



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 3

#### DISPUTES AND APPEALS

#### *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 [<sup>F1</sup>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 [<sup>F2</sup>section 5 of the Wireless Telegraphy Act 2006] that is not about the making of a decision specified in Schedule 8.

*Status: Point in time view as at 06/04/2023.*

*Changes to legislation: Communications Act 2003, Cross Heading: Appeals is up to date with all changes known to be in force on or before 22 June 2024. 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)*

- [<sup>F3</sup>(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
  - (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM, by the Secretary of State [<sup>F4</sup>, 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.

#### Textual Amendments

- F1** Words in s. 192(1)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), [Sch. 7 para. 28\(a\)](#)
- F2** 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\(b\)](#)
- F3** 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.)
- F4** 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.)

*Status: Point in time view as at 06/04/2023.*

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#### **Modifications etc. (not altering text)**

- C1** S. 192 applied (6.4.2023) by [The Trade \(Mobile Roaming\) Regulations 2023 \(S.I. 2023/214\)](#), regs. 1(b), **10(2)**

#### **Commencement Information**

- I1** 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))
- I2** 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 [F<sup>5</sup>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 [F<sup>6</sup>CMA] for determination.
- (2) Where a price control matter is referred in accordance with Tribunal rules to the [F<sup>7</sup>CMA] for determination, [F<sup>8</sup>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 [F<sup>9</sup>, 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;
  - (b) in accordance with directions given to [F<sup>10</sup>the 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 [F<sup>11</sup>CMA] consider appropriate.
- (3) The provision that may be made by Tribunal rules about the determination of a price control matter referred to the [F<sup>12</sup>CMA] in accordance with the rules includes provision about the period within which that matter is to be determined by [F<sup>13</sup>the CMA] .
- (4) Where the [F<sup>14</sup>CMA] 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 [F<sup>15</sup>CMA] under this section, the Tribunal, in deciding the appeal <sup>F<sup>16</sup></sup>..., must decide that matter in accordance with the determination of [F<sup>17</sup>the 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 [F<sup>18</sup>CMA] 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 [F<sup>18</sup>CMA] 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.

*Status: Point in time view as at 06/04/2023.*

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- (10) In this section [<sup>F19</sup>and 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).

#### Textual Amendments

- F5** 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.)
- F6** 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.)
- F7** 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.)
- F8** 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.)
- F9** 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)
- F10** 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.)
- F11** 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.)
- F12** 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.)
- F13** 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.)
- F14** 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.)
- F15** 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.)
- F16** 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)
- F17** 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.)
- F18** 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.)
- F19** 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

- I3** 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))
- I4** 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)

#### [<sup>F20</sup>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”).

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- (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
  - (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.]

#### Textual Amendments

**F20** 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.)

*Status: Point in time view as at 06/04/2023.*

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## <sup>F21</sup>194 Composition of Competition Commission for price control references

### Textual Amendments

**F21** 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

**I5** 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))

**I6** 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)

## [<sup>F22</sup>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.

[ In a case where the appeal is against a relevant security decision of OFCOM, the <sup>F23</sup>(2A) Tribunal is to apply those principles without taking any special account of the merits of the case.

(2B) Subsection (2A) has effect notwithstanding any retained case law or retained general principle of EU law.]

- (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;

[<sup>F24</sup>“relevant security decision” means a decision under any of sections 105I, 105L to 105O and 105U to 105W;

“retained case law” and “retained general principle of EU law” have the meanings given by section 6(7) of the European Union (Withdrawal) Act 2018.]]

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#### Textual Amendments

- F22** 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)
- F23** S. 194A(2A)(2B) inserted (1.10.2022) by [Telecommunications \(Security\) Act 2021 \(c. 31\)](#), **ss. 13(2)**, 28(2)(b); S.I. 2022/931, reg. 2(b)
- F24** Words in s. 194A(6) inserted (1.10.2022) by [Telecommunications \(Security\) Act 2021 \(c. 31\)](#), **ss. 13(3)**, 28(2)(b); S.I. 2022/931, reg. 2(b)

#### Modifications etc. (not altering text)

- C2** S. 194A applied (6.4.2023) by [The Trade \(Mobile Roaming\) Regulations 2023 \(S.I. 2023/214\)](#), regs. 1(b), **10(2)**

### 195 <sup>F25</sup>Disposal of appeals under section 192 against certain decisions of Secretary of State]

<sup>F26</sup>(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 <sup>F27</sup>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 <sup>F27</sup>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 <sup>F27</sup>the Secretary of State ] to take any action which he would not otherwise have power to take in relation to the decision under appeal.
- (6) It shall be the duty of <sup>F27</sup>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.

<sup>F28</sup>(9) .....

#### Textual Amendments

- F25** 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)
- F26** 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)

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- F27** 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)
- F28** 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

- I7** 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))
- I8** 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).

#### Modifications etc. (not altering text)

- C3** S. 196 applied (6.4.2023) by [The Trade \(Mobile Roaming\) Regulations 2023 \(S.I. 2023/214\)](#), regs. 1(b), **10(2)**

#### Commencement Information

- I9** 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))
- I10** 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)



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