



Postal Services Act 2011

2011 CHAPTER 5

PART 3

REGULATION OF POSTAL SERVICES

Appeals

57 Decisions by OFCOM to impose regulatory conditions, penalties etc

- (1) For the purposes of this section a “qualifying decision” means—
 - (a) a decision to impose or modify a regulatory condition,
 - (b) a decision to give, modify or withdraw a direction, consent or approval that falls within paragraph 2 of Schedule 6,
 - (c) a decision to impose a penalty, or give or modify a direction, under any provision of Schedule 4, 7 or 8,
 - (d) a decision to give or modify a direction under section 89A or 116(2A) of the Postal Services Act 2000 (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or
 - (e) a decision to give a direction under section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement of requirements to give information to the ^[F1]Citizens Advice etc).
- (2) A person affected by a qualifying decision may appeal against it to the Competition Appeal Tribunal (“the CAT”).
- (3) The means of making an appeal is by sending the CAT a notice of appeal in accordance with rules made under section 15 of the Enterprise Act 2002.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) In determining an appeal under this section the CAT must apply the same principles as would be applied by a court on an application for judicial review.

Status: Point in time view as at 01/04/2014.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, Cross Heading: Appeals. (See end of Document for details)

- (6) The CAT must either—
 - (a) dismiss the appeal, or
 - (b) quash the whole or part of the qualifying decision to which the appeal relates.
- (7) If the CAT quashes the whole or part of a qualifying decision, it may refer the matter back to the person who made the decision with a direction to reconsider and make a new decision in accordance with its ruling.
- (8) The CAT may not direct the person who made the decision to take any action that the person would not otherwise have the power to take in relation to the decision.
- (9) Except in the case of a decision to impose a penalty, or give or modify a direction, under Schedule 4, 7 or 8, the effect of a qualifying decision is not suspended by the making of an appeal against the decision under this section.

Textual Amendments

- F1** Words in s. 57(1)(e) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 13(4)** (with Sch. 1 para. 28, 2 paras. 13-15)

Commencement Information

- I1** S. 57 in force at 1.10.2011 by [S.I. 2011/2329](#), **art. 3**

58 Appeals from the CAT

- (1) An appeal lies to the appropriate court on any point of law arising from a decision of the CAT under section 57.
- (2) An appeal under this section may be brought by—
 - (a) a party to the proceedings before the CAT, or
 - (b) any other person who has a sufficient interest in the matter.
- (3) An appeal under this section requires the permission of the CAT or the appropriate court.
- (4) In this section “the appropriate court” means—
 - (a) in relation to England and Wales and Northern Ireland, the Court of Appeal, and
 - (b) in relation to Scotland, the Court of Session.

Commencement Information

- I2** S. 58 in force at 1.10.2011 by [S.I. 2011/2329](#), **art. 3**

59 Price control decisions

- (1) A person affected by a price control decision may appeal against it by sending a notice of appeal to OFCOM within the period of two months beginning with the day on which the decision is published.

Status: Point in time view as at 01/04/2014.

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- (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate the error (or errors) which the appellant contends OFCOM made.
- (3) OFCOM must refer any appeal made in accordance with this section (and with rules made under section 60) to the [^{F2}Competition and Markets Authority (“the CMA”)] as soon as reasonably practicable after it is made.
- (4) The making of an appeal against a decision does not suspend the effect of the decision.
- (5) The [^{F3}CMA] must determine an appeal before the end of—
 - (a) the period of 4 months beginning with the day on which OFCOM refer the appeal to it, or
 - (b) if the decision appealed against is not an initial price control decision and the [^{F3}CMA] considers that the circumstances of the case are exceptional, the period of 6 months beginning with that day.

If paragraph (b) applies, the [^{F3}CMA] must, before the end of the period mentioned in paragraph (a), publish its reasons for considering that the circumstances of the case are exceptional.

- (6) On determining the appeal, the [^{F3}CMA] must—
 - (a) dismiss the appeal,
 - (b) allow the appeal and make its own decision on the subject matter of the appeal, or
 - (c) quash the whole or part of the price control decision to which the appeal relates.
- (7) The [^{F3}CMA] may allow the appeal, or quash the whole or part of the price control decision to which the appeal relates, only if it considers that OFCOM made a material error.
- (8) If the [^{F3}CMA] quashes the whole or part of a price control decision, it may refer the matter back to OFCOM with a direction to reconsider and make a new decision in accordance with its ruling.
- (9) The [^{F3}CMA] may not direct OFCOM to take any action that they would not otherwise have the power to take in relation to the decision.
- (10) OFCOM must give effect to any decision of the [^{F3}CMA] under subsection (6)(b) as soon as is reasonably practicable after it is made.
- (11) The [^{F3}CMA] may investigate any matter or do any other thing for the purpose of making a decision under subsection (6)(b) or (c).
- (12) Any decision made by the [^{F3}CMA] under subsection (6) other than one relating to an initial price control decision is a qualifying decision for the purposes of section 57.

[^{F4}(12A) The CMA's functions with respect to an appeal under this section are to be carried out on its behalf by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013]

- (13) In this section—
 - a “price control decision” means—
 - (a) a decision of OFCOM as to the tariffs that are to be used as mentioned in section 36(4) (designated USP condition: tariffs), or

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- (b) a decision of OFCOM (other than under Part 2 of Schedule 3) as to prices that may be charged for the giving of access under an access condition, and
- an “initial price control decision” means—
- (a) the first decision of OFCOM within paragraph (a) of the definition of “price control decision”, or
- (b) the first decision of OFCOM within paragraph (b) of that definition.

Textual Amendments

- F2** Words in s. 59(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 125\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 59(5)-(12) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 125\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** S. 59(12A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 125\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I3** S. 59 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

60 Section 59: supplementary

- (1) The [F5CMA] may make rules about the making, conduct and disposal of appeals under section 59.
- (2) The rules may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing, or
 - (b) the making of representations or observations at an oral hearing.
- (3) The rules may make different provision for different cases.
- (4) The [F5CMA] must publish the rules in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (5) Before making the rules, the [F5CMA] must consult such persons as it considers appropriate.
- (6) The Secretary of State may by order—
 - (a) apply any of sections 109 to 117 of the Enterprise Act 2002 (investigation powers of the [F5CMA]), with or without modifications, in relation to appeals made under section 59, and
 - (b) make provision for and in connection with the extension of the period within which appeals must be determined in cases where requirements imposed under section 109 of that Act (as applied) have not been complied with.
- (7) An order under subsection (6) applying an enactment under which a criminal or civil penalty could be imposed may not provide for the penalty to be greater than that which could be imposed under the enactment.
- (8) An order under subsection (6) is subject to negative resolution procedure.

Status: Point in time view as at 01/04/2014.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, Cross Heading: Appeals. (See end of Document for details)

Textual Amendments

- F5** Words in s. 60 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 126](#); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with Sch.)
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Commencement Information

- I4** S. 60 in force at 1.10.2011 by [S.I. 2011/2329, art. 3](#)

Status:

Point in time view as at 01/04/2014.

Changes to legislation:

There are currently no known outstanding effects for the Postal Services Act 2011, Cross
Heading: Appeals.