



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 3

#### DISPUTES AND APPEALS

##### *Disputes*

#### **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.

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*Status: Point in time view as at 26/05/2011. This version of this provision has been superseded.*

*Changes to legislation: Communications Act 2003, Section 190 is up to date with all changes known to be in force on or before 21 July 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)*

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[<sup>F1</sup>(2A) In relation to a dispute falling within section 185(1), OFCOM must exercise their powers under subsection (2) in the way that seems to them most appropriate for the purpose of securing—

- (a) efficiency;
- (b) sustainable competition;
- (c) efficient investment and innovation; and
- (d) the greatest possible benefit for the end-users of public electronic communications services.]

(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 [<sup>F2</sup>regulations under section 8 or 45 of the Wireless Telegraphy Act 2006] .

(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.

[<sup>F3</sup>and may determine the amount of the costs and when the costs are to be paid.]

[<sup>F4</sup>(6A) OFCOM may not, under subsection (6)(a), require a party to the dispute to make payments to another party unless OFCOM have considered—

- (a) the conduct of the party before and after the reference to OFCOM (including, in particular, whether any attempt has been made to resolve the dispute), and
- (b) whether OFCOM has made a decision in the party’s favour in respect of the whole or a part of the dispute.

(6B) OFCOM may not, under subsection (6)(b), require payments to be made to them by a party to the dispute unless—

- (a) 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) they have considered the matters referred to in subsection (6A)(a) and (b).]

<sup>F5</sup>(7) . . . . .

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(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.

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#### Textual Amendments

- F1** S. 190(2A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(a)** (with Sch. 3 para. 2)
- F2** Words in s. 190(4)(c) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), s. 126(2), **Sch. 7 para. 27**
- F3** Words in s. 190(6) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(b)** (with Sch. 3 para. 2)
- F4** S. 190(6A)(6B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(c)** (with Sch. 3 para. 2)
- F5** S. 190(7) omitted (26.5.2011) by virtue of The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 95(d)** (with Sch. 3 para. 2)

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#### Commencement Information

- I1** 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))
- I2** 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)

**Status:**

Point in time view as at 26/05/2011. This version of this provision has been superseded.

**Changes to legislation:**

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