



# 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;
  - (d) a dispute relating to the subject-matter of a condition set under section 74(1) between a communications provider or person who makes associated facilities available and a person who (without being such a person) is a person to whom such a condition applies; or
  - (e) a dispute relating to the subject-matter of such a condition between different persons each of whom (without being a communications provider or a person who makes associated facilities available) is a person to whom such a condition applies.
- (2) This section also applies in the case of any other dispute if—
- (a) it relates to rights or obligations conferred or imposed by or under this Part or any of the enactments relating to the management of the radio spectrum that are not contained in this Part;

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- (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  - (b) may be withdrawn or modified,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;
  - (b) contraventions of sections 125 to 127;
  - (c) obligations imposed on a communications provider by or under any of sections 128 to 131; or
  - (d) the operation in the case of a communications provider of section 134.
- (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.

#### 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)

## 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.
- (3) 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 the Community requirements set out in section 4, and

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- (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) 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.

#### 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

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- (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.

#### 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.

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- (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.

#### 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)

### 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 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 must consult the other regulatory authorities within whose jurisdiction the matter falls.
- (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.
- (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.

#### 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)

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## **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.
- (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 regulations under section 1 or 3 of the Wireless Telegraphy Act 1949 (c. 54).
- (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.
- (7) OFCOM are not, under subsection (6)(b), to require payments to be made to them by a party to the dispute except—

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- (a) in a case where 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) where it appears to OFCOM that the reference of the dispute by that party was frivolous or vexatious or that that party has otherwise abused the right of reference conferred by this Chapter.
- (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.

#### 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.
- (6) In its application for the enforcement of this section, section 138 is to have effect as if it allowed OFCOM to specify such period of less than one month for doing the things mentioned in subsection (3) of that section as they consider appropriate for the purpose of enabling them to comply with an obligation of theirs to make a determination within a particular period.

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#### 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)



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