



# Digital Economy Act 2017

## 2017 CHAPTER 30

### PART 6

#### MISCELLANEOUS

##### *Appeals*

#### **87 Appeals from decisions of OFCOM and others: standard of review**

- (1) The Communications Act 2003 is amended as follows.
- (2) In section 193(2) (reference of price control matters to the CMA), for “is to be performed” substitute “, having regard to the principles to be applied by the Tribunal under section 194A(2), is to be performed”.
- (3) In subsection (6) of that section omit “on the merits under section 195”.
- (4) Before section 195 (decisions of the Tribunal) insert—

#### **“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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.”
- (5) Section 195 (decisions of the Tribunal) is amended as follows.
- (6) For subsection (1) substitute—
  - “(1) This section applies to an appeal against a decision referred to in section 192(1)(d)(i), (ii), (ia) or (iv).”
- (7) Until section 20(2) of the Digital Economy Act 2010 comes into force, the amendment made by subsection (6) has effect with the omission of “, (ia)”.
- (8) In subsections (3) to (6), for “the decision-maker” in each place substitute “the Secretary of State”.
- (9) Omit subsection (9).
- (10) For the title substitute “Disposal of appeals under section 192 against certain decisions of Secretary of State”.
- (11) In section 317 (exercise of Broadcasting Act powers for a competition purpose), for subsection (7) substitute—
  - “(7) Sections 192(3) to (5), (7) and (8), 194A and 196 apply in the case of an appeal under subsection (6) as they apply in the case of an appeal under section 192(2).”
- (12) The amendments made by this section do not apply in relation to appeals against decisions made before this section comes into force.