



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 3

DISPUTES AND APPEALS

Disputes

185 Reference of disputes to OFCOM

(1) This section applies in the case of a dispute relating to the provision of network access if it is—

- (a) a dispute between different communications providers;
- (b) a dispute between a communications provider and a person who makes associated facilities available;
- (c) a dispute between different persons making such facilities available;
- ^{F1}(d)
- (e)

^{F2}(1A) This section also applies in the case of a dispute relating to the provision of network access if—

- (a) it is a dispute between a communications provider and a person who is identified, or is a member of a class identified, in a condition imposed on the communications provider under section 45; and
- (b) the dispute relates to entitlements to network access that the communications provider is required to provide to that person by or under that condition.]

(2) This section also applies in the case of any other dispute if—

Changes to legislation: Communications Act 2003, Chapter 3 is up to date with all changes known to be in force on or before 11 June 2018. 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)

- (a) it relates to rights or obligations conferred or imposed by or under [^{F3}a condition set under section 45, or any of the enactments relating to the management of the radio spectrum] ;
 - (b) it is a dispute between different communications providers; and
 - (c) it is not an excluded dispute.
- (3) Any one or more of the parties to the dispute may refer it to OFCOM.
- (4) A reference made under this section is to be made in such manner as OFCOM may require.
- (5) The way in which a requirement under subsection (4)—
- (a) is to be imposed, or
 - (b) may be withdrawn or modified,
- is by a notice published in such manner as OFCOM consider appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) Requirements imposed under subsection (4) may make different provision for different cases.
- (7) A dispute is an excluded dispute for the purposes of subsection (2) if it is about—
- (a) obligations imposed on a communications provider by SMP apparatus conditions;
 - ^{F4}(b)
 - (c)
 - (d)
- (8) For the purposes of this section—
- (a) the disputes that relate to the provision of network access include disputes as to the terms or conditions on which it is or may be provided in a particular case; and
 - (b) the disputes that relate to an obligation include disputes as to the terms or conditions on which any transaction is to be entered into for the purpose of complying with that obligation.

Annotations:

Amendments (Textual)

- F1** S. 185(1)(d)(e) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 91(a)** (with Sch. 3 para. 2)
- F2** S. 185(1A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 91(b)** (with Sch. 3 para. 2)
- F3** Words in s. 185(2)(a) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 91(c)** (with Sch. 3 para. 2)
- F4** S. 185(7)(b)-(d) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 91(d)** (with Sch. 3 para. 2)

Commencement Information

- I1** S. 185 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I2** S. 185 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

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[^{F5}185A. Power of OFCOM to invite parties to refer dispute

OFCOM may invite any one or more of the parties to a dispute falling within section 185(1) to refer the dispute to OFCOM under section 185(3).]

Annotations:

Amendments (Textual)

- F5** S. 185A inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 92** (with Sch. 3 para. 2)

186 Action by OFCOM on dispute reference

(1) This section applies where a dispute is referred to OFCOM under and in accordance with section 185.

(2) OFCOM must decide whether or not it is appropriate for them to handle the dispute.

[^{F6}(2A) In relation to a dispute falling within subsection 185(1), OFCOM may in particular take into account their priorities and available resources in considering whether it is appropriate for them to handle the dispute.]

(3) [^{F7}In relation to a dispute falling within section 185(1A) or (2),] Unless they consider

- (a) that there are alternative means available for resolving the dispute,
- (b) that a resolution of the dispute by those means would be consistent with [^{F8}European Union] requirements set out in section 4, and
- (c) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,

their decision must be a decision that it is appropriate for them to handle the dispute.

(4) As soon as reasonably practicable after OFCOM have decided—

- (a) that it is appropriate for them to handle the dispute, or
- (b) that it is not,

they must inform each of the parties to the dispute of their decision and of their reasons for it.

(5) The notification must state the date of the decision.

(6) [^{F9}In relation to a dispute falling within section 185(1A) or (2),] Where—

- (a) OFCOM decide that it is not appropriate for them to handle the dispute, but
- (b) the dispute is not resolved by other means before the end of the four months after the day of OFCOM's decision,

the dispute may be referred back to OFCOM by one or more of the parties to the dispute.

Annotations:

Amendments (Textual)

- F6** S. 186(2A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 93(a)** (with Sch. 3 para. 2)

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- F7** Words in s. 186(3) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 93(b)** (with Sch. 3 para. 2)
- F8** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))
- F9** Words in s. 186(6) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 93(b)** (with Sch. 3 para. 2)

Commencement Information

- I3** S. 186 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- I4** S. 186 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

187 Legal proceedings about referred disputes

- (1) Where a dispute is referred or referred back to OFCOM under this Chapter, the reference is not to prevent—
- (a) the person making it,
 - (b) another party to the dispute,
 - (c) OFCOM, or
 - (d) any other person,
- from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.
- (2) Nor is the reference or reference back to OFCOM under this Chapter of a dispute to prevent OFCOM from—
- (a) giving a notification in respect of something that they have reasonable grounds for believing to be a contravention of any obligation imposed by or under any an enactment;
 - (b) exercising any of their other powers under any enactment in relation to a contravention of such an obligation; or
 - (c) taking any other step in preparation for or with a view to doing anything mentioned in the preceding paragraphs.
- (3) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by OFCOM to be stayed or sisted—
- (a) OFCOM are required to make a determination for resolving the dispute only if the stay or sist is lifted or expires; and
 - (b) the period during which the stay or sist is in force must be disregarded in determining the period within which OFCOM are required to make such a determination.
- (4) Subsection (1) is subject to section 190(8) and to any agreement to the contrary binding the parties to the dispute.
- (5) In this section “legal proceedings” means civil or criminal proceedings in or before a court.

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Annotations:

Commencement Information

- I5** S. 187 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I6** S. 187 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

188 Procedure for resolving disputes

- (1) This section applies where—
- (a) OFCOM have decided under section 186(2) that it is appropriate for them to handle a dispute; or
 - (b) a dispute is referred back to OFCOM under section 186(6).
- (2) OFCOM must—
- (a) consider the dispute; and
 - (b) make a determination for resolving it.
- (3) The procedure for the consideration and determination of the dispute is to be the procedure that OFCOM consider appropriate.
- (4) In the case of a dispute referred back to OFCOM under section 186(6), that procedure may involve allowing the continuation of a procedure that has already been begun for resolving the dispute by alternative means.
- (5) Except in exceptional circumstances and subject to section 187(3), OFCOM must make their determination no more than four months after the following day—
- (a) in a case falling within subsection (1)(a), the day of the decision by OFCOM that it is appropriate for them to handle the dispute; and
 - (b) in a case falling within subsection (1)(b), the day on which the dispute is referred back to them.
- (6) Where it is practicable for OFCOM to make their determination before the end of the four month period, they must make it as soon in that period as practicable.
- (7) OFCOM must—
- (a) send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute; and
 - (b) publish so much of their determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (8) The publication of information under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention, to the extent that they consider appropriate, of members of the public.

Annotations:

Commencement Information

- I7** S. 188 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I8** S. 188 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

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189 Disputes involving other member States

- (1) This section applies where it appears to OFCOM that a dispute referred or referred back to them under this Chapter [^{F10}(other than a dispute falling within section 185(1))] relates partly to a matter falling within the jurisdiction of the regulatory authorities of another member State.
- (2) A dispute relates to matters falling within the jurisdiction of the regulatory authorities of another member State to the extent that—
 - (a) it relates to the carrying on of activities by one or both of the parties to the dispute in more than one member State or to activities carried on by different parties to the dispute in different member States; and
 - (b) the activities to which the dispute relates, so far as they are carried on in another member State, are carried on in the member State for which those authorities are the regulatory authorities.
- (3) For the purposes of subsection (2) the activities that are carried on in a member State include anything done by means of an electronic communications network, or part of such a network, which is situated in that member State.
- (4) Before taking any steps under this Chapter in relation to the reference or the dispute, OFCOM [^{F11}(a) must co-ordinate their efforts with the other regulatory authorities within whose jurisdiction the matter falls,
 - (b) may consult BEREC in order to bring about a consistent resolution of the dispute, and
 - (c) may request BEREC to adopt an opinion as to the action to be taken to resolve the dispute.]
- (5) It shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute (whether taken by them or by the other regulatory authorities) are, so far as practicable, agreed between OFCOM and those authorities.
- [^{F12}(5A) Where an opinion is received from BEREC in relation to the reference or dispute, it shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute take account of the opinion (whether the opinion was requested by OFCOM or by the other regulatory authorities).]
- (6) Accordingly, section 188 is to have effect in relation to the reference as if the period for making a determination which is specified in subsection (5) of that section were such period (if any) as may be agreed between—
 - (a) OFCOM; and
 - (b) the other regulatory authorities within whose jurisdiction the matter falls.
- [^{F13}(7) OFCOM must—
 - (a) ensure, so far as practicable, that a period agreed under subsection (6) is long enough for BEREC to provide an opinion, if one has been requested by OFCOM or by the other regulatory authorities, and
 - (b) agree to any necessary extension of the period if an opinion is requested from BEREC (by OFCOM or by the other regulatory authorities) after the period has been agreed.
- (8) Subsection (7) does not apply if the dispute in question has resulted in, or creates an immediate risk of—

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- (a) a serious threat to the safety of the public, to public health or to national security;
- (b) serious economic or operational problems for persons who are communications providers or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities, or for other users of the radio spectrum.]

Annotations:

Amendments (Textual)

- F10** Words in s. 189(1) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 94(a)** (with Sch. 3 para. 2)
- F11** S. 189(4)(a)(b)(c) substituted for words (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 94(b)** (with Sch. 3 para. 2)
- F12** S. 189(5A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 94(c)** (with Sch. 3 para. 2)
- F13** S. 189(7)(8) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 94(d)** (with Sch. 3 para. 2)

Commencement Information

- I9** S. 189 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I10** S. 189 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

190 Resolution of referred disputes

- (1) Where OFCOM make a determination for resolving a dispute referred to them under this Chapter, their only powers are those conferred by this section.
- (2) Their main power (except in the case of a dispute relating to rights and obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum) is to do one or more of the following—
 - (a) to make a declaration setting out the rights and obligations of the parties to the dispute;
 - (b) to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
 - (c) to give a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM; and
 - (d) for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.

[^{F14}(2A) In relation to a dispute falling within section 185(1), OFCOM must exercise their powers under subsection (2) in the way that seems to them most appropriate for the purpose of securing—

- (a) efficiency;

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- (b) sustainable competition;
 - (c) efficient investment and innovation; and
 - (d) the greatest possible benefit for the end-users of public electronic communications services.]
- (3) Their main power in the excepted case is just to make a declaration setting out the rights and obligations of the parties to the dispute.
- (4) Nothing in this section prevents OFCOM from exercising the following powers in consequence of their consideration under this Chapter of any dispute—
- (a) their powers under Chapter 1 of this Part to set, modify or revoke general conditions, universal service conditions, access related conditions, privileged supplier conditions or SMP conditions;
 - (b) their powers to vary, modify or revoke wireless telegraphy licences or grants of recognised spectrum access;
 - (c) their power to make, amend or revoke [^{F15}regulations under section 8 or 45 of the Wireless Telegraphy Act 2006] .
- (5) In the case of a dispute referred back to OFCOM under section 186(6)—
- (a) OFCOM may, in making their determination, take account of decisions already made by others in the course of an attempt to resolve the dispute by alternative means; and
 - (b) the determination made by OFCOM may include provision ratifying decisions so made.
- (6) Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute—
- (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM, or in connection with it; and
 - (b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute.
- [^{F16}and may determine the amount of the costs and when the costs are to be paid.]
- [^{F17}(6A) OFCOM may not, under subsection (6)(a), require a party to the dispute to make payments to another party unless OFCOM have considered—
- (a) the conduct of the party before and after the reference to OFCOM (including, in particular, whether any attempt has been made to resolve the dispute), and
 - (b) whether OFCOM has made a decision in the party’s favour in respect of the whole or a part of the dispute.
- (6B) OFCOM may not, under subsection (6)(b), require payments to be made to them by a party to the dispute unless—
- (a) the dispute relates to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum, or
 - (b) they have considered the matters referred to in subsection (6A)(a) and (b).]

^{F18}(7)

(8) A determination made by OFCOM for resolving a dispute referred or referred back to them under this Chapter binds all the parties to the dispute.

(9) Subsection (8) is subject to section 192.

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Annotations:

Amendments (Textual)

- F14** S. 190(2A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(a)** (with Sch. 3 para. 2)
- F15** Words in s. 190(4)(c) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), s. 126(2), **Sch. 7 para. 27**
- F16** Words in s. 190(6) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(b)** (with Sch. 3 para. 2)
- F17** S. 190(6A)(6B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(c)** (with Sch. 3 para. 2)
- F18** S. 190(7) omitted (26.5.2011) by virtue of The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(d)** (with Sch. 3 para. 2)

Commencement Information

- I11** S. 190 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- I12** S. 190 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

191 OFCOM’s power to require information in connection with dispute

- (1) Where a dispute has been referred or referred back to OFCOM under this Chapter, they may require any person to whom subsection (2) applies to provide them with all such information as they may require for the purpose of—
 - (a) deciding whether it is appropriate for them to handle the dispute;
 - (b) determining whether it is necessary for them to consult the regulatory authorities of another member State; or
 - (c) considering the dispute and making a determination for resolving it.
- (2) This subsection applies to—
 - (a) a party to the dispute; and
 - (b) a person who is not a party to the dispute but appears to OFCOM to have information that is relevant to the matters mentioned in subsection (1)(a) to (c).
- (3) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (4) In fixing the period within which information is to be provided in accordance with a requirement under this section OFCOM must have regard, in particular, to—
 - (a) their obligation to make a determination for resolving the dispute within the period specified in section 188;
 - (b) the nature of the dispute; and
 - (c) the information that is required.
- (5) Sections 138 to 144 apply for the enforcement of a requirement under this section as they apply for the enforcement of requirements under section 135 or 136.

^{F19}(6)

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Annotations:

Amendments (Textual)

F19 S. 191(6) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 96** (with Sch. 3 para. 2)

Commencement Information

I13 S. 191 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

I14 S. 191 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

Appeals

192 Appeals against decisions by OFCOM, the Secretary of State etc.

- (1) This section applies to the following decisions—
- (a) a decision by OFCOM under this Part [^{F20}or any of Parts 1 to 3 of the Wireless Telegraphy Act 2006] that is not a decision specified in Schedule 8;
 - (b) a decision (whether by OFCOM or another) to which effect is given by a direction, approval or consent given for the purposes of a provision of a condition set under section 45;
 - (c) a decision to which effect is given by the modification or withdrawal of such a direction, approval or consent;
 - (d) a decision by the Secretary of State to which effect is given by one of the following—
 - (i) a specific direction under section 5 that is not about the making of a decision specified in Schedule 8;
 - (ii) a restriction or condition set by regulations under section 109;
 - (iii) a direction to OFCOM under section 132;
 - (iv) a specific direction under [^{F21}section 5 of the Wireless Telegraphy Act 2006] that is not about the making of a decision specified in Schedule 8.
 - [^{F22}(e) a decision by the CMA to which effect is given by an order made under section 193A.]
- (2) A person affected by a decision to which this section applies may appeal against it to the Tribunal.
- (3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) The notice of appeal must set out—
- (a) the provision under which the decision appealed against was taken; and
 - (b) the grounds of appeal.
- (6) The grounds of appeal must be set out in sufficient detail to indicate—
- (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and

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- (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM, by the Secretary of State [^{F23}, by the CMA] or by another person.
- (7) In this section and Schedule 8 references to a decision under an enactment—
- (a) include references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by or under an enactment; but
- (b) include references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, only where the failure constitutes a failure to grant an application or to comply with any other form of request to make the decision, to exercise the power or to perform the duty;
- and references in the following provisions of this Chapter to a decision appealed against are to be construed accordingly.
- (8) For the purposes of this section and the following provisions of this Chapter a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by or under an enactment shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

Annotations:

Amendments (Textual)

- F20** Words in s. 192(1)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 28\(a\)](#)
- F21** Words in s. 192(1)(d)(iv) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 28\(b\)](#)
- F22** S. 192(1)(e) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 15 para. 43\(2\)](#); [S.I. 2014/416, art. 2\(1\)\(f\) \(with Sch.\)](#)
- F23** Words in s. 192(6)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 15 para. 43\(3\)](#); [S.I. 2014/416, art. 2\(1\)\(f\) \(with Sch.\)](#)

Commencement Information

- I15** S. 192 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#))
- I16** S. 192 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

193 Reference of price control matters to the [^{F24}CMA]

- (1) Tribunal rules must provide in relation to appeals under section 192(2) relating to price control that the price control matters arising in that appeal, to the extent that they are matters of a description specified in the rules, must be referred by the Tribunal to the [^{F25}CMA] for determination.
- (2) Where a price control matter is referred in accordance with Tribunal rules to the [^{F26}CMA] for determination, [^{F27}the determination of the matter is 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, and [^{F28}, having regard to the principles to be applied by the Tribunal under section 194A(2), is to be performed]]—
- (a) in accordance with the provision made by the rules;

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- (b) in accordance with directions given to [F29the CMA] by the Tribunal in exercise of powers conferred by the rules; and
 - (c) subject to the rules and any such directions, using such procedure as the [F30CMA] consider appropriate.
- (3) The provision that may be made by Tribunal rules about the determination of a price control matter referred to the [F31CMA] in accordance with the rules includes provision about the period within which that matter is to be determined by [F32the CMA] .
- (4) Where the [F33CMA] determines a price control matter in accordance with Tribunal rules, they must notify the Tribunal of the determination they have made.
- (5) The notification must be given as soon as practicable after the making of the notified determination.
- (6) Where a price control matter arising in an appeal is required to be referred to the [F34CMA] under this section, the Tribunal, in deciding the appeal F35 ..., must decide that matter in accordance with the determination of [F36the CMA] .
- (7) Subsection (6) does not apply to the extent that the Tribunal decides, applying the principles applicable on an application for judicial review, that the determination of the [F37CMA] is a determination that would fall to be set aside on such an application.
- (8) Section 117 of the Enterprise Act 2002 (c. 40) (offences of supplying false or misleading information) shall have effect in relation to information supplied to the [F37CMA] in connection with their functions under this section as it has effect in relation to information supplied to them in connection with their functions under Part 3 of that Act.
- (9) For the purposes of this section an appeal relates to price control if the matters to which the appeal relates are or include price control matters.
- (10) In this section [F38and section 193A] “price control matter” means a matter relating to the imposition of any form of price control by an SMP condition the setting of which is authorised by—
- (a) section 87(9);
 - (b) section 91; or
 - (c) section 93(3).

Annotations:

Amendments (Textual)

- F24** Word in s. 193 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 98\(8\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F25** Word in s. 193(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 98\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F26** Word in s. 193(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 98\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F27** Words in s. 193(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 98\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F28** Words in s. 193(2) substituted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), [ss. 87\(2\)](#), 118(6) (with s. 87(12)); S.I. 2017/765, reg. 2(w)
- F29** Words in s. 193(2)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 98\(3\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F30** Word in s. 193(2)(c) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(3)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F31** Word in s. 193(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F32** Words in s. 193(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F33** Word in s. 193(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F34** Word in s. 193(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F35** Words in s. 193(6) omitted (31.7.2017) by virtue of Digital Economy Act 2017 (c. 30), **ss. 87(3), 118(6)** (with s. 87(12)); S.I. 2017/765, reg. 2(w)
- F36** Words in s. 193(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Word in s. 193(7)(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 98(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F38** Words in s. 193(10) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 44**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

Commencement Information

- I17** S. 193 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- I18** S. 193 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

[^{F39}193A Recovery of CMA's costs in respect of price control references

- (1) Where a determination is made on a price control matter referred by virtue of section 193, the CMA may make an order in respect of the costs incurred by it in connection with the reference (a “costs order”).
- (2) A costs order may require the payment to the CMA of some or all of those costs by such parties to the appeal which gave rise to the reference, other than OFCOM, as the CMA considers appropriate.
- (3) A costs order must—
 - (a) set out the total costs incurred by the CMA in connection with the reference, and
 - (b) specify the proportion of those costs to be paid by each party to the appeal in respect of whom the order is made.
- (4) In deciding on the proportion of costs to be paid by a party to the appeal the CMA must, in particular, consider—
 - (a) the extent to which the determination on the reference upholds OFCOM's decision in relation to the price control matter in question,
 - (b) the extent to which the costs were attributable to the involvement in the appeal of the party, and
 - (c) the conduct of the party.
- (5) A costs order—
 - (a) must be made as soon as reasonably practicable after the making of the determination on the reference, but

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- (b) does not take effect unless the Tribunal, in deciding the appeal which gave rise to the reference, decides the price control matter which is the subject of the reference in accordance with the determination of the CMA (see section 193(6)).
- (6) In a case where the Tribunal decides the price control matter in question otherwise than as mentioned in subsection (5)(b), the CMA may make an order under this subsection in respect of the costs incurred by it in connection with the reference.
- (7) Subsections (2) to (4) apply in relation to an order under subsection (6) as they apply in relation to an order under subsection (1); but for that purpose the reference in subsection (4)(a) to the determination on the reference is to be read as a reference to the decision of the Tribunal mentioned in subsection (6).
- (8) An order under subsection (6) must be made as soon as reasonably practicable after the decision of the Tribunal mentioned in that subsection.
- (9) An amount payable to the CMA by virtue of an order made under this section is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (10) The CMA must pay any sums it receives by virtue of this section into the Consolidated Fund.
- (11) The functions of the CMA under this section, other than those under subsections (9) and (10), are to be carried out on behalf of the CMA by the group constituted by the chair of the CMA in relation to the reference in question.]

Annotations:

Amendments (Textual)

F39 S. 193A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 54**, 103(3); S.I. 2014/416, **art. 2(1)(b)** (with Sch.)

^{F40}194 Composition of Competition Commission for price control references

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Annotations:

Amendments (Textual)

F40 S. 194 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **s. 103(3)**, **Sch. 6 para. 99**; S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

Commencement Information

I19 S. 194 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, **arts. 1(2), 2(1)**, **Sch. 1** (with **art. 3**) (as amended by S.I. 2003/3142, **art. 1(3)**)

I20 S. 194 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with **art. 11**)

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[^{F41}194A Disposal of appeals under section 192 (other than against certain decisions of Secretary of State)

- (1) This section applies to an appeal against a decision referred to in section 192(1)(a), (b), (c), (d)(iii) or (e).
- (2) The Tribunal must decide the appeal, by reference to the grounds of appeal set out in the notice of appeal, by applying the same principles as would be applied by a court on an application for judicial review.
- (3) The Tribunal may—
 - (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
 - (b) where it quashes the whole or part of that decision, remit the matter back to the decision-maker with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.
- (4) The decision-maker must comply with a direction under subsection (3)(b).
- (5) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if, for the reference to the undertaking to which commercial information relates, there were substituted a reference to any person to whom it relates.
- (6) In this section “the decision-maker” means the person who made the decision appealed against.]

Annotations:

Amendments (Textual)

F41 S. 194A inserted (31.7.2017) by Digital Economy Act 2017 (c. 30), ss. 87(4), 118(6) (with s. 87(12)); S.I. 2017/765, reg. 2(w)

195 [^{F42}Disposal of appeals under section 192 against certain decisions of Secretary of State]

- ^{F43}(1) This section applies to an appeal against a decision referred to in section 192(1)(d) (i), (ii), (iia) or (iv).]
- (2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal’s decision must include a decision as to what (if any) is the appropriate action for [^{F44} the Secretary of State] to take in relation to the subject-matter of the decision under appeal.
- (4) The Tribunal shall then remit the decision under appeal to [^{F44} the Secretary of State] with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.
- (5) The Tribunal must not direct [^{F44} the Secretary of State] to take any action which he would not otherwise have power to take in relation to the decision under appeal.

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- (6) It shall be the duty of [^{F44} the Secretary of State] to comply with every direction given under subsection (4).
- (7) In the case of an appeal against a decision given effect to by a restriction or condition set by regulations under section 109, the Tribunal must take only such steps for disposing of the appeal as it considers are not detrimental to good administration.
- (8) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (c. 40) (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if for the reference to the undertaking to which commercial information relates there were substituted a reference to any person to whom it relates.

^{F45}(9)

Annotations:

Amendments (Textual)

- F42** S. 195 title substituted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 87(10)**, 118(6) (with s. 87(12)); [S.I. 2017/765](#), reg. 2(w)
- F43** S. 195(1) substituted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 87(6)**, 118(6) (with s. 87(7)(12)); [S.I. 2017/765](#), reg. 2(w)
- F44** Words in s. 195(3)-(6) substituted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 87(8)**, 118(6) (with s. 87(12)); [S.I. 2017/765](#), reg. 2(w)
- F45** S. 195(9) omitted (31.7.2017) by virtue of [Digital Economy Act 2017 \(c. 30\)](#), **ss. 87(9)**, 118(6) (with s. 87(12)); [S.I. 2017/765](#), reg. 2(w)

Commencement Information

- I21** S. 195 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I22** S. 195 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

196 Appeals from the Tribunal

- (1) A decision of the Tribunal on an appeal under section 192(2) may itself be appealed.
- (2) An appeal under this section—
- (a) lies to the Court of Appeal or to the Court of Session; and
 - (b) must relate only to a point of law arising from the decision of the Tribunal.
- (3) An appeal under this section may be brought by—
- (a) a party to the proceedings before the Tribunal; or
 - (b) any other person who has a sufficient interest in the matter.
- (4) An appeal under this section requires the permission of the Tribunal or of the court to which it is to be made.
- (5) In this section references to a decision of the Tribunal include references to a direction given by it under section 195(4).

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Annotations:

Commencement Information

- I23** S. 196 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I24** S. 196 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

Interpretation of Chapter 3

197 Interpretation of Chapter 3

- (1) In this Chapter—
- [^{F46}“the CMA” means the Competition and Markets Authority;]
“network access” has the same meaning as in Chapter 1 of this Part;
“the Tribunal” means the Competition Appeal Tribunal; and
“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002.
- (2) References in this Chapter, in relation to a dispute, to the regulatory authorities of other member States are references to such of the authorities of the other member States as have been notified under the Framework Directive to the European Commission as the regulatory authorities of those States for the purposes of the matters to which the dispute relates.
- (3) In this section “the Framework Directive” has the same meaning as in Chapter 1 of this Part.

Annotations:

Amendments (Textual)

- F46** Words in s. 197 inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 100**; [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

Commencement Information

- I25** S. 197 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I26** S. 197 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

Changes to legislation:

Communications Act 2003, Chapter 3 is up to date with all changes known to be in force on or before 11 June 2018. 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.

Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

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. 124O and cross-heading inserted by [2010 c. 24 s. 19](#)
- s. 124P 124Q inserted by [2010 c. 24 s. 20\(1\)](#)
- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 124R inserted by [2010 c. 24 s. 21](#)
- s. 124S 124T and cross-heading inserted by [2017 c. 30 s. 102](#)
- s. 192(1)(d) (ia) inserted by [2010 c. 24 s. 20\(2\)](#)
- s. 365(1A) inserted by [2017 c. 30 s. 89\(3\)](#)
- s. 365(5A)(5B) inserted by [2017 c. 30 s. 89\(6\)](#)
- s. 365A inserted by [2017 c. 30 s. 89\(7\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)