



# Digital Economy Act 2010

## 2010 CHAPTER 24

### *Powers in relation to internet domain registries*

#### **19 Powers in relation to internet domain registries**

After section 124N of the Communications Act 2003 insert—

#### *“Powers in relation to internet domain registries*

##### **124O Notification of failure in relation to internet domain registry**

- (1) This section applies where the Secretary of State—
  - (a) is satisfied that a serious relevant failure in relation to a qualifying internet domain registry is taking place or has taken place, and
  - (b) wishes to exercise the powers under section 124P or 124R.
- (2) The Secretary of State must notify the internet domain registry, specifying the failure and a period during which the registry has the opportunity to make representations to the Secretary of State.
- (3) There is a relevant failure in relation to a qualifying internet domain registry if—
  - (a) the registry, or any of its registrars or end-users, engages in prescribed practices that are unfair or involve the misuse of internet domain names, or
  - (b) the arrangements made by the registry for dealing with complaints in connection with internet domain names do not comply with prescribed requirements.
- (4) A relevant failure is serious, for the purposes of this section, if it has adversely affected or is likely adversely to affect—
  - (a) the reputation or availability of electronic communications networks or electronic communications services provided in the United Kingdom or a part of the United Kingdom, or

- (b) the interests of consumers or members of the public in the United Kingdom or a part of the United Kingdom.
- (5) In subsection (3) “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) Before making regulations under subsection (3) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In this section and sections 124P to 124R—
  - “end-user”, in relation to a qualifying internet domain registry, means a person who has been or wants to be allocated an internet domain name that is or would be included in the register maintained by the registry;
  - “qualifying internet domain registry” means a relevant body that—
    - (a) maintains a relevant register of internet domain names, and
    - (b) operates a computer program or server that forms part of the system that enables the names included in the register to be used to access internet protocol addresses or other information by means of the internet;
  - “registrar”, in relation to a qualifying internet domain registry, means a person authorised by the registry to act on behalf of end-users in connection with the registration of internet domain names;
  - “relevant body” means a company formed and registered under the Companies Act 2006 or a limited liability partnership;
  - “relevant register of internet domain names” means a register of—
    - (a) the names of second level internet domains that form part of the same UK-related top level internet domain, or
    - (b) the names of third level internet domains that form part of the same UK-related second level internet domain;
  - “second level internet domain” means an internet domain indicated by the last two elements of an internet domain name;
  - “third level internet domain” means an internet domain indicated by the last three elements of an internet domain name;
  - “top level internet domain” means an internet domain indicated by the last element of an internet domain name.
- (8) An internet domain is “UK-related” if, in the opinion of the Secretary of State, the last element of its name is likely to cause users of the internet, or a class of such users, to believe that the domain and its sub-domains are connected with the United Kingdom or a part of the United Kingdom.”

## **20 Appointment of manager of internet domain registry**

- (1) After section 124O of the Communications Act 2003 insert—

### **“124P Appointment of manager of internet domain registry**

- (1) This section applies where—
  - (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,

- (b) the period allowed for making representations has expired, and
  - (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.
- (2) The Secretary of State may by order appoint a manager in respect of the property and affairs of the internet domain registry for the purpose of securing that the registry takes the steps described in subsection (1)(c).
- (3) The person appointed may be anyone whom the Secretary of State thinks appropriate.
- (4) The appointment of the manager does not affect—
  - (a) a right of a person to appoint a receiver of the registry’s property, or
  - (b) the rights of a receiver appointed by a person other than the Secretary of State.
- (5) The Secretary of State must—
  - (a) keep the order under review, and
  - (b) if appropriate, discharge all or part of the order.
- (6) The Secretary of State must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the registry.
- (7) The Secretary of State must discharge the order before the end of the period of 2 years beginning with the day on which it was made (but this does not prevent the Secretary of State from making a further order in the same or similar terms).
- (8) When discharging an order under this section, the Secretary of State may make savings and transitional provision.
- (9) The Secretary of State must send a copy of an order made under this section to the registry as soon as practicable after it is made.
- (10) In subsection (4), “receiver” includes a manager (other than a manager appointed by the registry) and a person who is appointed as both receiver and manager.
- (11) In subsection (6)—
  - “administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
  - “administrator” means a person appointed to manage the affairs, business and property of the registry under Schedule B1 to that Act or Schedule B1 to that Order.

### **124Q Functions of manager etc**

- (1) An order under section 124P may make provision about the functions to be exercised by, and the powers of, the manager.
- (2) The order may, in particular—

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

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- (a) provide for the manager to have such of the functions of the registry's directors as are specified in the order (including functions exercisable only by a particular director or class of directors), and
  - (b) provide for one or more of the registry's directors to be prevented from exercising any of those functions.
- (3) The order may make provision about the remuneration of the manager, including in particular—
- (a) provision for the amount of the remuneration to be determined by the Secretary of State, and
  - (b) provision for the remuneration to be payable from the property of the registry.
- (4) In carrying out the functions conferred by the order, the manager acts as the registry's agent.
- (5) The Secretary of State may apply to the court for directions in relation to any matter arising in connection with the functions or powers of the manager (and the costs of the application are to be paid by the registry).
- (6) On an application under subsection (5) the court may give such directions or make such orders as it thinks fit.
- (7) In this section “the court” means—
- (a) in England and Wales, the High Court or a county court,
  - (b) in Scotland, the Court of Session or the sheriff, and
  - (c) in Northern Ireland, the High Court.
- (8) Where the registry is a limited liability partnership, this section applies as if references to a director of the registry were references to a member of the limited liability partnership.”
- (2) In section 192(1)(d) of that Act (appeals against decisions of the Secretary of State), after sub-paragraph (ii) insert—
- “(ia) an order under section 124P;”.
- (3) In section 402(1) of that Act (powers of the Secretary of State to make orders and regulations), after “conferred by” insert “section 124P and”.

## **21 Application to court to alter constitution of internet domain registry**

After section 124Q of the Communications Act 2003 insert—

### **“124R Application to court to alter constitution of internet domain registry**

- (1) This section applies where—
- (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
  - (b) the period allowed for making representations has expired, and
  - (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.

- (2) The Secretary of State may apply to the court (as defined in section 124Q) for an order under this section.
- (3) The court may make an order—
  - (a) making alterations of the registry’s constitution, and
  - (b) requiring the registry not to make any alterations, or any specified alterations, of its constitution without the leave of the court.
- (4) An order under this section may contain only such provision as the court considers appropriate for securing that the registry remedies the failure specified in the notification under section 124O.
- (5) In this section—

“constitution” means, in the case of a company, the articles of association and, in the case of a limited liability partnership, the limited liability partnership agreement;

“limited liability partnership agreement” means the agreement or agreements, whether express or implied, between the members of a limited liability partnership, and between the partnership and the members of the partnership, determining—

  - (a) the mutual rights and duties of the members, and
  - (b) their rights and duties in relation to the partnership.”