



Energy Act 2004

2004 CHAPTER 20

PART 3

ENERGY REGULATION

CHAPTER 4

FURTHER PROVISIONS ABOUT REGULATION

Appeals from GEMA decisions

173 Appeals to the [^{F1}CMA]

- (1) An appeal ^{F2}... from a decision by GEMA to which this section applies [^{F3}shall lie to the Competition and Markets Authority (in this Chapter referred to as “the CMA”)].
- (2) This section applies to a decision by GEMA if—
 - (a) it is a decision relating to a document by reference to which provision is made by a condition of a gas or electricity licence;
 - (b) that document is designated for the purposes of this section by an order made by the Secretary of State;
 - (c) the decision consists in the giving or refusal of a consent by virtue of which the document has effect, or would have had effect, for the purposes of the licence with modifications or as reissued; and
 - (d) the decision is not of a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.
- (3) An appeal against a decision may be brought under this section only by—
 - (a) a person whose interests are materially affected by it; or
 - (b) a body or association whose functions are or include representing persons in respect of interests of theirs that are so affected.

Changes to legislation: Energy Act 2004, Cross Heading: Appeals from GEMA decisions is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) The permission of the [F⁴CMA] is required for the bringing of an appeal under this section.
- (5) The [F⁴CMA] may refuse permission only on one of the following grounds—
- (a) that the appeal is brought for reasons that are trivial or vexatious;
 - (b) that the appeal has no reasonable prospect of success.
- (6) Before making an order under this section, the Secretary of State must consult—
- (a) GEMA; and
 - (b) such other persons as he considers appropriate.
- (7) An order excluding decisions from the right of appeal under this section may provide—
- (a) for the exclusion to apply only in such cases as may be determined in accordance with the order; and
 - (b) for a determination in accordance with the order to be made by such persons, in accordance with such procedures, and by reference to such matters and the opinions of such persons (including GEMA), as may be provided for in the order.
- (8) An order made by the Secretary of State under this section is subject to the negative resolution procedure.
- (9) In this section—
- “consent” includes an approval or direction;
- “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

Textual Amendments

- F1** Word in s. 173 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 102\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 173(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 102\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 173(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 102\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Words in s. 173(4)(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 102\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C1** Ss. 171-196 power to apply (with modifications) conferred (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(l), [Sch. 18 para. 50](#)

Commencement Information

- I1** S. 173 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), [Sch. 1](#)

174 Procedure on appeals

- ^{F5}(1)
- (2) ^{F6}... Schedule 22 (procedure on appeals) has effect.

Changes to legislation: Energy Act 2004, Cross Heading: Appeals from GEMA decisions is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F7}(2A) Except where specified otherwise in Schedule 22, the functions of the CMA with respect to appeals under section 173 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.]

Textual Amendments

- F5** S. 174(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 103(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Word in s. 174(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 103(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** S. 174(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 103(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C1** Ss. 171-196 power to apply (with modifications) conferred (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(l), **Sch. 18 para. 50**

Commencement Information

- I2** S. 174 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), **Sch. 1**

175 Determination of appeals

- (1) This section applies to every appeal brought under section 173 of this Act.
- (2) In determining the appeal the [^{F8}CMA] must have regard, to the same extent as is required of GEMA, to the matters to which GEMA must have regard—
 - (a) in the carrying out of its principal objectives under section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objectives and general duties);
 - (b) in the performance of its duties under those sections; and
 - (c) in the performance of its duties under sections 4AB and 4A of that Act of 1986 and sections 3B and 3C of the 1989 Act (environmental and health and safety considerations).
- (3) In determining the appeal the [^{F8}CMA]—
 - (a) may have regard to any matter to which GEMA was not able to have regard in the case of the decision appealed against; but
 - (b) must not, in the exercise of that power, have regard to any matter to which GEMA would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The [^{F8}CMA] may allow the appeal only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
 - (a) that GEMA failed properly to have regard to the matters mentioned in subsection (2);
 - (b) that GEMA failed properly to have regard to the purposes for which the relevant condition has effect;
 - (c) that GEMA failed to give the appropriate weight to one or more of those matters or purposes;
 - (d) that the decision was based, wholly or partly, on an error of fact;

Changes to legislation: Energy Act 2004, Cross Heading: Appeals from GEMA decisions is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (e) that the decision was wrong in law.
- (5) Where the [F8CMA] does not allow the appeal, it must confirm the decision appealed against.
- (6) Where it allows the appeal, it must do one or more of the following—
- (a) quash the decision appealed against;
 - (b) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the [F8CMA];
 - (c) where it quashes the refusal of a consent, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given.
- (7) A person shall not be directed under subsection (6) to do anything that he would not have power to do apart from the direction.
- (8) A person to whom a direction is given under subsection (6) must comply with it; and such a direction given to a person other than GEMA shall be enforceable as if it were an order of the High Court or (in Scotland) of the Court of Session.
- (9) The decision of the [F9CMA] on the appeal—
- (a) must be contained in an order made by [F10the CMA];
 - (b) must set out the reasons for the decision;
 - (c) takes effect at the time specified in the order or determined in accordance with provision set out in that order;
 - (d) must be notified by [F10the CMA] to the persons who (within the meaning of Schedule 22) were parties to the appeal; and
 - (e) must be published by [F10the CMA] in such manner as it considers appropriate for bringing it to the attention of other persons likely to be affected by it.
- (10) The [F11CMA] may exclude from what it publishes under subsection (9)(e) any information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.
- (11) In this section—
- “consent” includes an approval or direction; and
- “the relevant condition”, in relation to a decision, means the licence condition the provisions of which have effect by reference to the document to which the decision relates.

Textual Amendments

- F8** Words in s. 175(2)-(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 104(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Word in s. 175(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 104(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in s. 175(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 104(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Word in s. 175(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 104(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation: Energy Act 2004, Cross Heading: Appeals from GEMA decisions is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

- C1** Ss. 171-196 power to apply (with modifications) conferred (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(l), [Sch. 18 para. 50](#)

Commencement Information

- I3** S. 175 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

^{F12}**176 Specialist members of Competition Commission**

.....

Textual Amendments

- F12** S. 176 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 105](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C1** Ss. 171-196 power to apply (with modifications) conferred (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(l), [Sch. 18 para. 50](#)

Changes to legislation:

Energy Act 2004, Cross Heading: Appeals from GEMA decisions is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)