

# DIGITAL ECONOMY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Topic 3: Powers in relation to internet domain names*

##### *Background*

88. The Act gives powers to the Secretary of State to intervene in the operation of domain name registries. Such registries allocate internet domain names to end users. Internet domain names (such as [www.google.co.uk](http://www.google.co.uk)) underpin the addressing system for the internet.
89. The Act confers powers exercisable in circumstances where there has been misuse of domain names, or the use of unfair practices by registries, registrars and end-users of domain names, or where registries have failed adequately to deal with complaints. The powers are only exercisable where those failures have adversely affected or are likely adversely to affect (a) the reputation or availability of electronic communications services or networks in the UK and/or (b) the interests of consumers or members of the public in the UK. The provisions only affect registries which take the form of companies formed and registered under the Companies Act 2006 or limited liability partnerships.
90. The powers are only exercisable in relation to top and second level internet domain name registries (which respectively hold the registers of second and third level internet domains) where the domain is UK-related (see the definitions of "relevant register of internet domain names" and "UK related" in new section 124O(7) and (8)). An example of a top level domain registry is one which registers second level domain names ending in .uk, and an example of a second level domain registry is one which registers third level domain names ending in .co.uk.
91. The powers allow the Secretary of State to appoint a manager of a registry or to apply to court to intervene in relation to a registry's constitution in order to secure that the registry remedies specified serious failures.

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

92. This section amends the Communications Act 2003 ("the 2003 Act") by inserting a new section 124O. The section applies where the Secretary of State wishes to use the new powers set out in sections 20 and 21 and is satisfied that there has been a serious failure of a registry because:
  - The registry itself, its end-users (that is, owners of or applicants for domain names) or registrars (that is, agents of end-users) have been engaging in practices prescribed in regulations made by the Secretary of State which are unfair or which involve the misuse of internet domain names; or
  - The registry's arrangements for dealing with complaints in connection with domain names do not comply with requirements prescribed in regulations made by the Secretary of State.

*These notes refer to the Digital Economy Act 2010  
(c.24) which received Royal Assent on 8 April 2010*

93. Possible examples of unfair practices would be cyber-squatting (that is, registering domain names which are of economic value to other people and then charging those people high prices to buy them or use them for their own purposes); drop-catching (that is, waiting until the expiry date for an existing registered domain name, snatching it and then charging the previous owner to buy it back); or pressure sales tactics.
94. Possible examples of the misuse of internet domain names would be registering intentionally misleading domain names, perhaps using them for phishing (a form of internet fraud); distributing malware or spyware, which are computer viruses; spamming; intentionally misleading the public into believing there is a connection between the domain name owner and other organisations (or that another organisation owns or authorises the use of the domain name).
95. The Secretary of State is required to consult before making regulations prescribing the unfair practices and misuse of domain names or the requirements in relation to arrangements for dealing with complaints.
96. The section provides that such a failure will be serious where it has adversely affected or is likely adversely to affect the reputation or availability of electronic communications networks or services provided in the UK, or the interests of consumers or the public in the UK.
97. Where the section applies, the Secretary of State must notify the registry specifying the failure and a period within which the registry may make representations to the Secretary of State. In practice, the Secretary of State may (if he considers it appropriate in the circumstances) require OFCOM to prepare a report on the allocation, registration and/or misuse of internet domain names by UK-based registries under section 134C (inserted by section 1(1)) before exercising his powers.

***Section 20: Appointment of manager of internet domain registry***

98. This section amends the 2003 Act by inserting new sections 124P and 124Q. If the Secretary of State has served a notice under new section 124O, the period allowed for making representations has expired and the Secretary of State is satisfied that the registry has not taken appropriate steps to remedy the failure or its consequences, the Secretary of State may appoint a manager in respect of the property and affairs of the registry to secure that appropriate steps are taken to remedy the failure.
99. New section 124Q makes provision about the powers and functions of the manager so appointed. In particular, the Secretary of State may provide for the manager to take over any or all specified functions of the directors in order to ensure that the registry remedies the failure, and may also prevent the registry's directors from carrying out those functions (*subsection (2)*). The Secretary of State may also provide for the remuneration of the manager, which may be payable by the registry itself (*subsection (3)*). In order to ensure that this power does not affect the rights of third parties or the insolvency process, section 124P(4) provides that the appointment does not affect the rights of any third party to appoint a receiver or manager, or the rights of any receiver or manager appointed by a third party. For similar reasons, section 124P(6) provides that if certain office holders under insolvency legislation are appointed in respect of the registry, the Secretary of State must discharge the order appointing a manager. The Secretary of State must also keep the order under review and discharge it if appropriate, for example if the registry has remedied the failure (section 124P(5)). The order has a time limit of two years but the Secretary of State can, if necessary, make a further order in the same or similar terms.
100. Subsections 124Q(5) to (7) allow the Secretary of State to seek directions from a court in connection with the manager's functions. This might be done in order to counter obstruction of the manager by a registry or its officers, since disobeying the court's directions would amount to contempt.

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101. Section 124Q(8) applies all the provisions to limited liability partnerships as if the references to a director were to a member of the limited liability partnership.
102. Subsection (2) of section 20 inserts a reference to an order under section 124P into section 192(1)(d) of the 2003 Act. The effect of this is that the registry has a right of appeal on both the facts and the law to the Competition Appeal Tribunal (and thence to the Court of Appeal on a point of law) in respect of a decision to appoint a manager.

***Section 21: Application to court to alter constitution of internet domain registry***

103. This section amends the 2003 Act by inserting a new section 124R. This gives the Secretary of State the power to apply to the court for an order to alter the constitution of a registry and to limit the registry's ability to amend its constitution itself without the leave of the court. The provision only applies where the Secretary of State has served a notice under new section 124O, the period allowed for making representations has expired and the Secretary of State is satisfied that the registry has not taken the appropriate steps to remedy the failure. The court may only make an order if the court considers it is appropriate in order to secure that the registry remedies the failure specified in the section 124O notification.
104. Section 124R(5) provides that, in the case of a company, the constitution means the articles of association, and in the case of a limited liability partnership, it means the limited liability partnership agreement (as defined).
105. The Secretary of State may exercise his power under this section to apply to court to alter the constitution and the power under new section 124P to appoint a manager concurrently (if he considers it appropriate).