



# Deregulation and Contracting Out Act 1994

## 1994 CHAPTER 40

### PART I

#### DEREGULATION

#### CHAPTER I

#### GENERAL

#### *Enforcement procedures and appeals*

### **5 Powers to improve enforcement procedures.**

[<sup>F1</sup>(1) If, with respect to any provision made by an enactment, a Minister of the Crown is of the opinion—

- (a) that the effect of the provision is such as to impose, or authorise or require the imposition of, a restriction, requirement or condition affecting any person in the carrying on of any trade, business or profession or otherwise, and
- (b) that, by exercising any one or more of the powers conferred by Schedule 1 to this Act, it would be possible, without jeopardising any necessary protection, to improve (so far as fairness, transparency and consistency are concerned) the procedures for enforcing the restriction, requirement or condition,

he may, subject to the following provisions of this section, by order exercise the power or powers accordingly.

- (2) No order shall be made under this section in any case where the sole or main effect which the restriction, requirement or condition may be expected to have on each person on whom it is imposed is an effect on him in his personal capacity, and not as a person carrying on a trade, business or profession.

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- (3) Where the relevant enactment—
- (a) contains a power for the Minister to make regulations or orders; and
  - (b) provides for that power to be exercisable so as to give effect, with or without modifications, to proposals submitted by some other person,
- the Minister shall consult with that person before he makes an order under this section.
- (4) An order under this section shall be made by statutory instrument and may do all or any of the following—
- (a) make provision as to the consequences of any failure to comply with a provision made by the order;
  - (b) contain provisions (including provisions modifying enactments relating to the periods within which proceedings must be brought) which are consequential upon, or supplemental or incidental to, the provisions made by the order;
  - (c) contain such transitional provisions and savings as appear to the Minister to be appropriate;
  - (d) make different provision for different cases or different areas;
- and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in any order made under this section shall—
- (a) preclude an enforcement officer from taking immediate enforcement action against any person, or from requiring any person to take immediate remedial action, in any case where it appears to the officer to be necessary to take such action or impose such a requirement; or
  - (b) require such an officer to disclose any information the disclosure of which would be contrary to the public interest.
- (6) In this section and Schedule 1 to this Act—
- “enactment” means an enactment within the meaning of section 1 above, and any subordinate legislation made under such an enactment;
- “enforcement action”—
- (a) in relation to any restriction, requirement or condition, means any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it; and
  - (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;
- “enforcement officer” does not include—
- (a) the Director of Public Prosecutions;
  - (b) the Lord Advocate or a procurator fiscal; or
  - (c) the Director of Public Prosecutions for Northern Ireland,
- but, subject to that, means any person who is authorised, whether by or under the relevant enactment or otherwise, to take enforcement action;
- “licence” includes any authorisation (by whatever name called) to do anything which would otherwise be unlawful;
- “Minister of the Crown” and “Minister” have the same meanings as in section 1 above;

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“ the relevant enactment ” means the enactment containing the provision by which the restriction, requirement or condition is imposed or, as the case may be, is authorised or required to be imposed;

“ remedial action ” means action taken by any person in order to avoid enforcement action being taken against him;

“ subordinate legislation ” has the same meaning as in the Interpretation <sup>M1</sup> Act 1978. ]

#### Textual Amendments

**F1** Ss. 1-5 repealed (S.) (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(3)(7)(7), [Sch. 7 para. 1\(2\)](#) (with [Sch. 7 para. 1\(4\)](#)); S.S.I. 2010/221, art. 3(2)

#### Marginal Citations

**M1** 1978 c. 30.

## 6 Model provisions with respect to appeals. **E+W+N.I.**

- (1) The Secretary of State shall by order prescribe model provisions with respect to appeals against enforcement action with a view to their being incorporated, if thought fit and with or without modifications, in enactments to which subsection (2) below applies.
- (2) This subsection applies to enactments which include provision the effect of which is to impose, or authorise or require the imposition of, a restriction, requirement or condition affecting any person in the carrying on of any trade, business or profession or otherwise.
- (3) The Secretary of State shall perform his duty under this section in the manner which he considers is best calculated to secure—
  - (a) that appeals determined in accordance with the model provisions are determined without unnecessary delay; and
  - (b) that the costs or expenses incurred by the parties to appeals so determined are kept to the minimum.
- (4) Model provisions prescribed by an order under this section may provide for the appointment of persons to hear and determine appeals and confer powers on persons so appointed, including in particular—
  - (a) power to appoint experts and their own counsel or solicitor;
  - (b) power to require respondents to disclose documents and other material;
  - (c) power to summon or, in Scotland, to cite witnesses;
  - (d) power to make interim orders, including orders staying or, in Scotland, suspending enforcement action; and
  - (e) power to award costs or expenses to appellants and, in certain cases, against them.
- (5) Model provisions so prescribed may also—
  - (a) confer a right for interested persons to make representations before enforcement action is taken;
  - (b) require the giving of reasons to such persons for any decision to take such action;

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- (c) require appellants to state their grounds of appeal and respondents to furnish statements by way of answer;
  - (d) enable appellants to amend their grounds of appeal before the hearing;
  - (e) require appeals to be determined on the merits rather than by way of review; and
  - (f) provide for further appeals to courts on points of law.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
- “enactment” does not include anything contained in Northern Ireland legislation but, subject to that, includes an enactment contained in an Act (whenever passed) and an enactment contained in subordinate legislation (whenever made);
- “enforcement action” has the same meaning as in [<sup>F2</sup>section 9 of the Regulatory Reform Act 2001];
- [<sup>F3</sup> “interested person ” means—
- (a) the person against whom enforcement action may be or has been taken;
  - (b) any other person who will or may be required to meet, or to make a significant contribution towards, the cost of observing the restriction or complying with the requirement or condition; or
  - (c) where the enforcement action which may be or has been taken relates specifically to goods or services which are to be or have been supplied by a person other than the one against whom enforcement action may be or has been taken, that person;]

“Northern Ireland legislation” means—

    - (a) Northern Ireland legislation within the meaning of section 24 of the Interpretation <sup>M2</sup>Act 1978; and
    - (b) instruments, within the meaning of the Interpretation <sup>M3</sup>Act (Northern Ireland) 1954, made under such legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.

#### Extent Information

- E1** This version of this provision extends to England and Wales and Northern Ireland only; a separate version has been created for Scotland only

#### Textual Amendments

- F2** Words in the definition of “enforcement action” in s. 6(7) substituted (10.4.2001) by [2001 c. 6, s. 13\(1\)\(a\)](#)
- F3** Definition of “interested person” in s. 6(7) substituted (10.4.2001) by [2001 c. 6, s. 13\(1\)\(b\)](#)

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

- C1** S. 6: power to apply (with modifications) conferred (3.8.1999 for certain purposes only and 1.11.1999 otherwise) by [1999 c. 8, s. 37\(6\)](#); [S.I. 1999/2177, arts. 2\(2\)\(c\), 4\(a\)](#)

#### Marginal Citations

- M2** [1978 c. 30.](#)

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**M3** 1954 c. 33 (N.I.).

## 6 Model provisions with respect to appeals. **S**

- (1) The Secretary of State shall by order prescribe model provisions with respect to appeals against enforcement action with a view to their being incorporated, if thought fit and with or without modifications, in enactments to which subsection (2) below applies.
- (2) This subsection applies to enactments which include provision the effect of which is to impose, or authorise or require the imposition of, a restriction, requirement or condition affecting any person in the carrying on of any trade, business or profession or otherwise.
- (3) The Secretary of State shall perform his duty under this section in the manner which he considers is best calculated to secure—
  - (a) that appeals determined in accordance with the model provisions are determined without unnecessary delay; and
  - (b) that the costs or expenses incurred by the parties to appeals so determined are kept to the minimum.
- (4) Model provisions prescribed by an order under this section may provide for the appointment of persons to hear and determine appeals and confer powers on persons so appointed, including in particular—
  - (a) power to appoint experts and their own counsel or solicitor;
  - (b) power to require respondents to disclose documents and other material;
  - (c) power to summon or, in Scotland, to cite witnesses;
  - (d) power to make interim orders, including orders staying or, in Scotland, suspending enforcement action; and
  - (e) power to award costs or expenses to appellants and, in certain cases, against them.
- (5) Model provisions so prescribed may also—
  - (a) confer a right for interested persons to make representations before enforcement action is taken;
  - (b) require the giving of reasons to such persons for any decision to take such action;
  - (c) require appellants to state their grounds of appeal and respondents to furnish statements by way of answer;
  - (d) enable appellants to amend their grounds of appeal before the hearing;
  - (e) require appeals to be determined on the merits rather than by way of review; and
  - (f) provide for further appeals to courts on points of law.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
 

“enactment” does not include anything contained in Northern Ireland legislation but, subject to that, includes an enactment contained in an Act (whenever passed) <sup>F4</sup>... an enactment contained in subordinate legislation (whenever made) [<sup>F5</sup>, an enactment contained in an Act of the Scottish

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Parliament (whenever passed) and an enactment contained in an instrument made under an Act of the Scottish Parliament (whenever made)];

[<sup>F6</sup> “ enforcement action ” means—

- (a) in relation to any restriction, requirement or condition, any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it; and
- (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;]

[<sup>F7</sup> “ interested person ” means—

- (a) the person against whom enforcement action may be or has been taken;
- (b) any other person who will or may be required to meet, or to make a significant contribution towards, the cost of observing the restriction or complying with the requirement or condition; or
- (c) where the enforcement action which may be or has been taken relates specifically to goods or services which are to be or have been supplied by a person other than the one against whom enforcement action may be or has been taken, that person;]

“Northern Ireland legislation” means—

- (a) Northern Ireland legislation within the meaning of section 24 of the Interpretation <sup>M4</sup>Act 1978; and
- (b) instruments, within the meaning of the Interpretation <sup>M5</sup>Act (Northern Ireland) 1954, made under such legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.

#### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales and Northern Ireland only

#### Textual Amendments

- F4** Word in s. 6(7) omitted (1.8.2010) by virtue of [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(3)(7)(7), [Sch. 7 para. 1\(3\)\(a\)\(i\)](#); S.S.I. 2010/221, art. 3(2), Sch.
- F5** Words in s. 6(7) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(3)(7)(7), [Sch. 7 para. 1\(3\)\(a\)\(ii\)](#); S.S.I. 2010/221, art. 3(2), Sch.
- F6** Words in s. 6(7) substituted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(3)(7)(7), [Sch. 7 para. 1\(3\)\(b\)](#); S.S.I. 2010/221, art. 3(2), Sch.
- F7** Words in s. 6(7) substituted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(3)(7)(7), [Sch. 7 para. 1\(3\)\(c\)](#); S.S.I. 2010/221, art. 3(2), Sch.

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

- C2** S. 6: power to apply (with modifications) conferred (3.8.1999 for certain purposes only and 1.11.1999 otherwise) by 1999 c. 8, [s. 37\(6\)](#); S.I. 1999/2177, [arts. 2\(2\)\(c\)](#), 4(a)

#### Marginal Citations

- M4** 1978 c. 30.
- M5** 1954 c. 33 (N.I.).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 71(3)(ha) inserted by [2023 c. 55 Sch. 12 para. 4](#)