification of standard conditions) [M17] is amended as set out in paragraphs (4) to (6).

(4) For the heading and subsections (1) to (4) substitute—

" **Modification of conditions of licences**

**11A.**—(1) The Authority may make modifications of—

(a) the conditions of a particular licence;

(b) the standard conditions of licences of any type mentioned in section 6(1).

(2) Before making any modifications under this section, the Authority must give notice—

(a) stating that it proposes to make modifications;

(b) setting out the proposed modifications and their effect;

(c) stating the reasons why it proposes to make the modifications; and

(d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under subsection (2) must be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and

(b) by sending a copy of the notice to—

(i) each relevant licence holder,

(ii) the Secretary of State, and

(iii) the Council.

(4A) The Authority must consider any representations which are duly made.”.

(5) In subsection (5), for “in the notice under subsection (3)” substitute “ by virtue of subsection (2)(d) ”.

(6) For subsections (6) to (11) substitute—

“(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A) [M18], the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

(7) The Authority must—

(a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,

(b) state the effect of the modifications,

(c) state how it has taken account of any representations duly made, and

(d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

(8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A) [M19].

(9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.

(10) In this section “relevant licence holder”—

(a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—

(i) which is to be modified by the inclusion of any new standard condition, or

(ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or

(b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.”.

(7) After section 11A insert—

"**11B Modification of conditions under section 11A: supplementary**

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 11A.

(2) If the conditions modified are standard conditions, the Authority must—

(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and

(b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under section 11A does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.".

(8) After section 11B insert—

*"Appeal from decisions of the Authority*

**11C Appeal to the Competition Commission**

(1) An appeal lies to the Competition Commission ("the Commission") against a decision by the Authority to proceed with the modification of a condition of a licence under section 11A.

(2) An appeal may be brought under this section only by—

(a) a relevant licence holder (within the meaning of section 11A);

(b) any other person who holds a licence of any type under section 6(1) [M20] whose interests are materially affected by the decision;

(c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);

(d) the Council in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the Commission is required for the bringing of an appeal under this section.

(4) The Commission may refuse permission to bring an appeal only on one of the following grounds—

(a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;

(b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;

(c) in relation to an appeal brought by the Council, that the interests of the consumers represented are not materially affected by the decision;

(d) in relation to any appeal—

(i) that the appeal is brought for reasons that are trivial or vexatious;

(ii) that the appeal has no reasonable prospect of success.

(5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

### 11D Procedure on appeal to Commission

(1) The functions of the Commission with respect to appeals under section 11C 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 (manner in which general functions are to be carried out) [M21].

(2) Instead, Schedule 5A to this Act has effect.

### 11E Determination by Commission of appeal

(1) This section applies to every appeal brought under section 11C.

(2) In determining an appeal the Commission must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

(a) in the carrying out of its principal objective under section 3A [M22];

(b) in the performance of its duties under that section; and

(c) in the performance of its duties under sections 3B and 3C [M23].

(3) In determining the appeal the Commission—

(a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but

(b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The Commission may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

(a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);

(b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);

(c) that the decision was based, wholly or partly, on an error of fact;

(d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 11A(7)(b) [M24];

(e) that the decision was wrong in law.

(5) To the extent that the Commission does not allow the appeal, it must confirm the decision appealed against.

### 11F Commission's powers on allowing appeal

(1) This section applies where the Commission allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the Commission must do one or more of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission;

(c) substitute the Commission's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) If the appeal is in relation to any other decision, the Commission must do one or both of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission.

(4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under that subsection must comply with it.

(6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.

(7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the Commission's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this section and sections 11G and 11H any reference to a party to an appeal is to be read in accordance with Schedule 5A.

**11G Time limits for Commission to determine an appeal**

(1) The Commission must—

(a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;

(b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.

(3) This subsection applies where—

(a) the Commission has received representations on the timing of the determination from a party to the appeal; and

(b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).

(4) Where subsection (3) applies, the Commission must—

(a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;

(b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.

(5) Where subsection (3) applies, the Commission must also—

(a) inform the parties to the appeal of the time limit for determining the appeal, and

(b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(6) In this section "price control decision" is to be read in accordance with section 11F.

(7) References in this section to the permission date are to the date on which the Commission gave permission to bring the appeal in accordance with section 11C(3).

**11H Determination of appeal by Commission: supplementary**

(1) A determination by the Commission on an appeal—

(a) must be contained in an order made by the Commission;

(b) must set out the reasons for the determination;

(c) takes effect at the time specified in the order or determined in accordance with provision made in the order;

(d) must be notified by the Commission to the parties to the appeal;

(e) must be published by the Commission—

(i) as soon as reasonably practicable after the determination is made;

(ii) in such manner as the Commission considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The Commission may exclude from publication under subsection (1)(e) any information which it is satisfied is—

(a) commercial information, the disclosure of which would, or might in the Commission's opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or

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

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the Commission made by virtue of subsection (1)(a).

(4) The steps must be taken—

(a) if a time is specified in (or is to be determined in accordance with) the order, within that time;

(b) in any other case, within a reasonable time.

(5) Subsections (2) to (4) of section 11B apply where a condition of a licence is modified in accordance with section 11F as they apply where a condition of a licence is modified under section 11A.".

(9) After Schedule 5 [M25] insert the Schedule set out in Schedule 6.

(10) Omit sections 12 to 14A (modification references to the Competition Commission) [M26].

**Marginal Citations**

**M15** 1989 c. 29.

**M16** Section 11 was amended by sections 3(2) and 34(1) and (2) of the Utilities Act 2000 (c. 27).

**M17** Section 11A was inserted by section 35 of the Utilities Act 2000 (c. 27) and subsequently amended by section 197(8) and (9) and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

**M18** Section 11A(2) to (4A) is inserted by regulation 43(4) of these Regulations.

**M19** Schedule 5A is inserted by regulation 43(9) of these Regulations.

**M20** Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and subsequently amended by sections 89(3), 136(1) and (2), 143(1), 145(1) and (5) to (7), and 197(9) of, and paragraphs 3 and 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20); and by section 79 of, and paragraph 2 of Schedule 8 to, the Climate Change Act 2008 (c. 27).

**M21** 1998 c. 41. Amendments to Part 2 of Schedule 7 have been made that are not relevant for these purposes.

**M22** 1989 (c. 29). Section 3A was substituted by section 3 of the Utilities Act 2000 (c. 27) and subsequently amended by section 406(1) of, and paragraph 98 of Schedule 17 to, the Communications Act 2003 (c. 21); by sections 83(a) and (b), 143(1), 147(1) and (2)(b), 178, 179(2) and (3)(a), and 190(3) of, and paragraphs 3 and 4 of Schedule 19 to, the Energy Act 2004 (c. 20); by sections 83(2)(a) to (d), 102(4) to (7) and 108 of, and Schedule 6 to, the Energy Act 2008 (c 32); and by sections 17(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7) and (8) and 179(2) and (3)(a) of the Energy Act 2010 (c. 27).

**M23** Section 3B was inserted by section 14 of the Utilities Act 2000 (c. 27) and subsequently amended by section 63(1) of, and paragraphs (7) and (8) of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Section 3C was inserted by section 15 of the Utilities Act 2000 (c. 27) and subsequently amended by article 22 of, and Schedule 3 to, S.I. 2008/960.

**M24** Section 11A(7)(b) is inserted by regulation 43(6) of these Regulations.

**M25** Amendments to Schedule 5 have been made that are not relevant for these purposes.

**M26** Section 12 was amended by section 54(3) of, and paragraph 12(2) of Schedule 10 to, the Competition Act 1998 (c. 41); by article 24 (a) and (b) of S.I. 1999/506; by sections 3(2), 36(1) to (7), 104(4) to (6) and 108 of, and paragraphs 24, and 25 of Part 2 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by sections 278(1) of, and paragraphs 20(1) and (3)(a) and (b) of Schedule 25, and Schedule 26 to, the Enterprise Act 2002 (c. 40). Sections 12A and 12B were inserted by section 278(1) of, and paragraphs 20(1)and (4) of Schedule 25 to, the Enterprise Act 2002. Section 13 was amended by sections 54(3) and 74(3) of, and paragraph 12(3) of Schedule 10 and Part 1 of Schedule 14 to, the Competition Act 1998; by article 24(b) of S.I. 1999/506; by sections 3(2) and 37(1), (2), (3)(a) and (b), (4) and (5) of the Utilities Act 2000; and by section 278(1) of, and paragraph 20(1), (5)(a) and (b) of Schedule 25 to, the Enterprise Act 2002. Section 14 was amended by article 24(b) of S.I. 1999/506; and by sections 3(2) and 38(1) to (5) of the Utilities Act 2000. Section 14A was inserted by section 39 of the Utilities Act 2000 and subsequently amended by section 278 of, and paragraph 20(1), (6)(a) and (b) of Schedule 25 and Schedule 26 to, the Enterprise Act 2002.

### Transitional and savings provision for the Electricity Act 1989 in relation to modification of licence conditions, references to the Competition Commission and Competition Commission membership

**44.**—(1) The following provisions apply notwithstanding any amendment or repeal of any enactment made by this Part of these Regulations.

(2) Paragraphs (3) to (5) apply where—

(a) the Authority has made a reference under section 12 of the 1989 Act before the operative date, but

(b) the Commission has not made a report on that reference before that date.

(3) Sections 12 to 13 of the 1989 Act are to continue in force on and after the operative date in relation to the reference until—

(a) the Commission has made a report on that reference; and

(b) any actions required or permitted under those sections in connection with the reference have been taken.

(4) Any persons who are, immediately before the operative date, members of the Commission by virtue of section 104(1)(b) of the 2000 Act [M27] are to continue as members of the Commission on and after the operative date for the purpose of performing functions of the Commission—

(a) in relation to that section as amended by this Part of these Regulations; and

(b) in relation to the reference mentioned in paragraph (2).

(5) Any persons who are, immediately before the operative date, members of a group selected under section 104(2) of the 2000 Act are to continue as members of the group on and after the operative date for the purpose of performing functions of the Commission in relation to the reference mentioned in paragraph (2).

(6) Paragraphs (7) and (8) apply where—

(a) the Authority has given notice under section 11(2) or 11A(3) of the 1989 Act [M28] before the operative date; and

(b) the period specified in the notice by virtue of section 11(2)(c) or 11A(3)(c) of that Act has not ended before that date.

(7) On and after the operative date the notice is to be treated for the purposes of sections 11A to 11H of, and Schedule 5A to, the 1989 Act [M29] as if it were a notice given under section 11A(2) of that Act.

(8) Any representations or objections made in accordance with section 11(2)(c) or 11A(3)(c) of the 1989 Act in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with section 11A(2)(d) of that Act.

(9) The following references to provisions of the 1989 Act are to those provisions as amended or inserted by this Part of these Regulations—

(a) the references in paragraph (7);

(b) the reference to section 11A(2)(d) in paragraph (8).

(10) In this regulation—

(a) "the Authority" means the Gas and Electricity Markets Authority;

(b) "the Commission" means the Competition Commission;

(c) "the operative date" means the date on which these Regulations come into force;

(d) "the 1989 Act" means the Electricity Act 1989;

(e) "the 2000 Act" means the Utilities Act 2000.

**Marginal Citations**

**M27** 2000 c. 27. Section 104 was amended by section 53(1)(a) and (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 (c. 37) and by article 11 of, and paragraph 4(a) and (b) of Part 1 of the Schedule to, S.I. 2005/3172.

**M28** Section 11 was amended by sections 3(2) and 34(1) and (2) of the Utilities Act 2000 (c. 27). Section 11A was inserted by section 35 of the Utilities Act 2000 and subsequently amended by section 197(8) and (9) and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

**M29** By virtue of regulation 44(9) of these Regulations references to sections 11A to 11H and Schedule 5A are references to those sections and Schedule as amended or inserted by these Regulations.
Section 11A is amended by regulation 44(4) to (6) of these Regulations. Section 11B is inserted by regulation 43(7) of these Regulations. Sections 11C to 11H are inserted by regulation 43(8) of these Regulations. Schedule 5A is inserted by regulation 43(9) of these Regulations.

### Minor and consequential amendments

**45.**—(1) In section 10(4) of the Electricity Act 1989 (duty to copy notice and comply with direction) [M30] omit “, 11”.

(2) In paragraph 19A(9) of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out) [M31], in the definition of “special reference group”—

(a) in paragraph (d) omit “24 or”; and

(b) in paragraph (e) omit “12 or”.

(3) In section 104(1) of the Utilities Act 2000 (specialist members of the Competition Commission) [M32]—

(a) in paragraph (a), for “section 24, 26A or” substitute “ any of sections 23B to 23G [M33] or section ”; and

(b) in paragraph (b), for “section 12, 14A or” substitute “ any of sections 11C to 11H or section ”.

**Marginal Citations**

**M30** 1989 c. 29.

**M31** 1998 c. 41. Paragraph 19A was inserted by section 187(3) of the Enterprise Act 2002 (c. 40). The definition of ‘special reference group’ was amended by section 406(1) and (7) of, and paragraph 153(1) and (3) of Schedule 17, and Schedule 19(1) to, the Communications Act 2003 (c. 21); by section 1010(1) of, and paragraph 54 of Schedule 8 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 3(a)(i) and (ii) of the Schedule to, S.I. 2005/3172. Other amendments have been made to Schedule 7 that are not relevant for these purposes.

**M32** Section 104 was amended by section 53(1)(a) and (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 4(a) and (b) of Part 1 of the Schedule to, S.I. 2005/3172.

**M33** Sections 23B to 23G of the Gas Act 1986 (c. 44) are inserted by regulation 41(7) of these Regulations.

**Changes to legislation:**
There are currently no known outstanding effects for the The Electricity and Gas (Internal Markets) Regulations 2011, PART 9.