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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 1**

**GAS**

**ELECTRICITY**

**The Gas and Electricity Licence Modification  
and Appeals Regulations (Northern Ireland) 2015**

*Made* - - - - *5th January 2015*

*Coming into operation* *6th February 2015*

The Department of Enterprise, Trade and Investment being a Department designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to energy and energy sources<sup>(2)</sup>, in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

**PART 1**

**INTRODUCTORY**

**Citation and Commencement**

**1.** These Regulations may be cited as the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 and shall come into operation on 6th February 2015.

**Interpretation**

**2.—(1)** The Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the Authority” means the Northern Ireland Authority for Utility Regulation;

“the CMA” means the Competition and Markets Authority;

“the Department” means the Department of Enterprise, Trade and Investment;

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(1) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part I of the Schedule

(2) The European Communities (Designation) Order 2010 S.I. 2010/761

(3) 1954 c.33 (N.I.)

- “the Electricity Order” means the Electricity (Northern Ireland) Order 1992<sup>(4)</sup>;  
“the Energy Order” means the Energy (Northern Ireland) Order 2003<sup>(5)</sup>; and  
“the Gas Order” means the Gas (Northern Ireland) Order 1996<sup>(6)</sup>.

## PART 2

### AMENDMENTS TO GAS ORDER

- 3.—(1) For Article 14 of the Gas Order substitute the following Articles—

**“Modification of conditions of licences**

- 14.—(1) The Authority may make modifications of—
- (a) the conditions of a particular licence;
  - (b) the standard conditions of licences of any type under Article 8(1).
- (2) Before making any modifications under this Article, the Authority must give notice—
- (a) stating that it proposes to make modifications;
  - (b) setting out the proposed modifications and their effect;
  - (c) stating the reasons why it proposes to make the modifications; and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of paragraph (2)(d) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under paragraph (2) must be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
  - (b) by sending a copy of the notice to—
    - (i) each relevant licence holder,
    - (ii) the Department, and
    - (iii) the General Consumer Council.
- (5) The Authority must consider any representations which are duly made.
- (6) If, within the time specified by virtue of paragraph (2)(d), the Department directs the Authority not to make any modification, the Authority shall comply with the direction.
- (7) Paragraphs (8) to (10) apply where, having complied with paragraphs (2) to (5), the Authority decides to proceed with the making of modifications of the conditions of any licence under this Article.
- (8) The Authority must—
- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications;

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<sup>(4)</sup> S.I. 1992/231 (N.I.1)

<sup>(5)</sup> S.I. 2003/419 (N.I.6)

<sup>(6)</sup> S.I. 1996/275 (N.I.2)

- (b) state the effect of the modifications;
- (c) state how it has taken account of any representations duly made; and
- (d) state the reason for any differences between the modifications and those set out in the notice by virtue of paragraph (2)(b).

(9) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 3A).

(10) The date specified by virtue of paragraph (9) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this Article.

(11) In this Article “relevant licence holder”—

- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
  - (i) which is to be modified by the inclusion of any new standard condition, or
  - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of paragraph (2)(d); or
- (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.

#### **Modification of conditions under Article 14: supplementary**

**14A.**—(1) Paragraphs (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under Article 14.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under Article 14 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this Article has effect subject to the giving of a direction under paragraph 2 of Schedule 3A in relation to the decision to which the modification relates.

#### *Appeal from decisions of the Authority*

#### **Appeal to the CMA**

**14B.**—(1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification of a condition of a licence under Article 14.

(2) An appeal may be brought under this Article only by—

- (a) a relevant licence holder (within the meaning of Article 14);
- (b) any other person who holds a licence of any type under Article 8(1) whose interests are materially affected by the decision;

- (c) a qualifying body or association in the capacity of representing a person falling within sub-paragraph (a) or (b);
  - (d) the General Consumer Council in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the CMA is required for the bringing of an appeal under this Article.
- (4) The CMA may refuse permission to bring an appeal only on one of the following grounds—
- (a) in relation to an appeal brought by a person falling within paragraph (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to an appeal brought by the General Consumer Council, that the interests of the consumers represented are not materially affected by the decision;
  - (d) in relation to any appeal—
    - (i) that the appeal is brought for reasons that are trivial or vexatious;
    - (ii) that the appeal has no reasonable prospect of success.
- (5) References in this Article to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

#### **Procedure on appeal to CMA**

**14C.**—(1) Schedule 3A has effect.

(2) Except where specified otherwise in Schedule 3A, the functions of the CMA with respect to an appeal under Article 14B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013(7).

#### **Determination by CMA of appeal**

**14D.**—(1) This Article applies to every appeal brought under Article 14B.

(2) In determining an appeal the CMA must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under Article 14 of the Energy Order; and
- (b) in the performance of its duties under that Article and Article 6B of the Energy Order.

(3) In determining the appeal the CMA—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in paragraph (2);

- (b) that the Authority failed to give the appropriate weight to any matter mentioned in paragraph (2);
  - (c) that the decision was based, wholly or partly, on an error of fact;
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of Article 14(8)(b);
  - (e) that the decision was wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

### **CMA's powers on allowing appeal**

- 14E.**—(1) This Article applies where the CMA allows an appeal to any extent.
- (2) If the appeal is in relation to a price control decision, the CMA 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 (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.
- (3) 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.
- (4) A direction under paragraph (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under paragraph (2) or (3) must comply with it.
- (6) A direction given under paragraph (2) or (3) to a person other than the Authority is enforceable as if it were an order of the High Court.
- (7) For the purposes of this Article a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
- (8) In determining for the purposes of paragraph (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this Article and Articles 14F and 14G any reference to a party to an appeal is to be read in accordance with Schedule 3A.

### **Time limits for CMA to determine an appeal**

- 14F.**—(1) The CMA must—
- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.
- (2) Paragraph (1)(a) or (b) does not apply if paragraph (3) applies.

- (3) This paragraph applies where—
  - (a) the CMA has received representations on the timing of the determination from a party to the appeal; and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in paragraph (1)(a) or (b).
- (4) Where paragraph (3) applies, the CMA must—
  - (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where paragraph (3) applies, the CMA must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this Article “price control decision” is to be read in accordance with Article 14E.
- (7) References in this Article to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with Article 14B(3).

**Determination of appeal by CMA: supplementary**

- 14G.—**(1) A determination by the CMA on an appeal—
- (a) must be contained in an order made by the CMA;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the CMA to the parties to the appeal;
  - (e) must be published by the CMA—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication under paragraph (1)(e) any information which it is satisfied is—
- (a) commercial information, the disclosure of which would, or might in the CMA’s opinion, 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 in the CMA’s opinion, significantly harm the individual’s interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA made by virtue of paragraph (1)(a).
- (4) The steps must be taken—
- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.

(5) Paragraphs (2) to (4) of Article 14A apply where a condition of a licence is modified in accordance with Article 14E as they apply where a condition of a licence is modified under Article 14.”

(2) Omit Articles 15 to 17A from the Gas Order.

(3) After Schedule 3 to the Gas Order, insert the Schedule set out in Schedule 1.

## PART 3

### AMENDMENTS TO ELECTRICITY ORDER

4.—(1) For Article 14 of the Electricity Order substitute the following Articles—

#### **“Modification of conditions of licences**

14.—(1) The Authority may make modifications of—

- (a) the conditions of a particular licence;
- (b) the standard conditions of licences of any type mentioned in Article 10(1).

(2) Before making any modifications under this Article, the Authority must give notice—

- (a) stating that it proposes to make modifications;
- (b) setting out the proposed modifications and their effect;
- (c) stating the reasons why it proposes to make the modifications; and
- (d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of paragraph (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under paragraph (2) must be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
- (b) by sending a copy of the notice to—
  - (i) each relevant licence holder,
  - (ii) the Department, and
  - (iii) the General Consumer Council for Northern Ireland.

(5) The Authority must consider any representations which are duly made.

(6) If, within the time specified by virtue of paragraph (2)(d), the Department directs the Authority not to make any modification, the Authority shall comply with the direction.

(7) Paragraphs (8) to (10) apply where, having complied with paragraphs (2) to (5), the Authority decides to proceed with the making of modifications of the conditions of any licence under this Article.

(8) The Authority must—

- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications;
- (b) state the effect of the modifications;

- (c) state how it has taken account of any representations duly made; and
- (d) state the reason for any differences between the modifications and those set out in the notice by virtue of paragraph (2)(b).

(9) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A).

(10) The date specified by virtue of paragraph (9) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this Article.

(11) In this Article “relevant licence holder”—

- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
  - (i) which is to be modified by the inclusion of any new standard condition, or
  - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of paragraph (2)(d); or
- (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.

#### **Modification of conditions under Article 14: supplementary**

**14A.**—(1) Paragraph (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under Article 14.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under Article 14 does not prevent any other part of the conditions from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this Article has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.

#### *Appeal from decisions of the Authority*

#### **Appeal to the CMA**

**14B.**—(1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification of a condition of a licence under Article 14.

(2) An appeal may be brought under this Article only by—

- (a) a relevant licence holder (within the meaning of Article 14);
- (b) any other person who holds a licence of any type under Article 10(1) whose interests are materially affected by the decision;
- (c) a qualifying body or association in the capacity of representing a person falling within sub-paragraphs (a) or (b);



- (d) the General Consumer Council for Northern Ireland in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the CMA is required for the bringing of an appeal under this Article.
- (4) The CMA may refuse permission to bring an appeal only on one of the following grounds—
  - (a) in relation to an appeal brought by a person falling within paragraph (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to an appeal brought by the General Consumer Council for Northern Ireland, that the interests of the consumers represented are not materially affected by the decision;
  - (d) in relation to any appeal—
    - (i) that the appeal is brought for reasons that are trivial or vexatious;
    - (ii) that the appeal has no reasonable prospect of success.
- (5) References in this Article to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

#### **Procedure on appeal to CMA**

**14C.**—(1) Schedule 5A has effect.

(2) Except where specified otherwise in Schedule 5A, the functions of the CMA with respect to an appeal under Article 14B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013<sup>(8)</sup>.

#### **Determination by CMA of appeal**

**14D.**—(1) This Article applies to every appeal brought under Article 14B.

(2) In determining an appeal the CMA must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under Article 12 of the Energy Order or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (as the case may be)<sup>(9)</sup>;
- (b) in the performance of its duties under either such Article;
- (c) in the performance of its duties under Article 6B of the Energy Order.

(3) In determining the appeal the CMA—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

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<sup>(8)</sup> 2013 c.24

<sup>(9)</sup> S.I. 2007/913(N.I.7)

(4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in paragraph (2);
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in paragraph (2);
- (c) that the decision was based, wholly or partly, on an error of fact;
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of Article 14(8)(b);
- (e) that the decision was wrong in law.

(5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

### **CMA's powers on allowing appeal**

**14E.**—(1) This Article applies where the CMA allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the CMA 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 (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) 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.

(4) A direction under paragraphs (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under paragraphs (2) or (3) must comply with it.

(6) A direction given under paragraphs (2) or (3) to a person other than the Authority is enforceable as if it were an order of the High Court.

(7) For the purposes of this Article a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of paragraph (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this Article and Articles 14F and 14G any reference to a party to an appeal is to be read in accordance with Schedule 5A.

### **Time limits for CMA to determine an appeal**

**14F.**—(1) The CMA must—

- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.
- (2) Paragraph (1)(a) or (b) does not apply if paragraph (3) applies.
- (3) This subsection applies where—
  - (a) the CMA has received representations on the timing of the determination from a party to the appeal; and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in paragraph (1)(a) or (b).
- (4) Where paragraph (3) applies, the CMA must—
  - (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where paragraph (3) applies, the CMA must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal; and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this Article “price control decision” is to be read in accordance with Article 14E.
- (7) References in this Article to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with Article 14B(3).

**Determination of appeal by CMA: supplementary**

- 14G.—**(1) A determination by the CMA on an appeal—
- (a) must be contained in an order made by the CMA;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the CMA to the parties to the appeal;
  - (e) must be published by the CMA—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication under paragraph (1)(e) any information which it is satisfied is—
- (a) commercial information, the disclosure of which would, or might in the CMA’s opinion, 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 in the CMA’s opinion, significantly harm the individual’s interests.

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA made by virtue of paragraph (1)(a).

(4) The steps must be taken—

(a) if a time is specified in (or is to be determined in accordance with) the order, within that time;

(b) in any other case, within a reasonable time.

(5) Paragraphs (2) to (4) of Article 14A apply where a condition of a licence is modified in accordance with Article 14E as they apply where a condition of a licence is modified under Article 14.”.

(2) Omit Articles 15 to 17A from the Electricity Order.

(3) After Schedule 5 of the Electricity Order insert the Schedule set out in Schedule 2.

## PART 4

### TRANSITIONAL AND SAVINGS PROVISIONS

#### **Transitional and savings provision for the Gas Order**

**5.—**(1) The following provisions apply notwithstanding any amendment or repeal made by these Regulations.

(2) Where the Authority has made a reference under Article 15 of the Gas Order before the operative date, Articles 15 to 17A of the Gas Order shall continue to have effect on and after the operative date in relation to the reference until any actions required or permitted under those Articles in connection with the reference have been taken.

(3) Paragraphs (4) and (5) apply where—

(a) the Authority has given notice under Article 14(3) of the Gas Order before the operative date; and

(b) the period specified in the notice by virtue of Article 14(3)(c) of that Order has not ended before that date.

(4) On and after the operative date the notice is to be treated for the purposes of Articles 14 to 14G of, and Schedule 3A to, the Gas Order as if it were a notice given under Article 14(2) of that Order.

(5) Any representations or objections made in accordance with Article 14(3)(c) of the Gas Order in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with Article 14(2)(d) of that Order.

(6) The following references to provisions of the Gas Order are to those provisions as amended or inserted by these Regulations—

(a) the references in paragraph (4);

(b) the reference to Article 14(2)(d) in paragraph (5).

(7) In this regulation “operative date” means the date of coming into operation of regulation 3.

#### **Transitional and savings provision for the Electricity Order**

**6.—**(1) The following provisions apply notwithstanding any amendment or repeal made by these Regulations.

(2) Where the Authority has made a reference under Article 15 of the Electricity Order before the operative date, Articles 15 to 17A of the Electricity Order shall continue to have effect on and

after the operative date in relation to the reference until any actions required or permitted under those Articles in connection with the reference have been taken.

(3) Paragraphs (4) and (5) apply where—

- (a) the Authority has given notice under Article 14(2) of the Electricity Order before the operative date; and
- (b) the period specified in the notice by virtue of Article 14(2)(c) of that Order has not ended before that date.

(4) On and after the operative date the notice is to be treated for the purposes of Articles 14 to 14G of, and Schedule 5A to, the Electricity Order as if it were a notice given under Article 14(2) of that Order.

(5) Any representations or objections made in accordance with Article 14(2)(c) of the Electricity Order in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with Article 14(2)(d) of that Order.

(6) The following references to provisions of the Electricity Order are to those provisions as amended or inserted by this Part—

- (a) the references in paragraph (4);
- (b) the reference to Article 14(2)(d) in paragraph (5).

(7) In this regulation “operative date” means the date of coming into operation of regulation 4.

#### **Modification of existing gas licences**

7.—(1) The Authority, with the consent of the Department, may by notice in writing served on the licence holder make such modifications to the conditions of an existing gas licence which the Authority considers requisite or expedient in consequence of the coming into operation of these Regulations.

(2) A notice under paragraph (1) may—

- (a) revoke or modify such conditions of, or
- (b) include such new conditions in,

an existing gas licence as the Authority considers requisite or expedient for the purposes of that paragraph.

(3) Before making modifications under this regulation, the Authority shall consult the holders of the licences being modified and such other persons as it considers appropriate.

(4) The power to make modifications under this regulation may not be exercised after the end of the period of 6 months beginning with the day on which this regulation comes into operation.

(5) Nothing in this regulation prejudices the generality of any other power to modify a gas licence.

#### **Modification of existing electricity licences**

8.—(1) The Authority, with the consent of the Department, may by notice in writing served on the licence holder make such modifications to the conditions of an existing electricity licence which the Authority considers requisite or expedient in consequence of the coming into operation of these Regulations.

(2) A notice under paragraph (1) may—

- (a) revoke or modify such conditions of, or
- (b) include such new conditions in,

an existing electricity licence as the Authority considers requisite or expedient for the purposes of that paragraph.

(3) Before making modifications under this regulation, the Authority shall consult the holders of the licences being modified and such other persons as it considers appropriate.

(4) The power to make modifications under this regulation may not be exercised after the end of the period of 6 months beginning with the day on which this regulation comes into operation.

(5) Nothing in this regulation prejudices the generality of any other power to modify an electricity licence.

## PART 5

### CONSEQUENTIAL AMENDMENTS

#### Amendments to the Gas Order

9.—(1) In Article 11(2) of the Gas Order for “Article 14(1)(aa) and Articles 14(2), 17(2)” substitute “Articles 14(1)(b)”.

(2) In Article 11(4) of the Gas Order for “Article 14(1)(aa)” substitute “Article 14(1)(b)”.

(3) For Article 32(1)(a)(ii) of the Gas Order, substitute—

“(ii) the CMA’s activities during that year so far as relating to appeals under Article 14B;”.

#### Amendment to the Electricity Order

10. For Article 53(1)(a)(ii) of the Electricity Order, substitute—

“(ii) the CMA’s activities during that year so far as relating to appeals under Article 14B;”.

#### Amendments to the Energy Order

11. For Article 6(1)(b) of the Energy Order, substitute—

“(b) the Competition and Market Authority’s activities during that year so far as relating to appeals under Article 14B of the Electricity Order or Article 14B of the Gas Order;”.

12. Omit Articles 36 and 37 of the Energy Order.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 5th January 2015



*J Mills*  
A senior officer of the  
Department of Enterprise, Trade and Investment

SCHEDULE 1

Regulation 3(3)

Procedure for appeals under Article 14B of the Gas (Northern Ireland) Order 1996

“SCHEDULE 3A

Article 14C

Procedure for appeals under Article 14B

*Application for permission to bring appeal*

1.—(1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.

(2) Only a person entitled under Article 14B to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under Article 14(8), any application for permission to appeal is not to be made after the end of 20 working days after the day on which the decision is published.

(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

(7) The appellant must send the Authority—

- (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA; and
- (b) such other information as may be required by appeal rules.

(8) The CMA’s decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.

(9) Before the authorised member decides whether to grant permission under this paragraph, the Authority must be given an opportunity of making representations or observations, in accordance with paragraph 3(2).

(10) The CMA’s decision on an application for permission must be made—

- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
- (b) in any other case, before the end of 14 working days after the day on which the application for permission is received.

(11) The grant of permission may be made subject to conditions, which may include—

- (a) conditions which limit the matters that are to be considered on the appeal in question;
- (b) conditions for the purpose of expediting the determination of the appeal; and
- (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

(12) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons—

- (a) to the appellant; and

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(b) to the Authority.

(13) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.

(14) Article 14G(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under Article 14G.

#### *Suspension of decision*

2.—(1) The CMA may direct that, pending the determination of an appeal against a decision of the Authority—

- (a) the decision is not to have effect; or
- (b) the decision is not to have effect to such extent as may be specified in the direction.

(2) The power to give a direction under this paragraph is exercisable only where—

- (a) an application for its exercise has been made by the appellant at the same time that the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;
- (b) the Authority has been given an opportunity of making representations or observations, in accordance with paragraph 3(2);
- (c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in Article 14B(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and
- (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.

(3) The CMA's decision on an application for a direction under this paragraph must be made—

- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
- (b) in any other case, before the end of 14 working days following the day on which the application under sub-paragraph (2)(a) is received.

(4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.

(5) The CMA's decision whether to give a direction is to be taken by an authorised member of the CMA.

(6) A direction under this paragraph must be—

- (a) given by an authorised member of the CMA; and
- (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.

(7) Article 14G(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under Article 14G.

#### *Time limit for representations and observations by the Authority*

3.—(1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the CMA in relation to—



- (a) an application for permission to bring an appeal under paragraph 1;
  - (b) an application for a direction under paragraph 2.
- (2) The Authority must make the representations or observations in writing before the end of 10 working days after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the CMA in relation to—
- (a) the Authority’s reasons for the decision in relation to which the appeal is being brought;
  - (b) any grounds on which that appeal is being brought against that decision.
- (4) The Authority must make the representations or observations in writing before the end of 15 working days after the day on which permission to bring the appeal was granted.
- (5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

#### *Consideration and determination of appeal by group*

- 4.—(1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under Article 14B must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
- (a) all the members of the group are present when it is made; and
  - (b) at least two members of the group are in favour of the decision.

#### *Matters to be considered on appeal*

- 5.—(1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by Article 14F, may disregard—
- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and
  - (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

#### *Production of documents etc.*

- 6.—(1) For the purposes of this Schedule, the CMA may, by notice, require—
- (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;
  - (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—
- (a) at the time and place specified in the notice; and

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(b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court.

(4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph.

(5) A notice for the purposes of this paragraph—

(a) may be issued on the CMA's behalf by an authorised member of the CMA;

(b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

#### *Oral hearings*

7.—(1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—

(a) by a person considering an application for permission to bring an appeal under paragraph 1;

(b) by a person considering an application for a direction under paragraph 2; or

(c) by a group with the function of determining an appeal;

and, for that purpose, such a person or group may administer oaths.

(2) 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 person or group mentioned in sub-paragraph (1).

(3) At any oral hearing the person or group conducting the hearing may require—

(a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or

(b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.

(4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

(5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—

(a) there is no requirement to give notice to that person under sub-paragraph (2); and

(b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.

(6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court.

(7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.

(8) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Written statements*

8.—(1) The CMA may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—

- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
- (b) a group with the function of determining an appeal.

(2) The power to require the production of a written statement includes power—

- (a) to specify the time and place at which it is to be produced; and
- (b) to require it to be verified by a statement of truth;

and a statement required to be so verified must be disregarded unless it is so verified.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court.

(4) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Expert advice*

9. Where permission to bring an appeal is granted under paragraph 1 the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

#### *Defaults in relation to evidence*

10.—(1) If a person (“the defaulter”)—

- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
- (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 appeal rules, provides information that is false in a material particular,

an authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court.

(2) The High Court may inquire into a matter certified to it under this paragraph; and if, after having heard—

- (a) any witness against or on behalf of the defaulter; and
- (b) any statement in that defaulter's defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that that person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

#### *Appeal rules*

11.—(1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under Article 14B.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

- (a) the taking of evidence at an oral hearing; or
- (b) the making of representations or observations at such a hearing.

(3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

#### *Costs*

12.—(1) 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.

(2) An order under sub-paragraph (1) must require those costs to be paid—

- (a) where the appeal is allowed in full, by the Authority;
- (b) where the appeal is dismissed in full, by the appellant;
- (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.

(3) The 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.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

#### *Interpretation of Schedule*

13.—(1) In this Schedule—

- “appeal” means an appeal under Article 14B;
- “appeal rules” means rules of procedure under paragraph 11;
- “authorised member of the CMA”—

- (a) in relation to a power exercisable in connection with an appeal 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;
  - (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal 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;
- “CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;
- “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;
- (2) References in this Schedule to a party to an appeal are references to—
- (a) the appellant; or
  - (b) the Authority.”

## SCHEDULE 2

Regulation 4(3)

Procedure for appeals under Article 14B of the Electricity (Northern Ireland) Order 1992

### “SCHEDULE 5A

Article 14C

#### Procedure for appeals under Article 14B

##### *Application for permission to bring appeal*

1.—(1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.

(2) Only a person entitled under Article 14B to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under Article 14(8), any application for permission to appeal is not to be made after the end of 20 working days after the day on which the decision is published.

(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

(7) The appellant must send the Authority—

- (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA; and

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- (b) such other information as may be required by appeal rules.
- (8) The CMA's decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.
- (9) Before the authorised member decides whether to grant permission under this paragraph, the Authority must be given an opportunity of making representations or observations, in accordance with paragraph 3(2).
- (10) The CMA's decision on an application for permission must be made—
  - (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days after the day on which the application for permission was received.
- (11) The grant of permission may be made subject to conditions, which may include—
  - (a) conditions which limit the matters that are to be considered on the appeal in question;
  - (b) conditions for the purpose of expediting the determination of the appeal; and
  - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (12) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons—
  - (a) to the appellant; and
  - (b) to the Authority.
- (13) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (14) Article 14G(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under Article 14G.

#### *Suspension of decision*

- 2.—(1) The CMA may direct that, pending the determination of an appeal against a decision of the Authority—
  - (a) the decision is not to have effect; or
  - (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where—
  - (a) an application for its exercise has been made by the appellant at the same time the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;
  - (b) the Authority has been given an opportunity of making representations or observations, in accordance with paragraph 3(2);
  - (c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in Article 14B(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and
  - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (3) The CMA's decision on an application for a direction under this paragraph must be made—

- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days following the day on which the application under sub-paragraph (2)(a) is received.
- (4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (5) The CMA's decision whether to give a direction is to be taken by an authorised member of the CMA.
- (6) A direction under this paragraph must be—
- (a) given by an authorised member of the CMA; and
  - (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.
- (7) Article 14G(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under Article 14G.

#### *Time limit for representations and observations by the Authority*

- 3.—(1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the CMA in relation to—
- (a) an application for permission to bring an appeal under paragraph 1;
  - (b) an application for a direction under paragraph 2.
- (2) The Authority must make the representations or observations in writing before the end of 10 working days after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the CMA in relation to—
- (a) the Authority's reasons for the decision in relation to which the appeal is being brought;
  - (b) any grounds on which that appeal is being brought against that decision.
- (4) The Authority must make the representations or observations in writing before the end of 15 working days after the day on which permission to bring the appeal was granted.
- (5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

#### *Consideration and determination of appeal by group*

- 4.—(1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under Article 14B must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
- (a) all the members of the group are present when it is made; and
  - (b) at least two members of the group are in favour of the decision.

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*Matters to be considered on appeal*

- 5.—(1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by Article 14F, may disregard—
- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and
  - (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

*Production of documents etc.*

- 6.—(1) For the purposes of this Schedule, the CMA may, by notice, require—
- (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;
  - (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—
- (a) at the time and place specified in the notice; and
  - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court.
- (4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph.
- (5) A notice for the purposes of this paragraph—
- (a) may be issued on the CMA’s behalf by an authorised member of the CMA;
  - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

*Oral hearings*

- 7.—(1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
- (a) by a person considering an application for permission to bring an appeal under paragraph 1;
  - (b) by a person considering an application for a direction under paragraph 2; or
  - (c) by a group with the function of determining an appeal;
- and, for that purpose, such a person or group may administer oaths.
- (2) 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 person or group mentioned in subparagraph (1).



- (3) At any oral hearing the person or group conducting the hearing may require—
  - (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or
  - (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If the appellant, the Authority, or the appellant’s or Authority’s representative is not present at a hearing—
  - (a) there is no requirement to give notice to that person under sub-paragraph (2); and
  - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person’s evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person’s place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.
- (8) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

#### *Written statements*

- 8.—(1) The CMA may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
  - (a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
  - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
  - (a) to specify the time and place at which it is to be produced; and
  - (b) to require it to be verified by a statement of truth;and a statement required to be so verified must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court.
- (4) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

#### *Expert advice*

9. Where permission to bring an appeal is granted under paragraph 1 the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

#### *Defaults in relation to evidence*

- 10.—(1) If a person (“the defaulter”)—

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- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
- (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 appeal rules, provides information that is false in a material particular,

an authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court.

(2) The High Court may inquire into a matter certified to it under this paragraph; and if, after having heard—

- (a) any witness against or on behalf of the defaulter; and
- (b) any statement in the defaulter’s defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that a person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

### *Appeal rules*

11.—(1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under Article 14B.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

- (a) the taking of evidence at an oral hearing; or
- (b) the making of representations or observations at such a hearing.

(3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

### *Costs*

12.—(1) 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.

(2) An order under sub-paragraph (1) must require those costs to be paid—

- (a) where the appeal is allowed in full, by the Authority;

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- (b) where the appeal is dismissed in full, by the appellant; or
  - (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.
- (3) The 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.
- (4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.
- (6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

#### *Interpretation of Schedule*

13.—(1) In this Schedule—

“appeal” means an appeal under Article 14B;

“appeal rules” means rules of procedure under paragraph 11;

“authorised member of the CMA”—

- (a) in relation to a power exercisable in connection with an appeal 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;
- (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal 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;

“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“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.

(2) References in this Schedule to a party to an appeal are references to—

- (a) the appellant; or
- (b) the Authority.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 2(2) of the European Communities Act 1972. They make amendments to the electricity and gas regulatory regimes in Northern Ireland in order to amend the existing powers of the Northern Ireland Authority for Utility Regulation (“the Authority”) to modify the licence conditions of gas and electricity licensees. The Regulations replace the existing powers and procedures in The Gas (Northern Ireland) Order 1996 (“the 1996 Order”) and The Electricity (Northern Ireland) Order 1992 (“the 1992 Order”), and provide a right of appeal for specified parties to appeal to the Competition and Markets Authority (“the CMA”) following a decision by the Authority to modify the conditions of a gas or electricity licence.

In Part 1, regulation 1 covers the citation and commencement of the Regulations. Regulation 2 contains the interpretation provision for the Regulations.

In Part 2, regulation 3(1) substitutes Article 14 of the 1996 Order (Modification by agreement) with new Articles 14 to 14G. The new Article 14 provides that the Authority may modify the standard and special conditions of a gas licence issued under Article 8(1) of that Order following consultation on the proposed amendments, and having considered any responses to that consultation duly made.

The new Article 14A makes supplementary provision to Article 14, including provision for consequential amendments to be made to licences. Where a standard condition is modified, the Authority is under a duty to make, and publish, that modification in the standard conditions of future licences. Such modifications have effect subject to the giving of a direction by the CMA under paragraph 2 of new Schedule 3A to the Order directing the suspension of a modification decision by the Authority pending the determination of an appeal in relation to that modification decision.

Articles 14B to 14G specify the procedure for parties to appeal to the CMA against a decision of the Authority to amend the conditions of a licence under Article 14.

Regulation 3(2) repeals Articles 15 to 17A of the 1996 Order.

Regulation 3(3) and Schedule 1 to the Regulations inserts new Schedule 3A into the 1996 Order (Procedure for Appeals under Article 14B). Schedule 3A provides the procedure for making an application for permission to appeal, including the process for any application for the suspension of a decision to modify licence conditions prior to the determination of an appeal, and the powers of the CMA, including powers to require evidence under oath and require the production of specified documentation.

In Part 3, regulation 4(1) substitutes Article 14 of the 1992 Order (Modification by agreement) with new Articles 14 to 14G. The new Article 14 provides that the Authority may modify the standard and special conditions of an electricity licence issued under Article 10(1) of that Order following consultation on the proposed amendments, and having considered any responses to that consultation duly made.

The new Article 14A makes supplementary provision to Article 14, including provision for consequential amendments to be made to licences. Where a standard condition is modified, the Authority is under a duty to make and publish that modification in the standard conditions of future licences. Such modifications have effect subject to the giving of the direction by the CMA under paragraph 2 of new Schedule 5A to the Order (directing the suspension of a modification decision by the Authority pending the determination of an appeal in relation to that modification decision).

Articles 14B to 14G specify the procedure for parties to appeal to the CMA against a decision of the Authority to amend the conditions of a licence under Article 14 of the Order.

Regulation 4(2) repeals Articles 15 to 17A of the 1992 Order.

Regulation 4(3) and Schedule 2 to the Regulations inserts a new Schedule 5A (Procedure for appeal under Article 14B) into the 1992 Order. Schedule 5A provides the procedure for making an application for permission to appeal, including any application for the suspension of a decision to modify licence conditions prior to the determination of an appeal, and the powers of the CMA, including powers to require evidence under oath and require the production of specified documentation.

In Part 4, regulations 5 and 6 make savings provision in relation to existing references, and consultation commenced by the Authority under Articles 14 of the 1996 and 1992 Orders.

Regulations 7 and 8 create transitional powers for the Authority, with the consent of the Department, to modify existing gas and electricity licences.

Part 5 makes consequential changes to the 1992 and 1996 Orders and to the Energy (Northern Ireland) Order 2003.