



# Deregulation and Contracting Out Act 1994

## 1994 CHAPTER 40

### PART I

#### DEREGULATION

#### CHAPTER I

#### GENERAL

#### *Removal or reduction of burdens*

- 1 Power to remove or reduce certain statutory burdens on businesses, individuals etc**
- (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 burden affecting any person in the carrying on of any trade, business or profession or otherwise, and
  - (b) that, by amending or repealing the enactment concerned and, where appropriate, by making such other provision as is referred to in subsection (4) (a) below, it would be possible, without removing any necessary protection, to remove or reduce the burden or, as the case may be, the authorisation or requirement by virtue of which the burden may be imposed,
- he may, subject to the following provisions of this section and sections 2 to 4 below, by order amend or repeal that enactment.
- (2) The reference in subsection (1)(b) above to reducing the authorisation or requirement by virtue of which a burden may be imposed includes a reference to shortening any period of time within which the burden may be so imposed.

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- (3) In this section and sections 2 to 4 below, in relation to an order under this section,—
- (a) “the existing provision” means the provision by which the burden concerned is imposed or, as the case may be, is authorised or required to be imposed; and
  - (b) “the relevant enactment” means the enactment containing the existing provision.
- (4) An order under this section shall be made by statutory instrument and may do all or any of the following—
- (a) make provision (whether by amending any enactment or otherwise) creating a burden which relates to the subject matter of, but is less onerous than that imposed by, the existing provision;
  - (b) make such modifications of enactments as, in the opinion of the Minister concerned, are consequential upon, or incidental to, the amendment or repeal of the relevant enactment;
  - (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;
- but no order shall be made under this section unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) In this section and sections 2 to 4 below—
- (a) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 and “Minister” shall be construed accordingly;
  - (b) “burden” includes a restriction, requirement or condition (including one requiring the payment of fees), together with—
    - (i) any sanction (whether criminal or otherwise) for failure to observe the restriction or to comply with the requirement or condition; and
    - (ii) any procedural provisions (including provisions for appeal) relevant to that sanction; and
  - (c) “enactment”, subject to subsection (6) below, means an enactment contained in this Act or in any other Act passed before or in the same Session as this Act, or any provision of an order under this section.
- (6) In paragraph (c) of subsection (5) above—
- (a) “Act” does not include anything contained in Northern Ireland legislation, within the meaning of section 24 of the Interpretation Act 1978; and
  - (b) the reference to an enactment is a reference to an enactment as for the time being amended, extended or applied by or under any Act mentioned in that paragraph.
- (7) Where a restriction, requirement or condition is subject to a criminal sanction (as mentioned in subsection (5)(b)(i) above), nothing in this section shall authorise the making of an amendment which would have the effect of leaving the restriction, requirement or condition in place but producing a different criminal sanction or altering any procedural provisions relevant to the criminal sanction.

## **2 Limitations on the power under section 1**

- (1) If an order under section 1 above creates a new criminal offence, then, subject to subsections (2) and (3) below, that offence shall not be punishable—
- (a) on indictment with imprisonment for a term of more than two years; or

- (b) on summary conviction with imprisonment for a term exceeding six months or a fine exceeding level 5 on the standard scale or both.
- (2) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of—
  - (a) Part V of the Criminal Justice Act 1988, or
  - (b) section 457A(4) of the Criminal Procedure (Scotland) Act 1975,the reference in subsection (1)(b) above to level 5 on the standard scale shall be construed as a reference to the statutory maximum.
- (3) If an order under section 1 above abolishes an offence contained in the relevant enactment and the maximum penalties for that offence are greater than those specified in subsection (1) above, the order may create a new criminal offence having maximum penalties not exceeding those applicable to the offence which is abolished.
- (4) An order under section 1 above shall not contain any provision—
  - (a) providing for any forcible entry, search or seizure, or
  - (b) compelling the giving of evidence,unless, and then only to the extent that, a provision to that effect is contained in the relevant enactment and is abolished by the order.

### **3 Preliminary consultation**

- (1) Before a Minister makes an order under section 1 above, he shall—
  - (a) consult such organisations as appear to him to be representative of interests substantially affected by his proposals; and
  - (b) consult such other persons as he considers appropriate.
- (2) If it appears to the Minister, as a result of the consultation required by subsection (1) above, that it is appropriate to vary the whole or any part of his proposals, he shall undertake such further consultation with respect to the variations as appears to him to be appropriate.
- (3) If, after the conclusion of—
  - (a) the consultation required by subsection (1) above, and
  - (b) any further consultation undertaken as mentioned in subsection (2) above,the Minister considers it appropriate to proceed with the making of an order under section 1 above, he shall lay before Parliament a document containing his proposals in the form of a draft of the order, together with details of the matters specified in subsection (4) below.
- (4) The matters referred to in subsection (3) above are—
  - (a) the burden, authorisation or requirement which it is proposed to remove or reduce;
  - (b) whether the existing provision affords any necessary protection and, if so, how that protection is to be continued if the burden, authorisation or requirement is removed or reduced;
  - (c) whether any savings in cost are estimated to result from the proposals and, if so, either the estimated amount or the reasons why savings should be expected;
  - (d) any other benefits which are expected to flow from the removal or reduction of the burden, authorisation or requirement;

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- (e) any consultation undertaken as required by subsection (1) or subsection (2) above;
  - (f) any representations received as a result of that consultation; and
  - (g) the changes (if any) which the Minister has made to his original proposals in the light of those representations.
- (5) In giving details of the representations referred to in subsection (4)(f) above, the Minister shall not disclose any information relating to a particular person or business except—
- (a) with the consent of that person or of the person carrying on that business; or
  - (b) in such a manner as not to identify that person or business.
- (6) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of subsection (1) above, those requirements shall to that extent be taken to have been satisfied.

#### **4 Parliamentary consideration of proposals**

- (1) Where a document has been laid before Parliament under section 3(3) above, no draft of an order under section 1 above to give effect (with or without variations) to proposals in that document shall be laid before Parliament until after the expiry of the period for Parliamentary consideration, as defined in subsection (2) below.
- (2) In this section “the period for Parliamentary consideration”, in relation to a document, means the period of sixty days beginning on the day on which it was laid before Parliament.
- (3) In reckoning the period of sixty days referred to in subsection (2) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (4) In preparing a draft of an order under section 1 above to give effect, with or without variations, to proposals in a document laid before Parliament under section 3(3) above, the Minister concerned shall have regard to any representations made during the period for Parliamentary consideration and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document.
- (5) Together with a draft of an order laid before Parliament under section 1(4) above, the Minister concerned shall lay a statement giving details of—
- (a) any representations, resolution or report falling within subsection (4) above; and
  - (b) the changes (if any) which, in the light of any such representations, resolution or report, the Minister has made to his proposals as contained in the document previously laid before Parliament under section 3(3) above.
- (6) Subsection (5) of section 3 above shall apply in relation to the representations referred to in subsection (5)(a) above as it applies in relation to the representations referred to in subsection (4)(f) of that section.

*Enforcement procedures and appeals***5 Powers to improve enforcement procedures**

- (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.
- (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”—

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(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;

“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 Act 1978.

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

(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) and an enactment contained in subordinate legislation (whenever made);
  - “enforcement action” has the same meaning as in section 5 above;
  - “interested person” means—
    - (a) the person against whom enforcement action may be or has been taken; and
    - (b) any other person in respect of whom either of the conditions mentioned in paragraph 5(1) of Schedule 1 to this Act is fulfilled;
  - “Northern Ireland legislation” means—
    - (a) Northern Ireland legislation within the meaning of section 24 of the Interpretation Act 1978; and
    - (b) instruments, within the meaning of the Interpretation Act (Northern Ireland) 1954, made under such legislation;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978.