



Law Society
of Scotland

Consultation Response

Energy licence modification appeals: rules and guide

August 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Energy Law and Competition Law Sub-committees welcome the opportunity to consider and respond to the Competition and Markets Authority's consultation *Energy licence modification appeals: rules and guide*. The Sub-committees have the following comments to put forward for consideration.

Response to questions

Question 1 - Do you have any comments on the draft Energy Licence Modification Appeals Rules and Guide?

Generally speaking the new rules and guidance will not result in any major changes to appeal procedure: the only material change is to enhance the role of third party interveners in appeals.

Question 2 - What is your view on the CMA's proposed approach in Rule 10 of the draft Energy Licence Modification Appeals Rules, which is to provide that the CMA may take into account whether a third party is materially interested in the outcome of the appeal, when it is considering whether to allow that person to intervene in an energy licence modification appeal?

When the CMA permits an appeal, Rule 9 allows the CMA to submit its own comments on its decision and the appeal; these comments must be published by the CMA. Rule 10 then allows Interveners to submit their reasons as to why they should be allowed to participate in the appeal. However, given the timescales in Rules 9 and 10 it is possible that a prospective intervener would have to make their case to the CMA

without having first seen the CMA's own comments. The timescales will therefore need to be amended if interveners or potential interveners should have access to the CMA's response before submitting the case for intervention.

The rules are not clear as to whether or not an intervener need only make their case for involvement at the initial stage or if they would be required present their full submission at the same time. In practice, the intervener may feel obliged to present a substantial or full submission concurrently with the case for intervention, in order to ensure the best chance of the CMA permitting the intervention. The CMA should therefore consider (i) whether the timescale of 10 Working Days from announcement of allowing the appeal is sufficient and (ii) whether or not further guidance to interveners to clarify what is expected from their initial submissions is appropriate.

For further information, please contact:

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