
STATUTORY INSTRUMENTS

2016 No. 607

The Open Internet Access (EU Regulation) Regulations 2016

PART 6

APPEALS

Interpretation of Part 6

26.—(1) In this Part—

“the Tribunal” means the Competition Appeal Tribunal; and

“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002⁽¹⁾.

(2) For the purposes of this Part a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by the EU Regulation or these Regulations, is to 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.

Appeals against decisions by OFCOM or another person

27.—(1) This regulation applies to the following decisions—

- (a) a decision by OFCOM under the EU Regulation or these Regulations;
- (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 requirement imposed under regulation 7;
- (c) a decision to which effect is given by the modification or withdrawal of such a direction, approval or consent.

(2) A person affected by a decision to which this regulation 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 person making the appeal (“the appellant”) contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
- (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM or another person.

(1) 2002 c. 40. Section 15 was amended by section 81 of, and Part 2 of Schedule 8 to, the Consumer Rights Act 2015 (c. 15).

(7) In this regulation references to a decision—

- (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 the EU Regulation or these Regulations; 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 comply with any form of request to make the decision, exercise the power or perform the duty;

and references in the following regulations to a decision appealed against are to be construed accordingly.

Decisions of the Tribunal

28.—(1) The Tribunal must dispose of an appeal under regulation 27 in accordance with this regulation.

(2) The Tribunal must 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 the decision-maker to take in relation to the subject-matter of the decision under appeal.

(4) The Tribunal may then remit the decision under appeal to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.

(5) The Tribunal must not direct the decision-maker to take any action which the decision-maker would not otherwise have power to take in relation to the decision under appeal.

(6) The decision-maker must comply with every direction given under paragraph (4).

(7) In any document recording the decision of the Tribunal under this regulation, the Tribunal shall have regard to the need for excluding, so far as practicable, commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of any person to whom it relates.

(8) In this regulation the “decision-maker” means—

- (a) OFCOM; or
- (b) in the case of an appeal against—
 - (i) a direction, approval or consent given by a person other than OFCOM, or
 - (ii) the modification or withdrawal by that person of such a direction, approval or consent,that other person.

Appeals from the Tribunal

29.—(1) A decision of the Tribunal on an appeal under regulation 28 may itself be appealed.

(2) An appeal under this regulation—

- (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 regulation may be brought by—

- (a) a party to the proceedings before the Tribunal; or
- (b) any other person who has sufficient interest in the matter.

(4) An appeal under this regulation requires the permission of the Tribunal or of the court to which it is to be made.

(5) In this regulation references to a decision of the Tribunal include references to a direction given by it under regulation 28(4).