

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Networks, Services and the Radio Spectrum

Chapter 3: Disputes and Appeals

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

416. This section provides for appeal to the Competition Appeal Tribunal (CAT) against decisions (with specified exceptions) made by OFCOM under Part 2 of the Act and the Wireless Telegraphy Acts 1949 and 1998 and against decisions made further to a condition of entitlement set under section 45. The specified exceptions are set out in Schedule 8 and are either (i) decisions that do not have immediate effect on a person, but are of a legislative or quasi-legislative nature that require a further act or decision to be given effect, or (ii) decisions on matters which fall outside the scope of the Communications Directives. For example, a decision taken by OFCOM relating to the making or revision of a statement of policy on information-gathering under section 145 would not have immediate effect on any person. It would only be where OFCOM exercised their powers under section 135 to require the provision of information, in accordance with that statement, that there would be a decision that would actually have effect on any person. Another example is decisions under section 175 (special procedure for contraventions by multiplex licence holders), which fall outside the scope of the Directives.

*For the purposes of this section and the rest of this Chapter, a decision includes OFCOM's exercise of any power and any failure by them to grant an application or to exercise any power following a request (*subsection (7) and (8)*).

417. **Section 192** also applies to specific decisions of the Secretary of State given under section 5 (directions in respect of Part 2 functions) or section 156 (directions with respect to radio spectrum) (in both cases, excluding decisions specified by Schedule 8), under section 109 (restrictions and conditions subject to which the electronic communications code applies) or under section 132 (suspension or restriction of a communication provider's entitlement).
418. The right of appeal extends to any person affected by a decision to which this section applies. *Subsections (3) to (6)* provide that an appeal can be made only by sending a notice of appeal to the CAT, and prescribe the contents of the notice. This section and sections 193 to 195 implement Article 4 and 11(3) of the Framework Directive and Article 10(7) of the Authorisation Directive.