

**Rules of Procedure
of the Scheme Adjudicator**

for

(1) the Meter Asset Manager Code of Practice

and

(2) the Approved Meter Installer Code of Practice

Version 2.0

17 August 2018

Introduction

The Scheme Adjudicator

In accordance with the Supply Point Administration Agreement (**SPAA**) a Scheme Adjudicator has been appointed –

- under Schedule 32 of the SPAA to determine certain matters arising in respect of the Code of Practice for Gas Meter Asset Managers (**MAMCoP**),
- under Schedule 40 of the SPAA to determine certain matters arising in respect of the Code of Practice for Approved Meter Installers (**AMICoP**).

The Rules of Procedure

For the purposes of each Code of Practice, the Scheme Adjudicator is required to produce a terms of reference document setting out its procedure in respect of certain matters to be determined by it (the **Rules of Procedure**). Each document must be approved, and subsequently published, by the SPAA Executive Committee (**SPAA EC**).

This document incorporates –

- at Part A, the Rules of Procedure produced for the purposes of MAMCoP, and approved by the SPAA EC, under paragraph 6.23 of Schedule 32 to the SPAA,
- at Part B, the Rules of Procedure produced for the purposes of AMICoP, and approved by the SPAA EC, under paragraph 5.3 of Schedule 40 to the SPAA.

Versions of the Rules of Procedure

Each set of Rules of Procedure may be updated from time to time by the Scheme Adjudicator, with the approval of the SPAA EC. Where either set of Rules of Procedure is updated, the SPAA EC will publish a new version of this document.

Every version of the Rules of Procedure is effective immediately on the date of its publication. However, where a matter has been referred for determination by the Scheme Adjudicator under one version of the Rules of Procedure and a new version subsequently takes effect, then – unless the SPAA requires otherwise, or the new version is produced to reflect any modifications of the SPAA which need to apply to all determinations to be made by the Scheme Adjudicator – the version which applied when the matter was referred for determination shall continue to apply for the purposes of making that determination.

Status of the Rules of Procedure

The Rules of Procedure are binding in accordance with the provisions of the SPAA.

However, any other parts of the document – including in particular any shaded text box, Annex or Appendix – which are identified as explanatory notes or guidance or shall be treated as such and not as part of the approved and binding Rules of Procedure.

PART A. Rules of Procedure of the Scheme Adjudicator for the Code of Practice for Gas Meter Asset Managers

1 Status of this Part A

1.1 This Part A –

- (a) sets out the Scheme Adjudicator's procedure in respect of the matters referred to in paragraph 6 of Schedule 32 to the SPAA; and
- (b) is produced by the Scheme Adjudicator, and approved and published by the SPAA EC, in accordance with paragraph 6.23 of that Schedule.

1.2 This Part A shall be referred to as the **Rules of Procedure**.

2 The Scope of the Rules of Procedure

2.1 The Rules of Procedure relate to determinations to be made by the Scheme Adjudicator in respect of –

- (a) an **appeal** brought by an Applicant which has been refused approval as a MAM by the Registration Agent (*para 3.11 of Schedule 32*);
- (b) an **appeal** brought by a MAM against the Registration Agent's determination of non-compliance by that MAM with the MAMCoP:
 - (i) following an Audit or assessment of completion of remedial action (*para 4.18 of Schedule 32*);
 - (ii) following an Investigation (*para 5.30 of Schedule 32*);
- (c) a **recommendation** made by the Registration Agent, in an Audit Report or a Final Investigation Report, that a MAM should have its approval (whether in respect of all or certain categories of meter installation) partially suspended, suspended or withdrawn (*paras 4.13 and 5.28 of Schedule 32*).

3 Role and Remit of the Scheme Adjudicator

The role of the Scheme Adjudicator

3.1 The role of the Scheme Adjudicator is limited to –

- (a) determining whether an appeal made against a decision of the Registration Agent and referred to in paragraph 2.1(a) is to be upheld or rejected;
- (b) determining whether an appeal made against a decision of the Registration Agent and referred to in paragraph 2.1(b) is to be upheld or rejected;
- (c) determining whether the approval of a MAM should be partially suspended, suspended or withdrawn in accordance with the recommendation of the Registration Agent referred to in paragraph 2.1(c); and
- (d) for the purpose of or ancillary to these determinations, making any of the decisions referred to in paragraph 3.2.

3.2 The decisions referred to in this paragraph are the decisions to –

- (a) identify any major non-compliance or minor non-compliance by a MAM (*para 6.12.1 of Schedule 32*);
- (b) conclude the extent to which a MAM has taken effective Remedial Action (*para 6.12.2 of Schedule 32*);
- (c) instruct a MAM to take Remedial Action (*para 6.12.3 of Schedule 32*);
- (d) approve a Remedial Plan prepared by a MAM (*para 6.12.3 of Schedule 32*);
- (e) determine the date by which any Remedial Action should be completed (*para 6.12.3 of Schedule 32*) and subsequently to determine a later date (*para 6.17 of Schedule 32*);
- (f) conclude whether a MAMCoP Event of Default has occurred (*para 6.12.4 of Schedule 32*);
- (g) determine the date from which any suspension, partial suspension, or withdrawal of approval of a MAM shall take effect, and the period and effect of any such suspension or partial suspension (*para 6.12.5 of Schedule 32*);
- (h) instruct the Registration Agent to monitor any Remedial Action taken by a MAM and report to the Scheme Adjudicator (*para 6.18 of Schedule 32*);
- (i) instruct the Registration Agent to consider whether any Remedial Action has been completed (*para 6.20 of Schedule 32*);
- (j) notify the relevant MAM and the SPAA EC that Remedial Action has been completed (*para 6.21 of Schedule 32*);

- (k) conclude that Remedial Action has not been completed and that a MAMCoP Event of Default has therefore occurred (*para 6.22 of Schedule 32*).

Matters outside the remit of the Scheme Adjudicator

3.3 The role of the Scheme Adjudicator is not to –

- (a) determine any commercial dispute between any persons;
- (b) conduct arbitration or an adjudication within the meaning which is generally given to those terms;
- (c) duplicate the work, or replace the role, of the Registration Agent.

Matters relating to the role of the Scheme Adjudicator

3.4 The Scheme Adjudicator may request the provision of information from such persons and in such circumstances as may be provided for in Schedule 32.

3.5 In undertaking its role the Scheme Adjudicator is unlikely to, but may in exceptional cases, conduct site visits or review or observe any live working of systems.

Explanatory Note

This section confirms and clarifies the following –

- The Scheme Adjudicator's role is limited to determining appeals made by a MAM or person applying to be approved as a MAM and making decisions on recommendations made by the Registration Agent for a MAM's approval to be (permanently or temporarily) withdrawn. As part and parcel of its determination it may also make supplementary or associated decisions relating to remedial action that was, or is, required to be undertaken by the MAM.
- The Scheme Adjudicator is not appointed to, and therefore does not, determine or settle commercial or contractual disputes which might, for example, arise between competing MAMs. By way of an illustrative example, a dispute as to whether a MAM has breached any of the terms of a contract it may have with another MAM is not a dispute for determination by the Scheme Adjudicator.
- Similarly, the Scheme Adjudicator's role is not to check whether or not a MAM is compliant with the Code in the same way as the Registration Agent does. Its role is to decide on whether the Registration Agent's decision that the MAM is non-compliant is the right decision and/or to decide on whether the recommendation

made by the Registration Agent for the MAM's approval to be withdrawn should be followed.

- In order to assist its thinking the Scheme Adjudicator is able to request further information from any person that it thinks may have or be able to provide that information and that it may in exceptional cases consider the need to observe how particular things are done or are working on the ground but that this will not be the norm.

4 Referrals to the Scheme Adjudicator by the Secretariat

Circumstances in which a referral occurs

- 4.1 Where an Applicant wishes to appeal a decision by the Registration Agent to refuse it approval as a MAM –
- (a) it must do so by giving written notice to the Secretariat specifying the grounds for the appeal within 15 Working Days after receipt by it of the Registration Agent's Assessment Report (*para 3.11 of Schedule 32*); and
- (b) the Secretariat will refer the appeal to the Scheme Adjudicator.
- 4.2 Where a MAM wishes to appeal a determination by the Registration Agent that it is in non-compliance with the MAMCoP –
- (a) it must do so by giving written notice to the Secretariat specifying the grounds for the appeal within 15 Working Days after receipt by it of the Registration Agent's determination (*paras 4.18 and 5.30 of Schedule 32*); and
- (b) the Secretariat must refer the appeal to the Scheme Adjudicator (*paras 4.19 and 5.31 of Schedule 32*).
- 4.3 Where the Registration Agent makes a recommendation (in an Audit Report or Final Investigation Report) that a MAM should have its approval (whether in respect of all or certain categories of meter installation) partially suspended, suspended or withdrawn, the Secretariat must refer that recommendation to the Scheme Adjudicator (*paras 4.13 and 5.28 of Schedule 32*).
- 4.4 In each of these cases, the relevant Applicant or MAM is the **Responding Party**, and the referral shall proceed in accordance with the following provisions of these Rules of Procedure.

Explanatory Note

This section confirms that –

- An Applicant that wishes to appeal the Registration Agent's decision not to approve it as a MAM has to do so within 15 working days of receiving notification of the decision and in doing so must set out the grounds on which it is appealing.
- A MAM that wishes to appeal the Registration Agent's finding of non-compliance has to do so within 15 working days of receiving notification of that finding and in doing so must set out the grounds on which it is appealing.
- Any recommendation made by the Registration Agent for a MAM's approval to be withdrawn (whether permanently or temporarily) has to be referred by the Secretariat to the Scheme Adjudicator.

The commencement of the referral

4.5 Where the referral relates to an appeal of the type referred to in paragraph 4.1 above, the referral to the Scheme Adjudicator commences when the Secretariat sends to it a copy of the following –

- (a) the Responding Party's notice of appeal;
- (b) the Assessment Report; and
- (c) such other information or documents associated with the Assessment Report as the Secretariat considers appropriate.

4.6 On receipt by it of the documents referred to in paragraph 4.5, the Scheme Adjudicator will promptly notify the Scheme Administrator and the Responding Party, and the date on which it does so shall be treated for the purposes of these Rules of Procedure as the **Referral Date**.

4.7 In all other cases, the referral to the Scheme Adjudicator commences when the Secretariat sends to it a copy of the following –

- (a) (where applicable) the Responding Party's notice of appeal;
- (b) (as applicable) the Audit Report or Final Investigation Report; and
- (c) a Statement of Case together with all associated documents relating to the Audit Report or Final Investigation Report (*para 6.2 of Schedule 32*).

5 The Statement of Case

- 5.1 The provisions in this Section 5 apply only where a referral commences pursuant to paragraph 4.7 above.
- 5.2 On receiving the documents referred to in paragraph 4.7, the Scheme Adjudicator will –
- (a) promptly acknowledge receipt to the Secretariat and the Responding Party; and
 - (b) if any part of the Statement of Case is unclear, make a request as soon as reasonably practicable for clarification from the Secretariat (*para 6.3 of Schedule 32*).
- 5.3 Where the Scheme Adjudicator requests clarification in relation to any part of the Statement of Case, the Secretariat will provide that clarification, update the Statement of Case so that it is consistent with the clarification provided, and send the updated Statement of Case to the Scheme Adjudicator (*para 6.3 of Schedule 32*).
- 5.4 Where the Scheme Adjudicator is satisfied that the updated Statement of Case is sufficiently clear, it will instruct the Secretariat to send that Statement of Case to the Responding Party.

Explanatory Note

The Statement of Case is a document prepared by the Secretariat which sets out the background to the matter. The Scheme Adjudicator may request clarification on the content of the Statement of Case – an example would include where the Statement of Case is inconsistent with or does not reflect matters set out in any of the documents which accompany it. The Responding Party will receive a copy of the Statement of Case and have an opportunity to respond to it.

6 The Response/Submission

Time for submitting the Response to the Statement of Case

- 6.1 Where Section 5 applies, the Responding Party must respond to the Statement of Case by providing its response in writing (the **Response**) to the Secretariat –
- (a) within 10 Working Days of receiving the Statement of Case; or
 - (b) within any longer period that may be determined by the Scheme Adjudicator and notified to the Responding Party (*para 6.5 of Schedule 32*).

Time for making the Submission

6.2 Where Section 5 does not apply, the Responding Party may make a written submission in relation to the matter referred to the Scheme Adjudicator (the **Submission**) by sending it to the Secretariat –

- (a) within 15 Working Days of the Referral Date; or
- (b) within any longer period that may be determined by the Scheme Adjudicator and notified to the Responding Party.

Extensions of time

6.3 For the purposes of paragraph 6.1(b) the Scheme Adjudicator may determine a longer period for the Responding Party to submit its Response either –

- (a) of its own accord when it instructs the Secretariat to send the Statement of Case to the Responding Party; or
- (b) following an application made by the Responding Party,

where it considers – after having regard to the Statement of Case, the other documents provided to it, and (where applicable) any application made by the Responding Party – that it would be appropriate in all the circumstances for the Responding Party to have longer than 10 Working Days to submit its Response.

6.4 For the purposes of paragraph 6.2(b) the Scheme Adjudicator may determine a longer period for the Responding Party to make its Submission either –

- (a) of its own accord on the Referral Date; or
- (b) following an application made by the Responding Party,

where it considers – after having regard to the documents provided to it and (where applicable) any application made by the Responding Party – that it would be appropriate in all the circumstances for the Responding Party to have longer than 15 Working Days to make its Submission.

6.5 In either case any application made by the Responding Party for the Scheme Adjudicator to determine such a longer period must –

- (a) be made as soon as reasonably practicable after, and in any event either (as applicable):
 - (i) within 10 Working Days of, the date on which it received the Statement of Case; or

- (ii) within 15 Working Days of, the Referral Date,
 - (b) contain all the information and supporting evidence (if any) which the Responding Party wishes to rely on for the purposes of its application; and
 - (c) specify the longer period which it requests for the submission of its Response or the making of the Submission.
- 6.6 Where the Secretariat receives an application from the Responding Party it will promptly send the application to the Scheme Adjudicator.
- 6.7 An application that is made more than (as applicable):
- (a) 10 Working Days after the Responding Party received the Statement of Case; or
 - (b) 15 Working Days after the Referral Date,
- will not be considered by the Scheme Adjudicator.
- 6.8 Where the Scheme Adjudicator has determined a longer period of its own accord, it –
- (a) may still consider an application made by the Responding Party for an extension to that period if that application is made in accordance with paragraph 6.5; and
 - (b) may determine a longer period in substitution for its original determination, but will do so only if the Responding Party has demonstrated to the satisfaction of the Scheme Adjudicator that the longer period which was originally determined was clearly inadequate in all the circumstances.
- 6.9 Where the Scheme Adjudicator receives an application to determine a longer period made in accordance with paragraph 6.5, but determines to refuse that application, it will promptly notify the Responding Party and provide a brief statement of reasons for its decision.

Responses/Submissions received late

- 6.10 A Response or Submission which is received by the Secretariat after the period determined in accordance with paragraph 6.1 or 6.2 (as applicable) will not be considered by the Scheme Adjudicator for the purposes of its determination of the matter referred to it.

The content of the Response/Submission

- 6.11 A Response or Submission must set out all of the information and arguments, and be accompanied by all of the evidence, on which the Responding Party wishes to rely.

- 6.12 Where the Responding Party wishes to rely on the evidence of any person, it must provide that evidence in the form of a statement given by that person, submitted with the Response or Submission, and supported by a statement of truth made by that person.
- 6.13 Where the Responding Party wishes to rely on the evidence of any expert, it must provide that evidence in the form of a report which is written by that expert, submitted with the Response or Submission, and which –
- (a) clearly states the qualifications and experience of the expert; and
 - (b) is supported by a statement of truth made by the expert.
- 6.14 The Secretariat may provide the Responding Party with a form in which a statement of truth may be made by any person or expert, and if it does so the Responding Party must ensure that any statement of truth made in accordance with paragraph 6.12 or 6.13 is in that form.
- 6.15 A Response may include the matters referred to in paragraph 6.5 of Schedule 32, and must in particular –
- (a) identify clearly any conclusions or recommendations within the Audit Report or Final Investigation Report (as applicable) which it accepts;
 - (b) identify clearly any conclusions or recommendations within the Audit Report or Final Investigation Report (as applicable) which it contests; and
 - (c) where the Responding Party considers that any issue arises as to the interpretation of the requirements of the MAMCoP, clearly identify the nature of that issue, state what it contends to be the correct interpretation of those requirements, and explain why it considers that interpretation to be correct.
- 6.16 A Submission must in particular –
- (a) identify clearly any conclusions or recommendations within the Assessment Report which it accepts;
 - (b) identify clearly any conclusions or recommendations within the Assessment Report which it contests; and
 - (c) where the Responding Party considers that any issue arises as to the interpretation of the requirements of the MAMCoP, clearly identify the nature of that issue, state what it contends to be the correct interpretation of those requirements, and explain why it considers that interpretation to be correct.

- 6.17 Where the matter referred to the Scheme Adjudicator is an appeal made by the Responding Party –
- (a) a Response or Submission must clearly –
 - (i) state how the information and evidence provided by the Responding Party supports each of the grounds of appeal contained in its notice of appeal; and
 - (ii) make any other submissions which the Responding Party wishes to be considered by the Scheme Adjudicator for the purposes of its determination.
 - (b) the Responding Party may not in its Response or Submission seek to rely on any grounds of appeal which were not included in its notice of appeal.
- 6.18 It is the responsibility of the Responding Party to ensure that the information and arguments which are contained in, and the evidence which accompanies, the Response or Submission constitute a full and clear statement of its case.

Explanatory Note

This section confirms and clarifies the following –

- A MAM has the opportunity to respond to the Statement of Case but must do so either within 10 working days of receipt or, if the Scheme Adjudicator considers it appropriate to give the MAM more time to submit the response, within the additional time given. Any late response will not be considered by the Scheme Adjudicator.
- Where the Scheme Adjudicator notifies the Applicant that it has received a referral from the Scheme Administrator relating to an appeal made by the Applicant in respect of a decision not to approve it as a MAM, the Applicant has the opportunity to make a submission to the Scheme Adjudicator. However, it must do so either within 15 working days of the Scheme Adjudicator's notification or, if the Scheme Adjudicator considers it appropriate to give the Applicant more time to make such a submission, within the additional time given. Any late submission will not be considered by the Scheme Adjudicator.
- The Scheme Adjudicator can, but is not required to, give more time for the Applicant/MAM to make the submission/submit the response either (i) of its own volition – and in this case the MAM will know whether the Scheme Adjudicator has given it more time when it receives the Statement of Case or notification of the referral, or (ii) where the Applicant/MAM has asked it to do so. Moreover, even if the Scheme Adjudicator has of its own volition given more time to the Applicant/ MAM,

the Applicant/MAM can still ask for, and the Scheme Adjudicator can decide to give, additional time.

- By way of an example the Scheme Adjudicator may consider it appropriate to give more time for the Applicant/MAM to make the submission/submit the response where the number and/or length of the documents to be reviewed are unusually high, or where the period for the response falls over the Christmas/New Year period.
- If the Applicant/MAM wants more time to make the submission/submit its response (or, where the Scheme Adjudicator has already given more time, the Applicant/MAM wants even longer), it must make its request as soon as it can but in all cases before the expiry of the 10/15 working days that it ordinarily has to make a submission/submit its response. Any such request also needs to give reasons for requesting more time and how much more time it would like. Again a late request will not be considered.
- Where the Applicant/MAM submits any witness or expert evidence with its response/submission that evidence must be supported by a statement of truth (which must, if the Secretariat has specified a particular form for the statement of truth, be in the form specified).
- The onus is on the Applicant/MAM to ensure that it makes its case as it would wish to do so by submitting a full and clear response/submission. But it cannot introduce new grounds of appeal at this stage of the process.

7 Hearings

The decision to hold a hearing

7.1 The Scheme Adjudicator may decide to invite the Responding Party to attend a hearing (*para 6.6 of Schedule 32*).

7.2 A decision to invite the Responding Party to attend a hearing may be made by the Scheme Adjudicator –

- (a) of its own accord; or
- (b) on receipt of a request made by the Responding Party,

where the Scheme Adjudicator considers – after having regard to the Response or Submission, the other documents provided to it, and (where applicable) any request made to it – that it would

assist in achieving the fair, efficient and effective determination of the matter for a hearing to take place.

- 7.3 Any request for a hearing made by the Responding Party must be made at the same time as it submits its Response or makes its Submission, and must be accompanied by a statement setting out the reasons why the Responding Party considers that a hearing would assist in achieving the fair, efficient and effective determination of the matter.
- 7.4 A request for a hearing that is made after the Responding Party submits its Response or makes its Submission will not be considered by the Scheme Adjudicator
- 7.5 Any decision to invite the Responding Party to attend a hearing will be made by the Scheme Adjudicator and communicated to the Responding Party promptly, and in any event no more than 3 Working Days, following the receipt of the Response or Submission.
- 7.6 Where the Scheme Adjudicator refuses a Responding Party's request for a hearing, that decision will be made and communicated to the Responding Party promptly, and in any event no more than 3 Working Days, following the receipt of the Response or Submission.
- 7.7 If the Responding Party does not submit a Response or make its Submission within the period determined in accordance with paragraph 6.1 or paragraph 6.2 (as applicable), the Responding Party may not be invited to attend a hearing, and the matter shall be determined without any hearing taking place.

Explanatory Note

A hearing is an opportunity for the Applicant/ MAM to present its case to the Scheme Adjudicator in person and for the Scheme Adjudicator to ask questions in person to the Applicant/MAM (and any other persons) about the matter.

The above provisions confirm and clarify that -

- There is no obligation on the Scheme Adjudicator to hold a hearing – the decision on whether or not to do so is a decision for the Scheme Adjudicator, and it can make that decision either of its own volition or where an Applicant/MAM has asked for a hearing to be held.
- If the Applicant/MAM considers that there should be a hearing it can ask the Scheme Adjudicator to hold one. However, it has to make that request at the same time as submits its response to the Statement of Case or makes its submission – it cannot request a hearing if it does not submit a response/make a submission. A late request will not be considered by the Scheme Adjudicator.

- The test that is applied by the Scheme Adjudicator in deciding whether to hold a hearing is that doing so would help to achieve a fair, efficient and effective determination of the matter. If the Applicant/MAM asks for a hearing it will need to explain how or why having a hearing would satisfy that test.
- The Applicant/MAM will know by no later than 3 working days of the Scheme Adjudicator receiving the MAM's response to the Statement of Case/Applicant's Submission, whether the Scheme Adjudicator has decided to hold a hearing – it will receive either an invitation to attend or notification that no hearing will be held.

Responding to an invitation to a hearing

- 7.8 On receipt of an invitation to attend a hearing, the Responding Party must within 3 Working Days of receipt of that invitation, notify the Secretariat whether or not it wishes to attend the hearing (*para 6.7 of Schedule 32*).
- 7.9 If the Secretariat has not received a reply from the Responding Party, within 3 Working Days, to an invitation to attend a hearing, the Responding Party will be deemed to have declined the invitation.
- 7.10 Where the Responding Party declines, or is deemed to have declined, an invitation to attend a hearing, the matter shall be determined without a hearing taking place (*para 6.7 of Schedule 32*).

Arrangements in respect of a hearing

- 7.11 Where the Responding Party accepts the invitation to attend a hearing, the Secretariat will promptly notify the Scheme Adjudicator of the acceptance, and the Scheme Adjudicator will –
- in all cases request the Secretariat to invite the attendance of the Registration Agent at the hearing; and
 - decide whether to request the Secretariat to invite any other person to attend the hearing (*para 6.6 of Schedule 32*).
- 7.12 The Secretariat will be responsible for making arrangements for the hearing, which will –
- where the Responding Party has submitted a Response take place within 20 Working Days of the receipt of the Response (*para 6.6 of Schedule 32*);
 - where the Responding Party has made a Submission usually take place on a date which falls no later than 20 Working Days following the receipt of the Submission,

unless it is not reasonably practicable for it to do so, in which case it shall take place as soon as reasonably practicable after that date;

- (c) other than in exceptional circumstances, be held at a venue in central London; and
- (d) be subject to those administrative arrangements which the Secretariat, in consultation with the Scheme Adjudicator, may determine.

7.13 The Secretariat will – in discussion with the Scheme Adjudicator, the Responding Party, the Registration Agent, and all other persons invited to attend the hearing – seek to identify the most convenient date and time for the hearing to take place having regard to their availability.

7.14 Following such discussions, the Secretariat, in consultation with the Scheme Adjudicator, will decide the date and time of the hearing and notify it to all those invited to attend. Its decision shall be final.

Explanatory Note

The above sections will apply only where the Scheme Adjudicator has decided to hold, and has therefore invited the Applicant/MAM to attend, a hearing.

Because of the need for the Secretariat to make arrangements for the date and location of the hearing, and because there is a tight timetable within which a hearing can take place, it is important that any invitation is accepted or rejected as quickly as possible. The Applicant/MAM has 3 working days within which to accept or refuse the invitation (by telling the Secretariat). If it does nothing and stays silent then it will be treated as having refused the invitation.

Where an Applicant/MAM refuses the invitation (either expressly or by doing nothing) a hearing will not take place.

If the Applicant/MAM accepts the invitation –

- the Registration Agent will be invited to attend the hearing and the Scheme Adjudicator can decide whether anyone else should be invited (this could, for example, include the MAMCoP Chair/Deputy Chair but may include anyone else that the Scheme Adjudicator considers should be invited);
- the Secretariat will liaise with the relevant parties to arrange and decide on a date for the hearing – noting that the hearing will need to take place within 20 working days of the Scheme Adjudicator receiving the Applicant/MAM's Submission/Response.

The purposes of a hearing

- 7.15 The purposes of a hearing shall be to –
- (a) provide the Responding Party with the opportunity to make oral representations in respect of the matters addressed in its Response or Submission;
 - (b) allow the Scheme Adjudicator to ask questions of the Responding Party, Registration Agent, and any other person invited to attend the hearing, in order to clarify any issue relating to the matter to be determined; and
 - (c) by virtue of paragraphs (a) and (b), assist in achieving the fair, efficient and effective determination of that matter.
- 7.16 The purposes of a hearing shall not include the production of evidence which has not been provided to the Scheme Adjudicator prior to the hearing, or the testing of the credibility of the evidence of any person.

The management and conduct of a hearing

- 7.17 The Scheme Adjudicator shall be entitled, in its absolute discretion, to decide on all matters relating to the management of a hearing, including the conduct of those who attend it, with a view to the hearing being designed to assist in the fair, efficient and effective determination of the matter that has been referred.
- 7.18 The Scheme Adjudicator may in particular decide –
- (a) whether any person other than the Responding Party shall be entitled to speak at the hearing;
 - (b) the order in which the Responding Party and any other person shall speak;
 - (c) any time limits or other restrictions which shall apply to the representations made by the Responding Party or any other person;
 - (d) whether any observers shall be able to attend all or part of the hearing.
- 7.19 For these purposes the Scheme Adjudicator may give directions as to the management and conduct of a hearing –
- (a) in writing in advance of the hearing to all those who have been invited to attend; and
 - (b) orally during the course of the hearing.

- 7.20 The Responding Party and any other person who is invited to attend a hearing or who attends as an observer must comply with any direction given by the Scheme Adjudicator in relation to the management and conduct of the hearing.
- 7.21 A Responding Party shall be entitled to be represented at a hearing by a legal representative or other professional adviser who may speak on its behalf, subject to having notified the Secretariat a reasonable time in advance of the hearing of the identity of that person.

Explanatory Note

The above provisions confirm and clarify that –

- The way in which any individual hearing is to be conducted and managed is for the Scheme Adjudicator to decide (this may, for example, include the running order, the amount of time to be given to the Applicant/MAM and/or the Registration Agent to present its case, whether observers are allowed, etc.).
- The Scheme Adjudicator may decide such matters in advance of the hearing or it may decide on them on the day and as the hearing progresses. Either way it will give directions to those that are attending and the attendees are required to comply with these directions.
- The Applicant/MAM is able to have its legal or other professional advisors make representations on its behalf at the hearing but only if it has given advance notice to the Secretariat of the person(s) that will be representing it, and subject to any other directions that the Scheme Adjudicator may give.

Information

- 7.22 The Scheme Adjudicator may, where it considers it appropriate for the purpose of facilitating the fair, efficient and effective determination of the matter referred to it –
- (a) require information or documents to be provided to it by the Responding Party, the Registration Agent or any other person at any time either before or after a hearing; and
 - (b) for that purpose specify the time within which the information or documents must be provided, with which the person who is the subject of the requirement must comply (*para 6.9 of Schedule 32*).

8 The Determination

- 8.1 The Scheme Adjudicator will:

- (a) where no hearing takes place in relation to a matter referred to it for determination in accordance with paragraph 4.1:
 - (i) if the Responding Party has submitted a Response, make its determination and provide a Determination Report to the Secretariat within 20 Working Days of the date of receipt of the Response; or
 - (ii) if the Responding Party has failed to submit a Response, make its determination and provide a Determination Report to the Secretariat within 20 Working Days of the date for the submission of the Response in accordance with paragraph 6.1;
- (b) where no hearing takes place in relation to a matter referred to it for determination in accordance with paragraphs 4.2 or 4.3:
 - (i) if the Responding Party has made a Submission, take all reasonable steps to make its determination within 20 Working Days of the date of receipt of the Submission;
 - (ii) if the Responding Party has failed to make a Submission, take all reasonable steps to make its determination within 20 Working Days of the date for the making of the Submission in accordance with paragraph 6.2;
- (c) where a hearing takes place in relation to a matter referred to it for determination and:
 - (i) the Rules of Procedure provide for a Statement of Case to be sent to the Responding Party, make its determination and provide its Determination Report to the Secretariat within 10 Working Days of the date of the hearing (*para 6.10 of Schedule 32*);
 - (ii) the Rules of Procedure do not provide for a Statement of Case to be sent to the Responding Party, take all reasonable steps to make its determination within 10 Working Days of the date of the hearing.

8.2 Where the Scheme Adjudicator makes a determination and provides a Determination Report to the Secretariat in accordance with paragraphs 8.1(a)(i), 8.1(a)(ii), or 8.1(b)(i), the Determination Report will include all of the information and conclusions referred to at paragraphs 6.11 and, where applicable, 6.12 of Schedule 32, and may also address such other matters as the Scheme Adjudicator considers appropriate in all the circumstances.

8.3 In all other cases, the Scheme Adjudicator shall provide its determination in writing and the determination:

- (a) shall include a clear statement of –

- (i) the conclusions reached by the Scheme Adjudicator in relation to the matter referred to it; and
 - (ii) the Scheme Adjudicator's reasons for reaching those conclusions; and
- (b) may address such other matters as the Scheme Adjudicator considers appropriate in all the circumstances.

Explanatory Note

The date by which the Scheme Adjudicator will make its determination is informed by whether or not a hearing is held and also by whether or not the Applicant/MAM has submitted or made a timely response/submission.

Where a hearing is held, the Scheme Adjudicator will make its determination within 10 working days of the hearing.

Where no hearing is held but the Applicant/MAM submitted or made a timely response/submission, the Scheme Adjudicator will make its determination within 20 working days of receiving the response/submission.

Where no hearing is held and the Applicant/MAM did not submit a timely response/submission, the Scheme Adjudicator will make its determination within 20 working days of the date by which the Applicant/MAM could (or should) have submitted a timely response/submission.

Appeals to Ofgem

- 8.4 Appeals may be brought to Ofgem from determinations of the Scheme Adjudicator where provided for by either paragraph 3.12 or paragraph 6.15 of Schedule 32, and subject to such procedural requirements as may be set out in that paragraph or otherwise in Schedule 32.

9 Post-Determination Actions

Extension of time for Remedial Actions

- 9.1 Where in its determination the Scheme Adjudicator has instructed the Responding Party to take any Remedial Action by a specified date, the Responding Party may make an application for the Scheme Adjudicator to determine a later date to apply in substitution for that original date (*para 6.17 of Schedule 32*).

- 9.2 An application made after the original date will not be considered by the Scheme Adjudicator.

- 9.3 Any application made by the Responding Party in accordance with paragraph 9.1 must –
- (a) be made prior to the original date specified for the taking of the Remedial Action;
 - (b) explain, together with all the information and supporting evidence (if any) on which the Responding Party wishes to rely:
 - (i) why the Responding Party is or will be unable, in spite of taking all reasonable steps to complete the Remedial Action, to do so by the original date; or
 - (ii) on what other exceptional basis the Responding Party considers that it should no longer be required to complete the Remedial Action by the original date; and
 - (c) specify the alternative date that it requests the Scheme Adjudicator to determine, and explain why that date is appropriate in all the circumstances.
- 9.4 Before determining any application, the Scheme Adjudicator may –
- (a) provide a copy of that application, and of any information and supporting evidence provided with it, to the Registration Agent;
 - (b) request the opinion of the Registration Agent on the application; and
 - (c) take into account any opinion provided to it when making its determination.
- 9.5 Where the Scheme Adjudicator is satisfied that –
- (a) in spite of taking all reasonable steps to complete the Remedial Action, the Responding Party is or will be unable to do so by the original date; or
 - (b) there is another exceptional basis why the Responding Party should no longer be required to complete the Remedial Action by the original date,
- the Scheme Adjudicator may determine such alternative date as it considers appropriate in all the circumstances, in which case it will notify that date to the Secretariat which will inform the Responding Party and the Registration Agent.
- 9.6 Where the Scheme Adjudicator receives an application in accordance with paragraph 9.1, but refuses that application, it will promptly notify the Responding Party and provide a brief statement of reasons for its decision.
- 9.7 Where, following an application in accordance with paragraph 9.1, the Scheme Adjudicator has determined an alternative date in accordance with paragraph 9.4, the Responding Party may subsequently make an application for the Scheme Adjudicator to determine a later date in substitution for that alternative date.

- 9.8 The provisions of paragraphs 9.1 to 9.6 shall apply to any such application as if references in them to the original date were references to the alternative date previously determined.

Explanatory Note

The above provisions apply only in those cases where, in making its determination, the Scheme Adjudicator has instructed a MAM to take remedial action in light of the determination and to do so by a specified date .

In these circumstances –

- The MAM can ask the Scheme Adjudicator to give it more time to take the remedial action but any such request (i) has to be made before the original specified date, (ii) must explain why the MAM cannot meet the original timescale or why it should not be required to meet that original timescale, and (iii) say how much more time the MAM requires and why. A late request will not be considered by the Scheme Adjudicator.
- In considering the MAM's request, the Scheme Adjudicator may ask for and take into account the view of the Registration Agent.
- The Scheme Adjudicator will notify the Secretariat, the MAM and the Registration Agent (as applicable) of its decision (including its reasons if the decision is to refuse the request).
- If the Scheme Adjudicator does give the MAM more time, the MAM may make a further request (in accordance with the same provisions) for even more time.

Monitoring and information

- 9.9 The Scheme Adjudicator may instruct the Registration Agent, or require the production of any information from the Registration Agent and/or the Responding Party, in accordance with the provisions of paragraphs 6.18 to 6.20 of Schedule 32.

Remedial Action

- 9.10 Where, on consideration of the information provided to it by the Responding Party and/or the Registration Agent, the Scheme Adjudicator is satisfied that the Responding Party has taken the Remedial Action instructed in the Determination Report, it will notify the Responding Party and the SPAA EC of its conclusion (*para 6.21 of Schedule 32*).

9.11 Where, on consideration of the information provided to it by the Responding Party and/or the Registration Agent, the Scheme Adjudicator is not satisfied that the Responding Party has taken the Remedial Action instructed in the Determination Report and is considering whether to determine that a MAMCoP Event of Default has occurred, it will –

- (a) notify the Responding Party of the situation;
- (b) provide the Responding Party with a copy of any information received by it from the Registration Agent which is relevant to the question of whether the Remedial Action has been taken;
- (c) ask such questions (if any) of the Responding Party as it considers appropriate for the purposes of obtaining clarification as to the Remedial Action that has been or remains to be taken; and
- (d) provide the Responding Party with a reasonable opportunity to make representations and provide further information and evidence in relation to whether a MAMCoP Event of Default has occurred .

9.12 The Scheme Adjudicator will consider any representations and information provided by the Responding Party before it reaches any determination whether or not a MAMCoP Event of Default has occurred.

9.13 Where the Scheme Adjudicator determines that a MAMCoP Event of Default has occurred it will update and re-issue the Determination Report to include a statement of that conclusion and of the reasons for it (*para 6.22 of Schedule 32*).

10 Definitions

10.1 In these Rules of Procedure, unless the context otherwise requires –

- (a) words or expressions shall have the same meaning as in Schedule 32,
- (b) words or expressions set out in the list immediately below shall have the meanings attributed to them in that list.

MAM means a Meter Asset Manager.

MAMCoP means the Code of Practice for Gas Meter Asset Managers.

Registration Agent means the MAMCoP Registration Agent.

Responding Party has the meaning given in paragraph 4.3.

Response has the meaning given in paragraph 6.1.

Schedule 32 means Schedule 32 to the SPAA.

11 Procedural Matters

11.1 Unless otherwise stated, all documents, notices or applications given, and all communications made, in accordance with or for the purposes of these Rules of Procedure –

- (a) must be provided in writing in an electronic form that is readable using software that is generally available and in general use for business purposes;
- (b) must be transmitted using electronic mail or such other file sharing platform as may be specified from time to time by the Secretariat.

11.2 Unless otherwise stated, all communications made in accordance with or for the purposes of these Rules of Procedure –

- (a) by the Scheme Adjudicator to the Responding Party, Registration Agent, SPAA EC or any other person; or
- (b) by the Responding Party, Registration Agent, SPAA EC or any other person to the Scheme Adjudicator,

shall be made via the Secretariat using contact details which the Secretariat shall provide for that purpose.

Costs

11.3 The Scheme Adjudicator does not have the power to make an order for costs or to make an award in favour of any person in respect of any determination made by it.

11.4 In respect of any matter referred to the Scheme Adjudicator for determination –

- (a) any costs incurred by the Secretariat, the Scheme Adjudicator, the Registration Agent or any other person (other than the Responding Party) in respect of that referral and determination shall be recovered by SPAA Ltd in accordance with the provisions in paragraph 8 of Schedule 32; and
- (b) any costs incurred by the Responding Party shall be borne by the Responding Party.

PART B. Rules of Procedure of the Scheme Adjudicator for the Code of Practice for Approved Meter Installers

1 Status of this Part B

1.1 This Part B –

- (a) sets out the Scheme Adjudicator's procedure in respect of the matters referred to in paragraph 5.2 of Schedule 40 to the SPAA; and
- (b) is produced by the Scheme Adjudicator, and approved and published by the SPAA EC, in accordance with paragraph 5.3 of that Schedule.

1.2 This Part B shall be referred to as the **Rules of Procedure**.

2 The Scope of the Rules of Procedure

2.1 The Rules of Procedure relate to determinations to be made by the Scheme Adjudicator in respect of –

- (a) an **appeal** brought by an Applicant which has been refused approval as an AMI by the Scheme Auditor (*para 5.2.1 of Schedule 40*);
- (b) an **appeal** brought by an AMI against a finding by the Scheme Auditor that it is not compliant with the AMICoP (*para 5.2.2 of Schedule 40*);
- (c) a **recommendation** made by the Scheme Auditor that an AMI should have its approval (whether in respect of all or certain categories of meter installation) suspended or withdrawn (*para 5.2.3 of Schedule 40*).

3 Role and Remit of the Scheme Adjudicator

The role of the Scheme Adjudicator

3.1 The role of the Scheme Adjudicator is limited to –

- (a) determining whether an appeal made against a decision of the Scheme Auditor referred to in paragraph 2.1(a) is to be upheld or rejected;
- (b) determining whether an appeal made against a finding of the Scheme Auditor referred to in paragraph 2.1(b) is to be upheld or rejected;

- (c) determining whether the approval of an AMI should be suspended or withdrawn in accordance with the recommendation of the Scheme Auditor referred to in paragraph 2.1(c);
- (d) ancillary to the determinations referred to in sub-paragraphs (a) and (b), determining whether or not to make any decision which the Scheme Auditor was entitled to make in accordance with Schedule 40 (*paras 6.7 and 6.16 of Schedule 40*).

Matters outside the remit of the Scheme Adjudicator

3.2 The role of the Scheme Adjudicator is not to –

- (a) determine any commercial dispute between any persons;
- (b) conduct arbitration or an adjudication within the meaning which is generally given to those terms;
- (c) duplicate the work, or replace the role, of the Scheme Auditor.

Matters relating to the role of the Scheme Adjudicator

- 3.3 The Scheme Adjudicator may request the provisions of information from such persons and in such circumstances as it considers requisite or expedient in all the circumstances of the case.
- 3.4 In undertaking its role the Scheme Adjudicator is unlikely to, but may in exceptional cases, conduct site visits or review or observe any live working of systems.

Explanatory Note

This section confirms and clarifies the following –

- The Scheme Adjudicator's role is limited to determining appeals made by an AMI and making decisions on recommendations made by the Scheme Auditor for an AMI's approval to be (permanently or temporarily) withdrawn. In making such determination it may also determine whether to make any other decision of the type that the Scheme Auditor is entitled to make.
- The Scheme Adjudicator is not appointed to, and therefore does not, determine or settle commercial or contractual disputes which might, for example, arise between competing AMIs. By way of an illustrative example, a dispute as to whether an AMI has breached any of the terms of a contract it may have with another AMI is not a dispute for determination by the Scheme Adjudicator.

- Similarly, the Scheme Adjudicator's role is not to check whether or not an AMI is compliant with the Code in the same way as the Scheme Auditor does. Its role is to decide on whether the Scheme Auditor's decision that the AMI is non-compliant is the right decision and/or to decide on whether the recommendation made by the Scheme Auditor for the AMI's approval to be withdrawn should be followed.
- In order to assist its thinking the Scheme Adjudicator is able to request further information from any person that it thinks may have or be able to provide that information and that it may in exceptional cases consider the need to observe how particular things are done or are working on the ground but that this will not be the norm.

4 Referrals to the Scheme Adjudicator by the Scheme Administrator

Circumstances in which a referral occurs

- 4.1 Where an Applicant wishes to appeal a decision by the Scheme Auditor to refuse it approval as an AMI –
- it must do so by giving written notice to the Scheme Administrator specifying the grounds for the appeal within 15 Working Days after receipt by it of the Scheme Auditor's Assessment Report (*para 6.6 of Schedule 40*); and
 - the Scheme Administrator will refer the appeal to the Scheme Adjudicator.
- 4.2 Where an AMI wishes to appeal a finding by the Scheme Auditor that it is not compliant with the AMICoP –
- it must do so by giving written notice to the Scheme Administrator specifying the grounds for the appeal within 15 Working Days after receipt by it of the Scheme Auditor's Audit Report (*para 6.15 of Schedule 40*); and
 - the Scheme Administrator will refer the appeal to the Scheme Adjudicator.
- 4.3 Where the Scheme Auditor makes a recommendation (in an Audit Report) that an AMI should have its approval (whether in respect of all or certain categories of meter installation) suspended or withdrawn, the Scheme Administrator must refer that recommendation to the Scheme Adjudicator (*para 6.14 of Schedule 40*).
- 4.4 In each of these cases, the relevant Applicant or AMI is the **Responding Party**, and the referral shall proceed in accordance with the following provisions of these Rules of Procedure.

Explanatory Note

This section confirms that –

- An Applicant that wishes to appeal the Scheme Auditor's decision not to approve it as an AMI has to do so within 15 working days of receiving notification of the decision and in doing so must set out the grounds on which it is appealing.
- An AMI that wishes to appeal the Scheme Auditor's finding of non-compliance has to do so within 15 working days of receiving notification of that finding and in doing so must set out the grounds on which it is appealing.
- Any recommendation made by the Scheme Auditor for an AMI's approval to be withdrawn (whether permanently or temporarily) has to be referred by the Scheme Administrator to the Scheme Adjudicator.

The commencement of the referral

- 4.5 Any referral to the Scheme Adjudicator commences when the Scheme Administrator sends to it a copy of the following –
- (a) (where applicable) the Responding Party's notice of appeal;
 - (b) (as applicable) the Assessment Report or Audit Report; and
 - (c) such other information or documents associated with the Assessment Report or Audit Report as the Scheme Administrator considers appropriate.
- 4.6 On receipt by it of the documents referred to in paragraph 4.5, the Scheme Adjudicator will promptly notify the Scheme Administrator and to the Responding Party, and the date on which it does so shall be treated for the purposes of the Rules of Procedure as the **Referral Date**.

5 The Submission

Time for making the Submission

- 5.1 The Responding Party may make a written submission in relation to the matter referred to the Scheme Adjudicator (the **Submission**) by sending it to the Scheme Administrator –
- (a) within 15 Working Days of the Referral Date; or
 - (b) within any longer period that may be determined by the Scheme Adjudicator and notified to the Responding Party.

Extensions of time

- 5.2 The Scheme Adjudicator may determine a longer period for the Responding Party to make its Submission either –
- (a) of its own accord on the Referral Date; or
 - (b) following an application made by the Responding Party,
- where it considers – after having regard to the documents provided to it and (where applicable) any application made by the Responding Party – that it would be appropriate in all the circumstances for the Responding Party to have longer than 15 Working Days to make its Submission.
- 5.3 Any application made by the Responding Party for the Scheme Adjudicator to determine such a longer period must –
- (a) be made as soon as reasonably practicable after, and in any event within 15 Working Days of, the Referral Date;
 - (b) contain all the information and supporting evidence (if any) which the Responding Party wishes to rely on for the purposes of its application; and
 - (c) specify the longer period which it requests for the making of the Submission.
- 5.4 Where the Scheme Administrator receives an application from the Responding Party it will promptly send the application to the Scheme Adjudicator.
- 5.5 An application that is made more than 15 Working Days after the Referral Date will not be considered by the Scheme Adjudicator.
- 5.6 Where the Scheme Adjudicator has determined a longer period of its own accord, it –
- (a) may still consider an application made by the Responding Party for an extension to that period if that application is made in accordance with paragraph 5.3; and
 - (b) may determine a longer period in substitution for its original determination, but will do so only if the Responding Party has demonstrated to the satisfaction of the Scheme Adjudicator that the longer period which was originally determined was clearly inadequate in all the circumstances.
- 5.7 Where the Scheme Adjudicator receives an application to determine a longer period made in accordance with paragraph 5.3, but determines to refuse that application, it will promptly notify the Responding Party and provide a brief statement of reasons for its decision.

Submissions received late

- 5.8 A Submission which is received by the Scheme Administrator after the period determined in accordance with paragraph 5.1 will not be considered by the Scheme Adjudicator for the purposes of its determination of the matter referred to it.

The content of the Submission

- 5.9 The Submission must set out all of the information and arguments, and be accompanied by all of the evidence, on which the Responding Party wishes to rely.
- 5.10 Where the Responding Party wishes to rely on the evidence of any person, it must provide that evidence in the form of a statement given by that person, submitted with the Submission, and supported by a statement of truth made by that person.
- 5.11 Where the Responding Party wishes to rely on the evidence of any expert, it must provide that evidence in the form of a report which is written by that expert, submitted with the Submission, and which –
- (a) clearly states the qualifications and experience of the expert; and
 - (b) is supported by a statement of truth made by the expert.
- 5.12 The Scheme Administrator may provide the Responding Party with a form in which a statement of truth may be made by any person or expert, and if it does so the Responding Party must ensure that any statement of truth made in accordance with paragraph 5.9 or 5.10 is in that form.
- 5.13 The Submission must in particular –
- (a) identify clearly any conclusions or recommendations within the Assessment Report or Audit Report (as applicable) which it accepts;
 - (b) identify clearly any conclusions or recommendations within the Assessment Report or Audit Report (as applicable) which it contests; and
 - (c) where the Responding Party considers that any issue arises as to the interpretation of the requirements of the AMICoP, clearly identify the nature of that issue, state what it contends to be the correct interpretation of those requirements, and explain why it considers that interpretation to be correct.
- 5.14 Where the matter referred to the Scheme Adjudicator is an appeal made by the Responding Party –

- (a) the Submission must clearly –
- (i) state how the information and evidence provided by the Responding Party supports each of the grounds of appeal contained in its notice of appeal; and
 - (ii) make any other submissions which the Responding Party wishes to be considered by the Scheme Adjudicator for the purposes of its determination.
- (b) the Responding Party may not in its Submission seek to rely on any grounds of appeal which were not included in its notice of appeal.

5.15 It is the responsibility of the Responding Party to ensure that the information and arguments which are contained in, and the evidence which accompanies, the Submission constitute a full and clear statement of its case.

Explanatory Note

This section confirms and clarifies the following –

- Where the Scheme Adjudicator notifies the Applicant or AMI (as the case may be) that it has received a referral from the Scheme Administrator, the Applicant/AMI has the opportunity to make a submission to the Scheme Adjudicator but that it must do so either within 15 working days of the Scheme Adjudicator's notification or, if the Scheme Adjudicator considers it appropriate to give the Applicant/AMI more time to make such a submission, within the additional time given. Any late submission will not be considered by the Scheme Adjudicator.
- The Scheme Adjudicator can, but is not required to, give more time for the Applicant/AMI to make its submission either (i) of its own volition – and in this case the Applicant/AMI will know whether the Scheme Adjudicator has given it more time when it receives notification of the referral, or (ii) where the Applicant/AMI has asked it to do so. Moreover, even if the Scheme Adjudicator has of its own volition given more time to the Applicant/AMI, the Applicant/AMI can still ask for, and the Scheme Adjudicator can decide to give, additional time.
- By way of an example the Scheme Adjudicator may consider it appropriate to give more time for the making of the submission where the number and/or length of the documents to be reviewed are unusually high, or where the period for making the submission falls over the Christmas/New Year period.
- If the Applicant/AMI wants more time to make its submission (or, where the Scheme Adjudicator has already given more time, the Applicant/AMI wants even longer), it must make its request as soon as it can but in all cases before the expiry of the 15

working days that it ordinarily has to make its submission. Any such request also needs to give reasons for requesting more time and how much more time it would like. Again a late request will not be considered.

- Where the Applicant/AMI submits any witness or expert evidence in making its submission that evidence must be supported by a statement of truth (which must, if the Scheme Administrator has specified a particular form for the statement of truth, be in the form specified)
- The onus is on the Applicant/AMI to ensure that it makes its case as it would wish to do so by making a full and clear submission. But it cannot introduce new grounds of appeal at this stage of the process.

6 Hearings

The decision to hold a hearing

6.1 The Scheme Adjudicator may decide to invite the Responding Party to attend a hearing.

6.2 A decision to invite the Responding Party to attend a hearing may be made by the Scheme Adjudicator –

- (a) of its own accord; or
- (b) on receipt of a request made by the Responding Party,

where the Scheme Adjudicator considers – after having regard to the Submission, the other documents provided to it, and (where applicable) any request made to it – that it would assist in achieving the fair, efficient and effective determination of the matter for a hearing to take place.

6.3 Any request for a hearing made by the Responding Party must be made at the same time as it makes its Submission, and must be accompanied by a statement setting out the reasons why the Responding Party considers that a hearing would assist in achieving the fair, efficient and effective determination of the matter.

6.4 A request for a hearing that is made after the Responding Party makes its Submission will not be considered by the Scheme Adjudicator.

6.5 Any decision to invite the Responding Party to attend a hearing will be made by the Scheme Adjudicator and communicated to the Responding Party promptly, and in any event no more than 3 Working Days, following the receipt of the Submission.

- 6.6 Where the Scheme Adjudicator refuses a Responding Party's request for a hearing, that decision will be made and communicated to the Responding Party promptly, and in any event no more than 3 Working Days, following the receipt of the Submission.
- 6.7 If the Responding Party does not make a Submission within the period determined in accordance with paragraph 5.1, the Responding Party may not be invited to attend a hearing, and the matter shall be determined without any hearing taking place.

Explanatory Note

A hearing is an opportunity for the Applicant/AMI to present its case to the Scheme Adjudicator in person and for the Scheme Adjudicator to ask questions in person to the Applicant/AMI (and any other persons) about the matter.

The above provisions confirm and clarify that -

- There is no obligation on the Scheme Adjudicator to hold a hearing – the decision on whether or not to do so is a decision for the Scheme Adjudicator, and it can make that decision either of its own volition or where an Applicant/ AMI has asked for a hearing to be held.
- If the Applicant/AMI considers that there should be a hearing it can ask the Scheme Adjudicator to hold one. However, it has to make that request at the same time as makes its submission – it cannot request a hearing if it does not make a submission. A late request will not be considered by the Scheme Adjudicator.
- The test that is applied by the Scheme Adjudicator in deciding whether to hold a hearing is that doing so would help to achieve a fair, efficient and effective determination of the matter. If the Applicant/AMI asks for a hearing it will need to explain how or why having a hearing would satisfy that test.
- The Applicant/AMI will know by no later than 3 working days of the Scheme Adjudicator receiving the Applicant/AMI submission, whether the Scheme Adjudicator has decided to hold a hearing – it will receive either an invitation to attend or notification that no hearing will be held.

Responding to an invitation to a hearing

- 6.8 On receipt of an invitation to attend a hearing, the Responding Party must within 3 Working Days of receipt of that invitation, notify the Scheme Administrator whether or not it wishes to attend the hearing.

- 6.9 If the Scheme Administrator has not received a reply from the Responding Party, within 3 Working Days, to an invitation to attend a hearing, the Responding Party will be deemed to have declined the invitation.
- 6.10 Where the Responding Party declines, or is deemed to have declined, an invitation to attend a hearing, the matter shall be determined without a hearing taking place.

Arrangements in respect of a hearing

- 6.11 Where the Responding Party accepts the invitation to attend a hearing, the Scheme Administrator will promptly notify the Scheme Adjudicator of the acceptance, and the Scheme Adjudicator will then –
- (a) in all cases request the Scheme Administrator to invite the attendance of the Scheme Auditor at the hearing; and
 - (b) decide whether to request the Scheme Administrator to invite any other person to attend the hearing.
- 6.12 The Scheme Administrator will be responsible for making arrangements for the hearing, which will –
- (a) usually take place on a date which falls no later than 20 Working Days following the receipt of the Submission, unless it is not reasonably practicable for it to do so, in which case it shall take place as soon as reasonably practicable after that date;
 - (b) other than in exceptional circumstances, be held at a venue in central London; and
 - (c) be subject to those administrative arrangements which the Scheme Administrator, in consultation with the Scheme Adjudicator, may determine.
- 6.13 The Scheme Administrator will – in discussion with the Scheme Adjudicator, the Responding Party, the Scheme Auditor, and all other persons invited to attend the hearing – seek to identify the most convenient date and time for the hearing to take place having regard to their availability.
- 6.14 Following such discussions, the Scheme Administrator, in consultation with the Scheme Adjudicator, will decide the date and time of the hearing and notify it to all those invited to attend. Its decision shall be final.

Explanatory Note

The above sections will apply only where the Scheme Adjudicator has decided to hold, and has therefore invited the Applicant/AMI to attend, a hearing.

Because of the need for the Scheme Administrator to make arrangements for the date and location of the hearing, and because there is a tight timetable within which a hearing can take place, it is important that any invitation is accepted or rejected as quickly as possible. The Applicant/AMI has 3 working days within which to accept or refuse the invitation (by telling the Scheme Administrator). If it does nothing and stays silent then it will be treated as having refused the invitation. Where an Applicant/AMI refuses the invitation (either expressly or by doing nothing) a hearing will not take place.

If the Applicant/AMI accepts the invitation –

- The Scheme Auditor will be invited to attend the hearing and the Scheme Adjudicator can decide whether anyone else should be invited (this could, for example, include the AMICoP Chair/Deputy Chair but may include anyone else that the Scheme Adjudicator considers should be invited).
- The Scheme Administrator will liaise with the relevant parties to arrange and decide on a date for the hearing – noting that the hearing will need to take place within 20 working days of the Scheme Adjudicator receiving the Applicant/AMI's submission.

The purposes of a hearing

6.15 The purposes of a hearing shall be to –

- (a) provide the Responding Party with the opportunity to make oral representations in respect of the matters addressed in its Submission;
- (b) allow the Scheme Adjudicator to ask questions of the Responding Party, Scheme Auditor, and any other person invited to attend the hearing, in order to clarify any issue relating to the matter to be determined; and
- (c) by virtue of paragraphs (a) and (b), assist in achieving the fair, efficient and effective determination of that matter.

6.16 The purposes of a hearing shall not include the production of evidence which has not been provided to the Scheme Adjudicator prior to the hearing, or the testing of the credibility of the evidence of any person.

The management and conduct of a hearing

- 6.17 The Scheme Adjudicator shall be entitled, in its absolute discretion, to decide on all matters relating to the management of a hearing, including the conduct of those who attend it, with a view to the hearing being designed to assist in the fair, efficient and effective determination of the matter that has been referred.
- 6.18 The Scheme Adjudicator may in particular decide –
- (a) whether any person other than the Responding Party shall be entitled to speak at the hearing;
 - (b) the order in which the Responding Party and any other person shall speak;
 - (c) any time limits or other restrictions which shall apply to the representations made by the Responding Party or any other person;
 - (d) whether any observers shall be able to attend all or part of the hearing.
- 6.19 For these purposes the Scheme Adjudicator may give directions as to the management and conduct of a hearing –
- (a) in writing in advance of the hearing to all those who have been invited to attend; and
 - (b) orally during the course of the hearing.
- 6.20 The Responding Party and any other person who is invited to attend a hearing or who attends as an observer must comply with any direction given by the Scheme Adjudicator in relation to the management and conduct of the hearing.
- 6.21 A Responding Party shall be entitled to be represented at a hearing by a legal representative or other professional adviser who may speak on its behalf, subject to having notified the Scheme Administrator a reasonable time in advance of the hearing of the identity of that person.

Explanatory Note

The above provisions confirm and clarify that –

- The way in which any individual hearing is to be conducted and managed is for the Scheme Adjudicator to decide (this may, for example, including the running order, the amount of time to be given to the Applicant/AMI and/or the Scheme Auditor to present its case, whether observers are allowed, etc.).
- The Scheme Adjudicator may decide such matters in advance of the hearing or it may decide on them on the day and as the hearing progresses. Either way it will give

directions to those that are attending and the attendees are required to comply with these directions.

- The Applicant/AMI is able to have its legal or other professional advisors make representations on its behalf at the hearing but only if it has given advance notice to the Scheme Administrator of the person(s) that will be representing it, and subject to any other directions that the Scheme Adjudicator may give.

Information

- 6.22 The Scheme Adjudicator may, where it considers it appropriate for the purpose of facilitating the fair, efficient and effective determination of the matter referred to it –
- (a) require information or documents to be provided to it by the Responding Party, the Scheme Auditor, or any other person at any time either before or after a hearing; and
 - (b) for that purpose specify the time within which the information or documents must be provided, with which the person who is the subject of the requirement must comply.

7 The Determination

- 7.1 The Scheme Adjudicator will:
- (a) where no hearing takes place in relation to a matter referred to it for determination:
 - (i) if the Responding Party has made a Submission, take all reasonable steps to make its determination within 20 Working Days of the date of receipt of the Submission; or
 - (ii) if the Responding Party has failed to make a Submission, take all reasonable steps to make its determination within 20 Working Days of the date for the making of the Submission in accordance with paragraph 5.1;
 - (b) where a hearing takes place in relation to the matter, take all reasonable steps to make its determination within 10 Working Days of the date of the hearing.
- 7.2 The Scheme Adjudicator shall provide its determination in writing, and the determination shall include a clear statement of –
- (a) the conclusions reached by the Scheme Adjudicator in relation to the matter referred to it;
 - (b) the Scheme Adjudicator's reasons for reaching those conclusions;

- (c) any decision which the Scheme Adjudicator may make in accordance with paragraph 6.7 or 6.16 of Schedule 40, and of the reasons for making that decision.

7.3 The determination may in addition address such other matters as the Scheme Adjudicator considers appropriate in all the circumstances.

Explanatory Note

The date by which the Scheme Adjudicator will make its determination is informed by whether or not a hearing is held and also by whether or not the Applicant/AMI made a timely submission.

Where a hearing is held, the Scheme Adjudicator will make its determination within 10 working days of the hearing.

Where no hearing is held but the Applicant/AMI made a timely submission, the Scheme Adjudicator will make its determination within 20 working days of receiving the submission.

Where no hearing is held and the Applicant/AMI did not make a timely submission, the Scheme Adjudicator will make its determination within 20 working days of the date by which the Applicant/AMI could (or should) have made a timely submission.

Appeals to Ofgem

7.4 Appeals may be brought to Ofgem from determinations of the Scheme Adjudicator where provided for by paragraph 6.22 of Schedule 40, and subject to such procedural requirements as may be set out in that paragraph or otherwise in Schedule 40.

8 Definitions

8.1 In these Rules of Procedure, unless the context otherwise requires –

- (a) words or expressions shall have the same meaning as in Schedule 40,
- (b) words or expressions set out in the list immediately below shall have the meanings attributed to them in that list.

AMI means an Approved Meter Installer.

AMICoP means the Code of Practice for Approved Meter Installers.

Referral Date	has the meaning given to it in paragraph 4.6.
Responding Party	has the meaning given in paragraph 4.4.
Schedule 40	means Schedule 40 to the SPAA.
Submission	has the meaning given in paragraph 5.1.

9 Procedural Matters

9.1 Unless the contrary intention is stated, all documents, notices or applications given, and all communications made, in accordance with or for the purposes of these Rules of Procedure –

- (a) must be provided in writing in an electronic form that is readable using software that is generally available and in general use for business purposes;
- (b) must be transmitted using electronic mail or such other file sharing platform as may be specified from time to time by the Scheme Administrator.

9.2 Unless the contrary intention is stated, all communications made in accordance with or for the purposes of these Rules of Procedure –

- (a) by the Scheme Adjudicator to the Responding Party, Scheme Auditor, SPAA EC or any other person; or
- (b) by the Responding Party, Scheme Auditor, SPAA EC or any other person to the Scheme Adjudicator,

shall be made via the Scheme Administrator using contact details which the Scheme Administrator shall provide for that purpose.

Costs

9.3 The Scheme Adjudicator does not have the power to make an order for costs or to make an award in favour of any person in respect of any determination made by it.

9.4 In respect of any matter referred to the Scheme Adjudicator for determination –

- (a) any costs incurred by the Scheme Administrator, the Scheme Adjudicator, the Scheme Auditor or any other person (other than the Responding Party) in respect of that referral and determination shall be recovered by SPAA Ltd in accordance with the provisions set out in paragraph 7 of Schedule 40; and

(b) any costs incurred by the Responding Party shall be borne by the Responding Party.