

SCHEDULE 3

Regulation 53(1)

Appeals (other than appeals to which Schedule 5 applies)

1.—(1) Any person that wishes to appeal to the appeal body under regulation 52 must give to the appeal body written notice of the appeal together with the documents specified in sub-paragraph (2) and must at the same time send to the regulator a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (e).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application for a benchmarking plan or emissions plan;
- (c) a copy of any relevant benchmarking plan or emissions plan;
- (d) a copy of any relevant correspondence between the appellant and the regulator;
- (e) a copy of any decision or notice which is the subject matter of the appeal; and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the appeal body in writing and must send a copy of that notification to the regulator.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given before the expiry of the period of 24 days beginning with the date of the decision, deemed decision or the notice takes effect.

(2) The appeal body may in a particular case allow notice of appeal to be given after the expiry of the period in sub-paragraph (1) where it is satisfied that there was good reason for the applicant's failure to bring the appeal in time.

3.—(1) The regulator must, within 16 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to any person who appears to the regulator to have a particular interest in the subject matter of the appeal.

(2) A notice under sub-paragraph (1) must—

- (a) state that notice of appeal has been given;
- (b) state the name of the appellant;
- (c) describe the decision or notice to which the appeal relates;
- (d) state that if a hearing is to be held wholly or partly in public, an interested party will be notified of the date of the hearing; and
- (e) state that an affected party may request to be heard at a hearing.

(3) An interested party may request the regulator to provide a copy of the documents set out in paragraph 1(2) for the purposes of the appeal only and where such a request is made the regulator must provide the documents as soon as is reasonably practicable.

(4) An interested party—

- (a) may make representations with respect to the appeal to the appeal body in writing within 16 days from the date of the notice;
- (b) must, when making those representations, state whether or not its civil rights will be determined in the appeal, and, if so, which civil rights will be determined.

(5) The appeal body must provide a copy of any representations made under sub-paragraph (4) to the appellant and the regulator.

Status: This is the original version (as it was originally made).

(6) The regulator must, within 8 days of sending a notice under sub-paragraph (1), notify the appeal body of the persons to whom and the date on which the notice was sent.

(7) The appeal body must, as soon as possible after receiving representations under sub-paragraph (4), determine whether an interested party is an affected party.

(8) In the event of an appeal being withdrawn, the regulator must give notice of the withdrawal to all interested parties.

4.—(1) Before determining an appeal, the appeal body may afford the appellant, the regulator and any affected party an opportunity of appearing before and being heard by a person appointed by it (the “person holding the hearing”) and it must do so in any case where a request is made by the appellant, the regulator or any affected party.

(2) A hearing held under sub-paragraph (1) may, if the person holding the hearing so decides, be held wholly or partly, in private.

(3) Where the appeal body causes a hearing to be held under sub-paragraph (1) it must give the appellant, the regulator and any affected party at least 24 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the appeal body must, at least 24 days before the date fixed for the holding of the hearing—

(a) publish a copy of the notice referred to in sub-paragraph (3) in an appropriate international aviation publication; and

(b) serve a copy of that notice on every interested party who has made representations in writing to the appeal body.

(5) The appeal body may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.

(6) The appeal body may vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to the appeal body to be reasonable.

(7) The persons entitled to be heard at a hearing are the appellant, the regulator and any affected party.

(8) Nothing in sub-paragraph (7) prevents the person holding the hearing from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(9) After the conclusion of a hearing, the person holding the hearing must make a report in writing to the appeal body which must include that person’s conclusions and recommendations, or decision not to make any recommendation and in all cases the reasons supporting the report.

(10) Paragraph 4(5) and (6) of Schedule 4 applies to hearings held under this paragraph as if references to the appointed person in those paragraphs were references to the person holding the hearing under this paragraph.

5.—(1) Where an appeal under regulation 52 is to be disposed of on the basis of written representations, the regulator must submit any written representations to the appeal body not later than 24 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (e).

(2) The appellant must make any further representations by way of reply to any representations from the regulator not later than 16 days after the date of submission of those representations by the regulator.

(3) Any representations made by the appellant or the regulator must bear the date on which they are submitted to the appeal body.

(4) When the regulator or the appellant submits any representations to the appeal body they must at the same time send a copy of them to the other party.

(5) The appeal body must send to the appellant and the regulator a copy of any representations made to it by any interested party and must allow the appellant and the regulator a period of not fewer than 16 days in which to make representations on them.

(6) The appeal body may in a particular case—

- (a) set earlier or later time limits than those mentioned in this Schedule;
- (b) require or permit exchanges of representations between the parties in addition to those mentioned in sub-paragraphs (1) and (2).

6.—(1) The appeal body must give notice to the appellant of its determination of the appeal and must provide the appellant with a copy of any report mentioned in paragraph 4(9).

(2) The appeal body must at the same time send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to the regulator; and
- (b) a copy of its determination of the appeal to any interested party who made representations to the appeal body and, if a hearing was held, to any other person who made representations at the hearing.

7. Where an appeal is made under regulation 52(1)(a) or (b) or regulation 52(2), the appeal body must, where practicable, determine the appeal before the deadline in regulation 13(5) or 17(4), as appropriate.

8. Where a determination of the appeal body on an appeal is quashed in proceedings before any court, the appeal body—

- (a) must send to the persons notified of its determination under paragraph 6 a statement of the matters with respect to which further representations are invited for the purposes of its further consideration of the appeal;
- (b) must afford to those persons the opportunity of making, within 31 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as it thinks fit, cause a hearing to be held or reopened and, if it does so, paragraphs 4(2) to (10) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 applies to the re-determination of the appeal as it applies to the determination of an appeal.

9. In this Schedule—

- (a) “affected party” means an interested party—
 - (i) that has stated in representations under paragraph 3(4) that its civil rights will be determined in an appeal; and
 - (ii) whom the appeal body is satisfied that its civil rights will be so determined;
- (b) “interested party” means a person notified under paragraph 3(1).