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SCHEDULES

[^{F1}SCHEDULE A1

APPEALS UNDER SECTION 19A

Textual Amendments

- F1** Sch. A1 inserted (29.6.2021) by [Air Traffic Management and Unmanned Aircraft Act 2021 \(c. 12\)](#), ss. 9(4), 21(3)-(7), [Sch. 4](#); S.I. 2021/748, reg. 2(a)

PART 5

GENERAL

Consideration of new matters

- 16 (1) This paragraph applies to—
- (a) an authorised member of the CMA with the function of determining an application for permission to appeal under section 19A;
 - (b) a group with the function of determining an appeal under that section.
- (2) The member or group must not have regard to any matter, information or evidence raised or provided by the CAA if it was not considered by the CAA in making the decision that is the subject of the application or the appeal, unless the member or group considers that—
- (a) the CAA could not reasonably have been expected to consider the matter, information or evidence when making that decision, and
 - (b) the matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.
- (3) The member or group must not have regard to any matter, information or evidence raised or provided by a person other than the CAA if it was not considered by the CAA in making the decision that is the subject of the application or appeal, unless the member or group considers that—
- (a) the person or a relevant connected person could not reasonably have raised the matter with the CAA, or provided the information or evidence to the CAA, during the period in which the CAA was making that decision, and
 - (b) the matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.
- (4) Where the member or group has regard to any matter, information or evidence in reliance on sub-paragraph (2) or (3), those sub-paragraphs do not prevent the member or group having regard to further matters, information or evidence raised or provided

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in response to it if the member or group considers that the further matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.

- (5) In sub-paragraph (3) “relevant connected person”, in relation to a person who raises or provides a matter, information or evidence, means a person who was connected to that person at any time during the period in which the CAA was making the decision that is the subject of the application or appeal.
- (6) References in this paragraph to the period in which the CAA was making a decision are to the period—
- (a) beginning with the publication of a notice under section 11A(1) proposing to make the modification, and
 - (b) ending with the publication of a notice under section 11A(5) in relation to that modification.

Production of documents

- 17 (1) The CMA may by notice require a person to produce to it documents specified or described in the notice that are in the person's custody or under the person's control.
- (2) In this paragraph “document” means anything in which information is recorded.
- (3) The notice may require the production of documents—
- (a) at a time and place specified in the notice;
 - (b) in a form and manner specified in the notice.
- (4) The notice may not require a person to produce documents that the person could not be compelled to provide in evidence in civil proceedings before the High Court or, in Scotland, the Court of Session.
- (5) A notice under this paragraph may be given on behalf of the CMA by an authorised member of the CMA.

Oral hearings

- 18 (1) For the purposes of this Schedule the following persons may hold an oral hearing and take evidence on oath—
- (a) an authorised member of the CMA considering an application under paragraph 1 for permission to appeal;
 - (b) an authorised member of the CMA considering an application under paragraph 4 for permission to intervene;
 - (c) an authorised member of the CMA considering an application under paragraph 6 for a direction;
 - (d) a group with the function of determining an appeal under section 19A.
- (2) In the course of holding such a hearing and taking such evidence, a person or group described in sub-paragraph (1) may administer oaths.
- (3) An authorised member of the CMA 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 member or group described in sub-paragraph (1).

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- (4) At an oral hearing, the member or group conducting the hearing may require the following persons to give evidence or to make representations—
 - (a) the applicant, the appellant or any intervener (if present);
 - (b) a person attending a hearing as a representative of the applicant, the appellant, an intervener or the CAA.
- (5) Subject to sub-paragraph (6), a person who gives oral evidence at the hearing may be cross-examined by or on behalf of—
 - (a) the appellant;
 - (b) an intervener;
 - (c) the CAA.
- (6) Such a person may be cross-examined by or on behalf of an intervener only with the leave of the member or group conducting the hearing.
- (7) If the applicant, the appellant, an intervener or a representative of any such person or the CAA is not present at a hearing—
 - (a) there is no requirement to give notice to that person under sub-paragraph (3);
 - (b) the member or group conducting the hearing may determine the application or appeal without hearing that person's evidence or representations.
- (8) A person may not be required under this paragraph to give evidence that the person could not be compelled to give in civil proceedings before the High Court or, in Scotland, the Court of Session.
- (9) Where a person is required under this paragraph to attend at a place more than 16 kilometres from the person's place of residence, an authorised member of the CMA must arrange for the person to be paid the necessary expenses of attendance.
- (10) A notice under this paragraph may be given on behalf of the CMA by an authorised member of the CMA.

Written evidence

- 19 (1) The CMA may by notice require a person to produce a written statement with respect to a matter specified in the notice—
 - (a) to an authorised member of the CMA considering an application under paragraph 1 for permission to appeal;
 - (b) to an authorised member of the CMA considering an application under paragraph 4 for permission to intervene;
 - (c) to an authorised member of the CMA considering an application under paragraph 6 for a direction;
 - (d) to a group with the function of determining an appeal under section 19A.
- (2) The notice may require the written statement—
 - (a) to be produced at the time and place specified in the notice;
 - (b) to be verified by a statement of truth.
- (3) Where a notice requires a written statement to be verified by a statement of truth, the written statement may be disregarded unless it is so verified.

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- (4) A person may not be required under this paragraph to produce a written statement about a matter if the person could not be compelled to give evidence about that matter in civil proceedings before the High Court or, in Scotland, the Court of Session.
- (5) A notice under this paragraph may be given on behalf of the CMA by an authorised member of the CMA.

Expert advice

- 20 Where permission to appeal is granted under paragraph 2, the CMA may commission expert advice with respect to any matter raised by—
- (a) the appellant,
 - (b) an intervener, or
 - (c) the CAA.

Enforcement of requirements in relation to evidence etc

- 21 (1) This paragraph applies where a person—
- (a) fails to comply with a notice under paragraph 17, 18 or 19,
 - (b) fails to comply with any other requirement imposed under paragraph 17, 18 or 19,
 - (c) in complying with a notice under paragraph 19, makes a statement that is false or misleading in a material respect, or
 - (d) in providing information verified by a statement of truth required by appeal rules under paragraph 23, provides information that is false or misleading in a material respect.
- (2) An authorised member of the CMA may certify to the appropriate court—
- (a) the failure,
 - (b) the fact that the person has made a false or misleading statement in circumstances described in sub-paragraph (1)(c), or
 - (c) the fact that the person has provided false or misleading information in circumstances described in sub-paragraph (1)(d).
- (3) The appropriate court may inquire into a certified failure or act and, if it does so, must hear—
- (a) any witness against the person;
 - (b) any witness on behalf of the person;
 - (c) any statement in the person's defence.
- (4) The appropriate court may punish the person as if the person had been guilty of contempt of court if it is satisfied that—
- (a) the certified failure or act took place, and
 - (b) the person did not have a reasonable excuse for the failure or act.
- (5) Where the person is a body corporate, the appropriate court may punish any director or other officer of that body, either instead or as well as punishing the body.
- (6) In this paragraph—
 “the appropriate court”—

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- (a) in relation to England and Wales and Northern Ireland, means the High Court;
 - (b) in relation to Scotland, means the Court of Session;
- “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body.

Withdrawal of applications and appeals

- 22 (1) An application under paragraph 1 for permission to appeal may be withdrawn only with the consent of the CMA.
- (2) After an application for permission to appeal is granted, the appeal may be withdrawn only with the consent of the CMA.
- (3) An application under paragraph 4 for permission to intervene may be withdrawn only with the consent of the CMA.
- (4) After an application for permission to intervene is granted, the intervener may withdraw from the appeal only with the consent of the CMA.
- (5) For the purposes of sub-paragraphs (1) to (4), the consent of the CMA may be given by an authorised member of the CMA.
- (6) Where the CMA has consented, the person wishing to withdraw the application or appeal, or withdraw as an intervener, may give notice of withdrawal to the CMA.
- (7) An application under paragraph 6 for a direction suspending the effect of a decision may be withdrawn at any time by giving notice of withdrawal to the CMA.
- (8) Withdrawal of an application under this Schedule or of an appeal, or as an intervener in an appeal, has effect when the notice of withdrawal is given to the CMA.
- (9) A person giving notice of withdrawal to the CMA must send a copy of the notice to the CAA.
- (10) The CAA must—
- (a) publish the notice;
 - (b) send a copy of it to the persons listed in sub-paragraph (11) (other than the person who gave the notice).
- (11) Those persons are—
- (a) the holder of the licence that is the subject of the application or appeal;
 - (b) any other person with a qualifying interest in the decision that is the subject of the application or appeal;
 - (c) any owners or operators of aircraft that the CAA considers appropriate;
 - (d) any owners or managers of prescribed aerodromes that the CAA considers appropriate.

Appeal Rules

- 23 (1) The CMA Board may make rules regulating the conduct and disposal of appeals.
- (2) The rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing or requirement for which this Schedule provides.

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- (3) The rules may, in particular, include—
 - (a) provision requiring an application to be accompanied by information specified in the rules;
 - (b) provision requiring such information to be verified by a statement of truth;
 - (c) provision requiring an applicant to provide the CAA with information specified in the rules;
 - (d) provision imposing time limits or other restrictions on the taking of evidence at an oral hearing;
 - (e) provision imposing time limits or other restrictions on the making of representations or observations at such a hearing.
- (4) The rules may make different provision for different purposes.
- (5) Before making rules under this paragraph the CMA Board must consult any persons that it considers appropriate.
- (6) The CMA Board must publish the rules made under this paragraph.

Costs

- 24 (1) Where an application under this Schedule or an appeal is withdrawn, an authorised member of the CMA may make any order that the member thinks fit requiring the parties to the application or appeal to make payments to each other and to the CMA in respect of costs incurred in connection with the application or appeal.
- (2) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.
- (3) Subject to sub-paragraph (4), an order under sub-paragraph (2) must require those costs to be paid—
 - (a) where the appeal is allowed in full, by the CAA;
 - (b) where the appeal is dismissed in full, by the appellant;
 - (c) where the appeal is allowed in part, by the appellant and the CAA in such proportions as the group considers appropriate.
- (4) The order may require an intervener in the appeal to pay such proportion of those costs (if any) as the group considers appropriate.
- (5) A group that determines an appeal may make any order that it thinks fit requiring one party to the appeal to make payments to another in respect of costs reasonably incurred by the other party in connection with the appeal.
- (6) A person who is required to make a payment by an order under this paragraph must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (7) If that person does not do so, the unpaid balance carries interest at a rate specified in the order or determined in accordance with it.
- (8) In this paragraph, references to an intervener in an appeal, and to a party to an appeal, include a person who was granted permission to intervene in an appeal and subsequently withdrew from the appeal.

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Secretary of State's power to modify time limits

- 25 The Secretary of State may by regulations modify any period of time specified in this Schedule.

Publication etc

- 26 Where the CAA, the CMA or an authorised member of the CMA is required by this Schedule to publish something or send a copy of something and this Schedule does not specify a time for doing so, it must be published or sent as soon as practicable.

Interpretation

- 27 (1) In this Schedule—
- “appeal” means an appeal under section 19A;
 - “authorised member of the CMA” has the meaning given in subparagraph (2);
 - “CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;
 - “intervener”, in relation to an appeal, means a person who has been granted permission to intervene in the appeal and who has not withdrawn from the appeal;
 - “prescribed aerodrome” has the meaning given in section 19A(3);
 - “statement of truth”, in relation to the production of a statement or in relation to information provided by a person, means a statement that the person producing that statement or providing that information believes the facts contained in the statement or the information to be true.
- (2) In this Schedule “authorised member of the CMA”—
- (a) in relation to a power exercisable in connection with an appeal, application or direction in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power; and
 - (b) in relation to a power exercisable in connection with an appeal, application or direction in respect of which a group has not been so constituted by the chair of the CMA, means—
 - (i) any member of the CMA Board who is also a member of the CMA panel, or
 - (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question.
- (3) For the purposes of this Schedule and sections 19D and 19E, a person has a qualifying interest in a decision that is the subject of an appeal or an application under this Schedule if—
- (a) the person has been granted permission to appeal against the decision and has not withdrawn the appeal,
 - (b) the person has applied for permission to appeal against the decision and the application has not been withdrawn or refused,
 - (c) the person has been granted permission to intervene in an appeal against the decision and the appeal has not been withdrawn,

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- (d) the person has applied for permission to intervene in an appeal against the decision and the application has not been withdrawn or refused, or
- (e) the person has applied for a direction under paragraph 6, the application has not been withdrawn or refused and any direction made in response to the application has not been withdrawn.]

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