

CMA's response to consultation on its proposal to extend energy licence modification appeals rules to Northern Ireland appeals

1. The [Competition Commission Energy Licence Modification Appeals Rules \(CC14\)](#) (the Rules) set out a procedural framework for appeals to the Competition and Markets Authority (CMA) against the [Office of Gas and Electricity Markets \(Ofgem\)](#) energy licence modification decisions. The EU Third Energy Package was implemented in Northern Ireland through various legislative changes, the latest of which came into operation on 6 February 2015. This legislation substantially aligns the Northern Ireland energy licence modification appeals regime with that of Great Britain.¹ This means that energy licence modification decisions made by the [Northern Ireland Authority for Utility Regulation \(NIAUR\)](#) are appealable to the CMA.²
2. The CMA consulted on a proposal to use the Rules – adapted as necessary to refer to the relevant Northern Ireland legislation and decisions of the NIAUR – to govern the procedure for any future appeals against NIAUR energy licence modification decisions. The CMA did not propose to make any substantive changes to the Rules for these purposes. The consultation closed on 7 May 2015.
3. The CMA received three replies to the consultation. All respondents supported in principle the CMA's proposal to use the Rules in any Northern Ireland licence modification appeal.
4. Some respondents in addition expressed concern with the time frames within which the CMA must determine Northern Ireland licence modification appeals. The CMA notes however that the appeal time frames are established in relevant Northern Ireland legislation and that it must comply with those time frames when making an appeal determination.³ The CMA further notes that if an appeal party has concerns about the timing of the determination of an appeal, it can make representations to the CMA on this point. If the CMA is

¹ Ofgem is a non-ministerial government department and an independent National Regulatory Authority, recognised by EU directives. Ofgem's principal objective when carrying out its functions is to protect the interests of existing and future electricity and gas consumers. It is governed by the Gas and Electricity Markets Authority, which consists of non-executive and executive members and a non-executive chair.

² NIAUR is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries. NIAUR's principle objective when carrying out its energy functions is to protect the interests of existing and future electricity consumers and to promote the gas industry in Northern Ireland.

³ See, for example Article 14F of the [Electricity \(Northern Ireland\) Order SI 1992/213 \(NI\)](#).

satisfied there are special reasons why the determination cannot be made within the usual period for determining an appeal, it may grant up to a one month extension to the appeal determination time frame under the relevant legislation.⁴

5. The CMA also notes that the overriding objective of the Rules is to enable the CMA to dispose of appeals fairly and efficiently within the time periods prescribed by the relevant legislation.⁵
6. The CMA notes that one respondent said that in relation to multifaceted licence modifications or packages of licence changes it would not be appropriate for the CMA to review any single aspect of those decisions separately to the overall decision, and that a licensee typically views these issues 'in the round.'
7. Another respondent suggested that the CMA should consider the licence modification by reference to the business as a whole, rather than treating component parts separately.
8. In response to this point, the CMA does not consider it appropriate to comment in advance on how it would take decisions in Northern Ireland energy licence modification appeals, other than to say that each case will be decided on its own facts and in accordance with the requirements set out in the relevant Northern Ireland legislation.⁶ In any event, this point is outside of the scope of the consultation.
9. One respondent made suggestions about the scope of appealable decisions, but these are not matters within the scope of the consultation and therefore not points for this response.

Outcome

10. In conclusion, and having taken into consideration the responses to the consultation, the CMA has decided to implement the proposal consulted upon. It will therefore use the Rules – adapted as necessary to refer to the relevant Northern Ireland legislation and decisions of the NIAUR – to govern the procedure for any future appeals against NIAUR energy licence modification decisions. The CMA does not propose to make any substantive changes to

⁴ See, for example Article 14F(3) and (4) of the Electricity (Northern Ireland) Order, referenced at footnote 1 above.

⁵ See CC14, Rule 4.

⁶ See, for example, Article 14D of the Electricity (Northern Ireland) Order, referenced at footnote 1 above.

the Rules for these purposes, nor does it intend to consult again prior to using the Rules in this manner.