

# Energy Licence Modification Appeals: Competition and Markets Authority Rules

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CMA70con

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## 1. Introduction, citation and commencement

- 1.1 These Rules are made in exercise of the powers conferred by paragraph 11(1) of Schedule 4A to the Gas Act 1986,<sup>1</sup> paragraph 11(1) of Schedule 5A to the Electricity Act 1989,<sup>2</sup> paragraph 11(1) of Schedule 5A to the Electricity (Northern Ireland) Order 1992<sup>3</sup> and paragraph 11(1) of Schedule 3A to the Gas (Northern Ireland) Order 1996,<sup>4</sup> for the purpose of regulating the conduct and disposal of appeals under, as applicable, section 23B of the Gas Act 1986, section 11C of the Electricity Act 1989, Article 14B of the Electricity (Northern Ireland) Order 1992 and Article 14B of the Gas (Northern Ireland) Order 1996.
- 1.2 Before making these Rules the CMA consulted such persons as it considered appropriate.
- 1.3 These Rules are to be known as the *Energy Licence Modification Appeals: Competition and Markets Authority Rules*.
- 1.4 These Rules will have effect from [x] and supersede the previous rules that had effect from 30 October 2017.

## 2. Interpretation

- 2.1 In these Rules:

**‘the Acts’** means the Electricity Act 1989, the Gas Act 1986, the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996;

**‘the Authority’** means the Gas and Electricity Markets Authority or the Northern Ireland Authority for Utility Regulation as the case may be;

**‘CMA Group’** means a group constituted by the Chair of the CMA under Part 3 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purposes of carrying out the functions of the CMA with respect to an appeal under, as applicable, section 23B of the Gas Act 1986, section 11C of the

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<sup>1</sup> 1986 c44, as amended in particular by the Electricity and Gas (Internal Markets) Regulations 2011 (SI 2011/2704).

<sup>2</sup> 1989 c29, as amended in particular by the Electricity and Gas (Internal Markets) Regulations 2011 (SI 2011/2704).

<sup>3</sup> The Electricity (Northern Ireland) Order 1992 SI 1992/231 (NI), as amended by the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) SI 2015/1 (NI).

<sup>4</sup> The Gas (Northern Ireland) Order 1996 (NI 2), SI 1996/275, as amended by the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015, SI 2015/1 (NI).

Electricity Act 1989, Article 14B of the Electricity (Northern Ireland) Order 1992 and Article 14B of the Gas (Northern Ireland) Order 1996;

**'intervener'** means any person given permission under Rule 10 to intervene in an appeal;

**'relevant licence holder'** has the same meaning as in section 11A(10) of the Electricity Act 1989, section 23(10) of the Gas Act 1986, Article 14(11) of the Electricity (Northern Ireland) Order 1992 and Article 14(11) of the Gas (Northern Ireland) Order 1996;

**'the Schedule'** means whichever of Schedule 5A to the Electricity Act 1989, Schedule 4A to the Gas Act 1986, Schedule 5A to the Electricity (Northern Ireland) Order 1992 or Schedule 3A to the Gas (Northern Ireland) Order 1996 is applicable to an appeal;

**'sensitive information'** means information which is:

- (a) commercial information, the disclosure of which would or might 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 significantly harm the individual's interests.

2.2 In these Rules, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

2.3 Words defined by paragraph 13 of the Schedule have the same meaning in these Rules as they have in the Schedule.

### **3. Application of rules**

3.1 These Rules are supplementary to the provisions of the Acts. In the event of any conflict between the Rules and the Acts, the latter will prevail.

3.2 The CMA has also published Guidance to assist those involved in appeals governed by these Rules – see *Energy Licence Modification Appeals: Competition and Markets Authority Guide* (CMA[x]).

### **4. Overriding objective**

4.1 The overriding objective of these Rules is to enable the CMA to dispose of appeals fairly and efficiently and at proportionate cost within the time periods prescribed by the Acts. The CMA will apply these Rules so as to give effect to the overriding objective.

4.2 All parties to an appeal<sup>5</sup> and any intervener must assist the CMA to further the overriding objective.

## 5. Obtaining permission to appeal<sup>6</sup>

5.1 Any person who wishes to make an application for permission to appeal must send a notice, marked Notice of Appeal, Energy Licence Modification ('the notice of appeal') to the CMA within twenty working days beginning with the first working day after the day on which the Authority's decision is published.<sup>7</sup>

5.2 The notice of appeal must:

(a) include the appellant's main submission covering:

(i) details of the decision of the Authority the appellant wishes to appeal and the date it was published, referencing the specific parts of the decision that the appellant wishes to appeal;

(ii) the appellant's standing to bring an appeal,<sup>8</sup> namely:

- the capacity in which the appellant is making the application;
- if the appellant is not the relevant licence holder, a description of the interests that the appellant believes are materially affected by the decision;
- where applicable, why the appellant believes it is to be regarded as a qualifying body or association who is acting in its capacity of representing a relevant licence holder or a person holding a licence<sup>9</sup> whose interests are materially affected by the decision.

(iii) the grounds of appeal on which the appellant wishes to rely (indicating the specific part(s) of the decision to which each ground relates);

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<sup>5</sup> Paragraph 13(2) of the Schedule provides that references to a party to an appeal are references to (a) the appellant; or (b) the Authority.

<sup>6</sup> See also paragraphs 1 and 5 of the Schedule.

<sup>7</sup> See sub-paragraph 1(3) of the Schedule.

<sup>8</sup> Section 23B(2) of the Gas Act 1986, section 11C(2) of the Electricity Act 1989, Article 14B(2) of the Electricity (Northern Ireland) Order 1992 and Article 14B(2) of the Gas (Northern Ireland) Order 1996.

<sup>9</sup> For the purposes of section 11C(2)(b) of the Electricity Act 1989, section 23(2)(b) of the Gas Act 1986, Article 14B(2)(b) of the Electricity (Northern Ireland) Order 1992 and Article 14B(2)(b) of the Gas (Northern Ireland) Order 1996.

- (iv) a statement of facts and reasons supporting each ground of appeal on which the appellant is relying, including an explanation of the relevance of any evidence or documents appended to the main submission to each ground of appeal;
  - (v) the identification of which, if any, of the matters relied on in any ground of appeal were, in the belief of the appellant, matters to which the Authority was unable to have regard in reaching its decision and whether they are matters to which the Authority would have been entitled to have regard in reaching its decision had it had the opportunity of doing so;
  - (vi) a statement of the relief sought and any directions necessary to give effect to that relief;
  - (vii) the appellant's name and address and, where applicable, the name and address of the appellant's legal representatives; and
  - (viii) an email address, together with a physical address in the UK, for the purpose of receiving documents.
- (b) append a bundle of supporting documentation including:
- (i) a copy of the Authority's decision subject to appeal;
  - (ii) any evidence on which the appellant wishes to rely in the form of witness statements or expert reports; and
  - (iii) any documents (or extracts of documents) to which the appellant believes the CMA should have regard in determining the appeal.

5.3 The appellant must verify the information contained in the main submission required under Rule 5.2(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 5.2(b) by a statement of truth. Paragraph 13(1) of the Schedule provides that a 'statement of truth' in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true.

5.4 Where the appellant considers that the main submission required under Rule 5.2(a) contains sensitive information, the appellant must provide the CMA with a non-sensitive version at the same time as the sensitive version is submitted to the CMA. Where the appellant considers that the bundle of supporting

documentation submitted under Rule 5.2(b) contains sensitive information, the appellant must by the end of the second working day following the day of submission of the sensitive version send the CMA a non-sensitive version of the bundle of supporting documentation (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).

- 5.5 The appellant must send the Authority a copy of the notice of appeal at the same time as it is sent to the CMA.<sup>10</sup>
- 5.6 When the appellant sends its notice of appeal to the CMA it must send to any relevant licence holders a non-sensitive version of the main submission required under Rule 5.2(a) by the end of the first working day following the date of submission and must at the same time send the CMA a list of the relevant licence holders to whom it has provided that non-sensitive version of the main submission.
- 5.7 If the CMA considers that the notice of appeal is incomplete, or is insufficiently clear, it may take this into account in considering whether to grant permission, or whether to grant permission subject to conditions.
- 5.8 The CMA will publish the non-sensitive version of an appellant's main submission required under Rule 5.2(a) as soon as reasonably practicable following receipt.

## **6. CMA's permission decision following submission of a notice of appeal<sup>11</sup>**

- 6.1 The CMA will normally not require a hearing when considering whether to grant permission to appeal.
- 6.2 The Authority must send the CMA and the appellant any representations or observations it wishes to make about whether permission to appeal should be granted in writing within ten working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(7) of the Schedule.<sup>12</sup>
- 6.3 The CMA may hold a hearing to determine whether permission to appeal should be granted, either of its own motion or on application. Where the CMA decides to hold a permission hearing the CMA will give notice to the appellant and the Authority, and the CMA may give notice to any relevant licence holder

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<sup>10</sup> Paragraph 1(7) of the Schedule.

<sup>11</sup> See also paragraphs 1 and 3 of the Schedule.

<sup>12</sup> See paragraph 3(2) of the Schedule.



and such other persons as it considers appropriate. The CMA may also request additional information from the appellant or the Authority to inform its decision.

- 6.4 If the CMA grants permission to appeal, it will notify the appellant and the Authority of its decision, giving reasons, and of any conditions subject to which the decision to grant permission is made. The CMA's decision on permission to appeal must be made:
- (a) where the Authority makes representations or observations, before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission was received.<sup>13</sup>
- 6.5 If the CMA refuses permission to appeal, it will notify the appellant and the Authority of its decision and its reasons.
- 6.6 The CMA will publish a non-sensitive version of its decision on its website as soon as reasonably practicable after it is made.

## **7. Application for suspension of decision<sup>14</sup>**

- 7.1 An application for suspension of the Authority's decision must be made at the same time as making the application for permission to appeal under Rule 5.<sup>15</sup>
- 7.2 In addition to the information required to be included in the notice of appeal under Rule 5.2, an application for suspension submitted alongside the notice of appeal must:
- (a) explain in a statement:
    - (i) particulars of the Authority's decision that the appellant wishes the CMA to suspend, including whether the appellant is requesting suspension of the whole or part of the Authority's decision;

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<sup>13</sup> See paragraph 1(10) of the Schedule. See also paragraph 1(11) of the Schedule for the conditions to which the grant of permission may be subject.

<sup>14</sup> See paragraphs 2 and 3 of the Schedule.

<sup>15</sup> Paragraph 2(2)(a) of the Schedule.

- (ii) particulars of the action the appellant considers the CMA must take under paragraph 2(1) of the Schedule if the CMA gives a direction suspending the effect of that decision;
- (iii) whether the relevant licence holder, the licence holder or consumers whose interests are materially affected (as the case may be)<sup>16</sup> would incur significant costs if the decision were to have effect before the determination of the appeal;
- (iv) whether the balance of convenience does not otherwise require effect to be given to the decision pending that determination; and
- (v) any further considerations that the appellant believes the CMA should take into account in deciding the application.

(b) Append as a bundle:

- (i) a statement of the costs that the appellant will incur if the application is not granted;
- (ii) any evidence on which the appellant wishes to rely in the form of witness statements or expert reports; and
- (iii) any documents (or extracts of documents) to which the appellant believes the CMA should have regard in determining the application.

7.3 The appellant must verify the information contained in the statement submitted under Rule 7.2(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 7.2(b) by a statement of truth.

7.4 On making an application for suspension the appellant must at the same time provide the CMA with a non-sensitive version of the statement submitted under Rule 7.2(a). A non-sensitive version of the bundle submitted under Rule 7.2(b) must follow by the end of the second working day following the date of submission of the application for suspension (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).

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<sup>16</sup> See Section 23B(2) of the Gas Act 1986, section 11C(2) of the Electricity Act 1989, Article 14B(2) of the Electricity (Northern Ireland) Order 1992 and Article 14B(2) of the Gas (Northern Ireland) Order 1996.

- 7.5 When the appellant sends its application for suspension to the CMA, it must at the same time send a copy to the Authority.<sup>17</sup>
- 7.6 When the appellant sends its application for suspension to the CMA, it must by the end of the first working day following the date of submission send a non-sensitive copy of the statement submitted under Rule 7.2(a) to any relevant licence holder.
- 7.7 The CMA will publish the non-sensitive version of an appellant's statement submitted under Rule 7.2(a) as soon as reasonably practicable following receipt.
- 7.8 The Authority must send any representations or observations it wishes to make about an application for suspension to the CMA and the appellant in writing within ten working days beginning with the first working day after the day on which it received a copy of the application under paragraph 2(4) of the Schedule.<sup>18</sup>
- 7.9 Any relevant licence holder must send any representations or observations it wishes to make about an application for suspension to the CMA in writing within five working days, beginning with the first working day after the day on which it received the notification of the application for suspension under Rule 7.6.
- 7.10 The CMA may consider an application for suspension of the Authority's decision, with or without a hearing, and may hold any such hearing either of its own motion or on application.
- 7.11 If the CMA decides to hold a hearing to consider an application for suspension, it will give notice to the parties to the appeal, any relevant licence holders and such other persons as it considers appropriate.
- 7.12 The CMA's decision on an application for suspension must be made:
- (a) where the Authority makes representations or observations, before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received; and
  - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application is received.<sup>19</sup>

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<sup>17</sup> Paragraph 2(4) of the Schedule.

<sup>18</sup> See paragraph 3(2) of the Schedule.

<sup>19</sup> See paragraph 2(3) of the Schedule.

7.13 The CMA will notify the parties to the appeal, any relevant licence holders and such other persons as it considers appropriate of its decision and reasons and, as soon as reasonably practicable after making its decision, the CMA will publish a non-sensitive version of it on the CMA's website.

## **8. Withdrawal of application**

8.1 An appellant must notify the CMA in writing if it wishes to withdraw an appeal in its entirety or in part (either before or after permission to appeal is granted), or an application for suspension of the Authority's decision in its entirety or in part.

8.2 The Authority may apply to the CMA for a summary determination allowing the appeal.

8.3 Where a notification is made to the CMA under Rule 8.1 or 8.2, it must at the same time be sent to the other parties to the appeal, and to any interveners.

## **9. The Authority's response<sup>20</sup>**

9.1 Where the CMA has granted permission to appeal, and the Authority wishes to make representations or observations to the CMA about its reasons for the decision, and/or any grounds on which the appeal is brought, the Authority must send its representations or observations (its 'response') to the CMA in writing within 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.<sup>21</sup>

9.2 At the time of sending its response to the CMA, the Authority must send to the appellant a copy of all the material set out in Rule 9.3 below.

9.3 The response should contain:

(a) a statement, identifying the facts and reasons why the appeal should not succeed and, or alternatively, why the relief sought should not be allowed;

(b) a bundle of supporting documentation including:

(i) any evidence on which the Authority wishes to rely in the form of witness statements or expert reports; and

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<sup>20</sup> See paragraph 3 of the Schedule.

<sup>21</sup> See paragraph 3(4) of the Schedule.

- (ii) any documents (or extracts of documents) to which the Authority believes the CMA should have regard in determining the appeal.

- 9.4 The Authority must verify the information contained in the statement submitted under Rule 9.3(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 9.3(b)(i) by a statement of truth.
- 9.5 Where the Authority considers that the statement under Rule 9.3(a) contains sensitive information, the Authority must provide the CMA with a non-sensitive version at the same time as filing the response. A non-sensitive version of the supporting documentation under Rule 9.3(b) must be provided to the CMA by the end of the second working day following the date of submission of the sensitive version (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).
- 9.6 The non-sensitive version of the statement in response filed under Rule 9.3(a) will be published on the CMA's website as soon as reasonably practicable following receipt.

## **10. Interveners**

- 10.1 Where the CMA has granted permission to appeal, it may on the application of any person give permission to intervene.
- 10.2 In considering whether to grant permission to intervene, the CMA shall take account of all the circumstances including:
  - (a) whether the applicant is materially interested in the outcome of the appeal;
  - (b) whether the applicant's intervention in the appeal will assist the CMA to determine the appeal; and
  - (c) whether granting permission to intervene would be proportionate in the circumstances.
- 10.3 An application for permission to intervene must be made before the end of the period of 15 working days beginning with the first working day after the day on which the decision granting permission to appeal is published on the CMA's website.
- 10.4 In appropriate circumstances, the CMA may accept the whole or part of an application for permission to intervene after the expiry of the deadline set out in the preceding Rule 10.3. A prospective applicant seeking to submit the

whole or part of its application after the deadline should send a reasoned submission to the CMA explaining why it would be appropriate for the CMA to accept submission after expiry of the deadline. The CMA will consider this reasoned submission and will then either invite the prospective applicant to submit its application (or the relevant parts of the application) within the revised deadline or will re-affirm the deadline set out in the preceding paragraph and dismiss the request.

10.5 The application for permission to intervene must be contained in a notice of intervention sent to the CMA, marked Application for Permission to Intervene in Energy Licence Modification Appeal. The notice of intervention must:

(a) include the applicant's main submission covering:

- (i) details of the appeal in which the applicant seeks to intervene;
- (ii) why the CMA should grant permission to intervene with reference to the factors set out in Rule 10.2 above;
- (iii) any representations the applicant wishes to make concerning whether permission to intervene should be granted subject to any conditions;
- (iv) the applicant's substantive arguments on the appeal, comprising a statement of whether the applicant supports or opposes the appeal and the facts and reasons on which they rely, including a precise explanation of the relevance of any evidence or documents appended to the main submission;
- (v) particulars of any matter, information or evidence to which the CMA should have regard in determining the application or appeal;
- (vi) the applicant's name and address, and where applicable, the name and address of the applicant's legal representatives;
- (vii) an email address, together with a physical address in the UK, for the purpose of receiving documents;

(b) append a bundle of supporting documentation including:

- (i) any evidence on which the applicant wishes to rely in the form of witness statements or expert reports;
- (ii) any documents (or extracts of documents) to which the applicant believes the CMA should have regard in determining the appeal.

- 10.6 The applicant must verify the information contained in the main submission required under Rule 10.5(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 10.5(b) by a statement of truth.
- 10.7 At the time of making an application for permission to intervene the applicant must send to the parties to the appeal a copy of the material provided to the CMA under Rule 10.5.
- 10.8 At the time of sending its application for permission to intervene to the CMA, the applicant must send a non-sensitive version of the main submission required under Rule 10.5(a). A non-sensitive version of the bundle under Rule 10.5(b) must follow by the end of the second working day following the date of submission of the sensitive version (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).
- 10.9 The non-sensitive version of the main submission required under Rule 10.5(a) will be published on the CMA's website as soon as reasonably practicable following receipt. A non-sensitive version of the CMA's decision on an application to intervene will also be published as soon as reasonably practicable after it is made.
- 10.10 The CMA of its own motion or on application may direct any party to provide it with representations or observations on the application for permission to intervene.
- 10.11 The CMA may consider an application for permission to intervene, and any representations or observations made under Rule 10.10, with or without a hearing, and may hold any such hearing either of its own motion or on application. Where the CMA decides to hold a permission hearing the CMA will give notice to the parties to the appeal, the applicant and such other persons as it considers appropriate.
- 10.12 The CMA will take its decision on whether to grant permission to intervene as soon as reasonably practicable following receipt of the notice of intervention.
- 10.13 The CMA may grant permission to intervene subject to any conditions it considers appropriate.

## **11. Non-disclosure applications**

- 11.1 Where anyone is required by these Rules, or a direction made under these Rules, to send to any person any document, and they consider that

information contained within the document is sensitive information which should not be disclosed to that person, it may:

- (a) make a non-disclosure application to the CMA at the same time that it sends the document to the CMA; and
- (b) pending the CMA's direction, excise the sensitive information from the relevant document sent in accordance with these Rules.

## **12. Publication on the CMA's website**

- 12.1 The CMA will publish on its website, as soon as reasonably practicable after receipt, the non-sensitive version of:
- (a) the main submission required under Rule 5.2(a) as part of a notice of appeal;
  - (b) the main submission required under Rule 10.5(a) as part of an application to intervene;
  - (c) the statement required under Rule 7.2(a) as part of an application for suspension;
  - (d) the statement required under Rule 9.3(a) as part of the Authority's response;
- 12.2 The CMA will publish on its website the non-sensitive versions of the following decisions as soon as reasonably practicable once they are made:
- (a) the CMA's decision on an application for permission to appeal under Rule 5;<sup>22</sup>
  - (b) the CMA's decision on an application for suspension under Rule 7;<sup>23</sup>
  - (c) the CMA's determination on the appeal.<sup>24</sup>
- 12.3 The CMA may publish on its website in such manner and at such time as it considers appropriate non-sensitive versions of any other document.

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<sup>22</sup> See paragraph 1(13) of the Schedule.

<sup>23</sup> See paragraph 2(6)(b) of the Schedule.

<sup>24</sup> See section 11H(1)(e)(i) of the Act.



## **13. Administrative timetable**

- 13.1 As soon as practicable after permission to appeal has been granted, the CMA will set an administrative timetable which makes provision for the major stages of the appeal.
- 13.2 The administrative timetable may, in particular, include arrangements for the following:
- (a) considering and notifying possible directions;
  - (b) considering submissions and representations;
  - (c) clarifying and verifying information;
  - (d) holding appeal management conferences;
  - (e) holding hearings;
  - (f) notifying provisional determinations; and
  - (g) publishing the CMA's determination,
- provided that where these stages are mentioned in the administrative timetable, they need not necessarily take place in the order in which they are mentioned in this Rule.
- 13.3 The CMA will, when drawing up the administrative timetable, have regard to any representations made by the parties to the appeal, and any interveners.
- 13.4 The CMA will proceed on the basis that the parties to the appeal and interveners will comply with the administrative timetable.
- 13.5 Once the administrative timetable has been drawn up, the CMA will notify it to the parties to the appeal, and any interveners or applicant interveners and will publish it on the CMA's website.
- 13.6 If, at any point during the appeal, the CMA has reason to believe that the administrative timetable will not be met for any reason, then the CMA may prepare a revised timetable to which the notification and publication requirements contained in Rule 13.5 will apply.

## **14. Procedure**

- 14.1 Subject to the provisions of the Acts and these Rules, the CMA may determine its own procedure.

- 14.2 The CMA may at any time on application or of its own motion give such directions or, where appropriate, such notice as it considers necessary for the conduct of any appeal including but not limited to any of the following matters:
- (a) the holding of appeal management conferences;
  - (b) where there are two or more appeals pending in respect of the same decision, or in respect of decisions which in the view of the CMA are closely related, that the appeals in whole or part should be considered together, where it is appropriate to do so;<sup>25</sup>
  - (c) the conduct of hearings, including the calling of witnesses, as well as provision for joint hearings and/or joint oral submissions on particular grounds of appeal to be made at hearings where the CMA is considering appeals or parts of appeals together;<sup>26</sup>
  - (d) the filing and service of further written statements, including provision for joint submissions where the CMA is considering appeals or parts of appeals together;<sup>27</sup>
  - (e) the appointment and instruction of experts, whether by the CMA,<sup>28</sup> by the parties to the appeal, or by any intervener, and as to the manner in which expert evidence is to be given;
  - (f) the submission of witness statements or expert reports;
  - (g) the examination or cross-examination of witnesses;
  - (h) the fixing of time limits in respect of any aspect of the appeal (other than where specified in the Acts);
  - (i) the setting of restrictions in terms of the form and content of any submissions made by any person pursuant to these Rules (such as page limits);
  - (j) the disclosure or the production of documents, or classes of documents (including estimates, forecasts, returns or other information), between the

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<sup>25</sup> Paragraph 1(11) of the Schedule provides that the CMA may grant permission to bring an appeal subject to conditions, which may include conditions requiring that the appeal be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

<sup>26</sup> See paragraphs 7 and 10 of the Schedule.

<sup>27</sup> See paragraphs 6, 8 and 10 of the Schedule.

<sup>28</sup> See paragraph 9 of the Schedule.

parties to the appeal or to other persons (for example, relevant licence holders);<sup>29</sup>

- (k) the giving of directions as to the treatment of sensitive information;
- (l) the variation of the provisions of these Rules in relation to the requirements for sending documents;
- (m) the hearing of a person who is not a party to the appeal where it is proposed to give a notice or direction in relation to that person; and
- (n) such other matters as appear to the CMA to be necessary to meet the overriding objective.

14.3 The CMA will give written notice of its directions.

14.4 The CMA may at any time:

- (a) put questions to the parties to the appeal or interveners;
- (b) invite the parties to the appeal or interveners to make written or oral submissions on aspects of the appeal;
- (c) direct the parties to the appeal or interveners to provide information or particulars and direct them to produce documents or papers relating to the appeal;
- (d) require the parties to the appeal or interveners to attend meetings or hearings; and
- (e) invite representations on any matter relating to the appeal from any person who it appears to the CMA may be affected by the outcome of the appeal.

14.5 Parties to the appeal or interveners may apply to the CMA for permission under this Rule to make further submissions or provide supplementary evidence. When doing so, parties to the appeal or interveners will need to explain why such submissions or the provision of such evidence is justified in the circumstances and why it was not possible to make such submissions or provide such evidence earlier in the appeal process. The CMA reserves the right to reject unsolicited submissions or the provision of supplementary evidence where accepting them would be inconsistent with the overriding

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<sup>29</sup> See paragraphs 6 and 10 of the Schedule.

objective or where the parties or the interveners have submitted them on an unsolicited basis without following the procedure set out in this paragraph.

## **15. Appeal management conferences**

- 15.1 The CMA may hold appeal management conferences with the parties to the appeal and any intervener and any person invited under Rule 15.2 where it considers that to do so would further the overriding objective.
- 15.2 The CMA may invite any applicants or potential applicants for permission to intervene to the appeal management conferences.

## **16. Oral hearings<sup>30</sup>**

- 16.1 The procedure at a hearing will be determined by the CMA.
- 16.2 Hearings will be opened and directed by the chair of the CMA Group or by such other member of the CMA as is appropriate.
- 16.3 The CMA will decide the extent, if any, to which at a hearing the parties to the appeal and any intervener are allowed:
- (a) to be present or to be heard, in person or by their representatives;
  - (b) to cross-examine witnesses; and
  - (c) otherwise to take part.
- 16.4 If no previous direction has been made, at the start of the hearing the attendees will be directed as to the length of their oral submissions, the issues on which the CMA wishes to concentrate at the hearing, the order in which the CMA wishes to hear the submissions, and when and how the CMA will pose questions of the attendees. It is for the CMA to determine the form and structure of the hearing and the CMA will not necessarily cover all of the appellant's grounds of appeal at a hearing.

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<sup>30</sup> See paragraphs 7 and 10 of the Schedule in relation to oral hearings. Paragraphs 6, 7 and 8 of the Schedule provide the CMA with powers to issue notices to any person requiring the provision of documents, the attendance at hearings and the making of written statements. Where a person (a) fails to comply with a notice issued or other requirement imposed by these paragraphs; (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular; or (c) in providing information verified in accordance with a statement of truth required by these Rules, provides information that is false in a material particular, paragraph 10 of the Schedule provides that the High Court or Court of Session may punish the defaulter as if the person had been guilty of contempt of court.

- 16.5 At a hearing a party may be represented by:
- (a) a qualified lawyer having a right of audience before a court in the United Kingdom; or
  - (b) such other person as the CMA allows.

## **17. The production of documents, calling witnesses and the production of written statements<sup>31</sup>**

- 17.1 Where the CMA requires a person to produce a document, to attend and give evidence or to produce a written statement pursuant to paragraphs 6, 7 or 8 of the Schedule, it may provide a copy of the notice or other requirement to each party to the appeal and interveners.

## **18. Provisional determination**

- 18.1 The CMA may issue a provisional determination depending on the circumstances of the case stating its provisional conclusions on the appeal.
- 18.2 When the CMA issues a provisional determination, it shall notify the parties to the appeal and interveners of that provisional determination on such terms and in such manner as the CMA considers appropriate.
- 18.3 The provisional determination will not normally be published on the CMA's website, although where appropriate the CMA may publish a summary of the provisional determination.
- 18.4 The provisional determination will normally contain:
- (a) the CMA's provisional findings on the grounds of appeal raised by the appellant;
  - (b) an explanation for the CMA's provisional conclusions and findings; and
  - (c) the form(s) of relief which the CMA is considering granting.
- 18.5 Where the CMA issues a provisional determination, it will at the same time invite the parties to the appeal including any interveners to make submissions in response to the provisional determination within such time as the CMA considers appropriate.

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<sup>31</sup> See paragraphs 6, 7, 8 and 10 of the Schedule and footnote 30 above.

18.6 Where the CMA is considering appeals or parts of appeals together, it may elect to make a single provisional determination in relation to two or more appeals in part or in their entirety.

## **19. The CMA's powers where an appeal is allowed<sup>32</sup>**

19.1 Where the CMA allows an appeal in relation to a price control decision, it 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 CMA;
- (c) substitute the CMA's decision for that of the Authority and (to the extent that the appeal is allowed) give directions to the Authority or any other party to the appeal.

19.2 If the appeal is in relation to any other decision, the CMA 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 CMA.

19.3 Where the CMA is considering appeals or parts of appeals together, it may elect to make a single final determination in relation to two or more appeals in part or in their entirety.

## **20. Costs<sup>33</sup>**

20.1 The CMA Group that determines an appeal must make an order for the payment to the CMA of the costs incurred by the CMA in connection with the appeal, in accordance with paragraph 12(2) of the Schedule.

20.2 Before making any order under Rule 20.1, the CMA will provide the parties with a provisional determination on the CMA's costs and a draft of the costs order and give them a reasonable opportunity to make representations on each.

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<sup>32</sup> Section 23E of the Gas Act 1986, section 11F of the Electricity Act 1989, Article 14E of the Electricity (Northern Ireland) Order 1992 and Article 14E of the Gas (Northern Ireland) Order 1996.

<sup>33</sup> See paragraph 12 of the Schedule.

- 20.3 The CMA 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 party in respect of costs reasonably incurred by that other party in connection with the appeal.
- 20.4 Any party to the appeal seeking an award of costs in its favour should file a statement of costs when invited by the CMA, which should be disclosed to any party to the appeal who may become liable to pay those costs.
- 20.5 In deciding what order to make under Rule 20.3, the CMA Group may have regard to all the circumstances, including but not limited to:
- (a) the conduct of the parties, including:
    - (i) the extent to which each party has assisted the CMA to meet the overriding objective;
    - (ii) whether it was reasonable for a party to raise, pursue or contest a particular issue;
    - (iii) the manner in which a party has pursued its case or a particular aspect of its case;
  - (b) whether a party has succeeded wholly or in part;
  - (c) the proportionality and reasonableness of the costs claimed;
  - (d) chilling effects of a costs order on the Authority.
- 20.6 Before making any order for costs under Rule 20.3, the CMA will provide the parties with a provisional determination on costs and a draft of the costs order and give them a reasonable opportunity to make representations on each.
- 20.7 The CMA will normally publish non-sensitive versions of any final determination on costs under Rule 20.1 or Rule 20.3 on its website.

## **21. Slip rule**

- 21.1 Where any order, notice or decision of the CMA contains a clerical error, or a slip or omission, that error, slip or omission may be corrected and a further order or decision issued by any person who could have made the original order or decision.

## **22. Filing of documents**

- 22.1 All sensitive documents sent to the CMA or any other person should be marked to identify sensitive information.
- 22.2 Unless a person is notified otherwise by the CMA, any document that is to be sent to the CMA under the Acts or these Rules must be sent via email to [appeals@cma.gov.uk](mailto:appeals@cma.gov.uk).
- 22.3 If the CMA informs a person that it requires hard copy documents, these must be sent by first class post or personal delivery, marked for the attention of the Regulatory Appeals Team, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ.
- 22.4 Unless a person is notified otherwise by the CMA, any document required to be sent to a person other than the CMA under these Rules should be sent by electronic mail.