

Appeals against Ofgem's Energy Code Modification Decisions

- The Energy Act 2004 allows for appeals against certain decisions made by Ofgem¹ on Gas and Electricity Industry Codes.
- SI 2005 No 1646 The Electricity and Gas Appeals (Designation and Exclusion) Order 2005² ("the 2005 Order") and SI 2009 No 648 The Electricity and Gas Appeals (designation and Exclusion) Order 2009³ ("the 2009 Order") together designate the codes to which the right of appeal applies.
- The 2005 Order came into effect on 14 July 2005 and applies to decisions made from that date, in respect of:
 - The Balancing and Settlement Code (BSC);
 - The Connection and Use of System Code (CUSC);
 - The Master Registration Agreement (MRA);
 - The Supply Point Administration Agreement (SPAA);
 - The Uniform Network Code (UNC); and,
 - The Network Codes prepared pursuant to Standard Special Condition A11 of the Gas Transporters licence.
- The 2009 Order came into effect on 6 April 2009 and applies to decisions made from that date, in respect of:
 - The Distribution Connection and Use of System Agreement; and,
 - The independent Gas Transporters' Uniform Network Code.
- Not all decisions taken by Ofgem in respect of the designated Codes will be subject to appeal.
- The 2005 Order excludes those of Ofgem's decisions which in the case of the:
 - BSC, CUSC, UNC or Network Code, accord with the recommendation of the relevant modification panel;
 - MRA, consent to a resolution of the MRA Executive Committee), and;
 - SPAA, consent to a change proposal which relevant parties have previously voted in favour of.
- The 2009 Order excludes those of Ofgem's decisions which in the case of the:
 - DCUSA, consent to a change proposal which relevant parties have previously voted in favour of; and,
 - iGT UNC, accord with the recommendation of the modification panel.
- Article 12 of the 2005 Order and article 4(1)(b) of the 2009 Order also provide that Ofgem may exclude a decision from the right of appeal where the delay caused by an appeal would be likely to have a material adverse effect on the availability of gas or electricity to meet the reasonable demands of consumers in Great Britain.

¹ Ofgem is the Office of the Gas and Electricity Markets Authority.

² Available from the Office of Public Sector Information website at: www.opsi.gov.uk/si/si2005/uksi_20051646_en.pdf

³ Available from the Office of Public Sector Information website at: www.opsi.gov.uk/si/si2009/pdf/uksi_20090648_en.pdf

- The rules and guidance for Energy Code modification appeals is available from the Competition Commission website at: http://www.competition-commission.gov.uk/rep_pub/rules_and_guide/index.htm.
- Application for permission to appeal should be addressed to:
 - Central Support Unit,
 - Competition Commission,
 - Victoria House,
 - Southampton Row,
 - London, WC1B 4AD.
- Rule 4.4 of the Competition Commission: The Energy Code Modification Rules requires that, at the time that it makes its application for permission to appeal, the applicant must send:
 - (a) a copy of the application for permission;
 - (b) a copy of any written evidence; and
 - (c) a copy of any further application
 to Ofgem and to such other persons as appear to the applicant to be affected by the decision. These should be sent to:
 - Industry Codes
 - Ofgem,
 - 9 Millbank,
 - London, SW1P 3GE.
 Or emailed to: industrycodes@ofgem.gov.uk
- Ofgem will acknowledge receipt within 5 working days.
- Ofgem will post its modification decisions on the 'Gas Codes' or 'Electricity Codes' sections of its website⁴, as appropriate. The 15 day window⁵ for an application to be lodged will commence with the publication of Ofgem's decision.

⁴ www.ofgem.gov.uk

⁵ Schedule 22 of the Energy Act 2004 provides that an application for permission to appeal is not to be made after the end of 15 working days following the earliest day on which the decision was published.