

# Water Codes Appeals Rules and Guide

Consultation document

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## 1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft rules of procedure to govern appeals that may be made to it under the Regulation 4 of the Water Industry Designated Codes (Appeals to the Competition and Markets Authority) Regulations (the Regulations) in respect of decisions of the Water Services Regulation Authority (the Authority) as to whether to modify codes designated for the purposes of section 207A(2) of the Water Industry Act 1991 (the Act) (*Water Codes Appeals: Competition and Markets Authority Rules*).
- 1.2 At the same time, the CMA is also consulting on a draft guide that is intended to assist participants involved in such appeals (see *Water Codes Appeals: Competition and Markets Authority Guide*).

## Background

- 1.3 The Water Act 2014 (WA14) introduced reforms to the competition regime in the water sector. In particular, the WA14 introduced statutory codes to regulate agreements between incumbent undertakers and new entrants that want to provide water services in competition with those incumbents.
- 1.4 The WA14 also amended the Act to allow for regulations to be made for appeals to the CMA of a decision of the Authority to make a revision, or not to make a proposed revision, to a code designated under those regulations. The Regulations were made by the Secretary of State on 17 March 2017 under these powers under the Act and under powers conferred by WA14.
- 1.5 The Regulations among other things provide that decisions of the Authority must concern designated codes and such decisions are only appealable by a water supply licensee, a sewerage licensee, or an undertaker.<sup>1</sup>
- 1.6 The CMA may allow appeals only to the extent that it is satisfied that the Authority's decision was wrong on one or more of the following grounds:
  - that the Authority failed properly to have regard to the matters mentioned in Regulation 12(2);
  - that the Authority failed properly to have regard to the purposes, listed in column 3 of the table in the Schedule to the Regulations, for which the designated code in question was issued;

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<sup>1</sup> The relevant codes are designated in Regulation 3 and are listed in a table in the Schedule to the Regulations. Regulation 4(2) lists the persons that can appeal an Authority decision.

- that the Authority failed to give appropriate weight to one or more of those matters or purposes;
  - that the decision was based, wholly or partly, on an error of fact;
  - that the decision was wrong in law.<sup>2</sup>
- 1.7 Where the CMA does not allow the appeal, it must confirm the decision appealed against.<sup>3</sup>
- 1.8 Where the CMA allows an appeal, it must do one or more of the following:
- (a) quash the Authority's decision;
  - (b) refer the matter back to the Authority to reconsider and redetermine in accordance with any directions given by the CMA; and/or
  - (c) where the decision quashed was a decision not to revise a code or part of it, the CMA must direct the Authority to ensure that the relevant designated code takes effect as if it had been revised or modified.<sup>4</sup>
- 1.9 Elements of the procedure regulating appeals, including the time periods for appealing and completing them and provision relating to the payment of costs by the parties to an appeal, are set out in the Regulations. Furthermore, the Act provides that the CMA may make rules of procedure regulating the conduct and disposal of these appeals.<sup>5</sup>

## **Scope of this consultation**

- 1.10 The CMA proposes to exercise its discretion to make rules of procedure to regulate the conduct and disposal of appeals made under the Regulations and to publish a guide that is intended to assist participants involved in such appeals.
- 1.11 The CMA therefore seeks views on draft *Water Codes Appeals: Competition and Markets Authority Rules* and draft guide to appeals, entitled *Water Codes Appeals: Competition and Markets Authority Guide*.

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<sup>2</sup> See Regulation 18(2).

<sup>3</sup> See Regulation 18(3).

<sup>4</sup> See Regulation 18(4).

<sup>5</sup> See paragraph 6(1) of Schedule 16 to the Act.

## **2. Questions for consultees**

2.1 We are asking consultees the following questions:

**Do you have any comments on the draft:**

**(a) *Water Codes Appeals: Competition and Markets Authority Rules;*  
and/or**

**(b) *Water Codes Appeals: Competition and Markets Authority Guide?***

### 3. Consultation process

#### What happens next?

- 3.1 This consultation is being published on the CMA website.
- 3.2 There is an opportunity for all interested parties to scrutinise and comment on the Water Codes Appeals: Competition and Markets Authority Rules and Guide. **The consultation will run for three weeks, from 20 June 2017 to 12 July 2017.**
- 3.3 The CMA is seeking views on the following questions:

#### **Do you have any comments on the draft:**

***(a) Water Codes Appeals: Competition and Markets Authority Rules; and/or***

***(b) Water Codes Appeals: Competition and Markets Authority Guide?***

- 3.4 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter is the case, please make clear who you are representing and the group's or organisation's role.
- 3.5 If your response contains any information you regard as sensitive and that you would not wish to be published, please also provide a non-confidential version for publication and explain why you regard the information excluded as sensitive.

#### How to respond

- 3.6 Responses should be submitted by email to: [steven.preece@cma.gsi.gov.uk](mailto:steven.preece@cma.gsi.gov.uk).
- 3.7 Alternatively, you can submit your response by post. The postal address for responses is:

The Regulatory Appeals Team  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

- 3.8 **Please submit your response no later than 5pm on 12 July 2017.**

- 3.9 In consulting, we have taken into account the government consultation principles, which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders. Full details can be found on [GOV.UK](https://www.gov.uk).

### **Data use statement for responses**

- 3.10 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business, which, if published, would or might, in our opinion, significantly harm the individual's interests, or as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 3.11 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information, we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

### **After the consultation**

- 3.12 In accordance with its policy of openness and transparency, the CMA will publish non-confidential versions of received responses on its website, along with a summary of responses received that fall within the scope of the consultation.