



# Deregulation and Contracting Out Act 1994

## 1994 CHAPTER 40

### PART II

#### CONTRACTING OUT

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

- C1** Pt. II (ss. 69-79) extended (E.W.) (19.9.1995) by [1995 c. 25, ss. 65\(7\), 125\(2\), Sch. 8 para. 13](#) (with [ss. 7\(6\), 115, 117, Sch. 8 para. 7](#))
- Pt. II (ss. 69-79) extended (S.) (8.9.2000) by 2000 asp. 10, s. 9, Sch. 2 para. 14 (with s. 32); [S.S.I. 2000/312, art. 2](#)
- Pt. II (ss. 69-79) modified (1.10.2001 (W.) 25.3.2002 (E.) for specified purposes, otherwise *prosp.*) by [2000 c. 14, ss. 67\(7\), 122; S.I. 2001/2538, art. 2\(2\)\(4\)\(a\); S.I. 2002/1245, art. 2](#)

#### *Contracting out of functions*

### **69 Functions of Ministers and office-holders.**

- (1) This section applies to any function of a Minister or office-holder—
  - (a) which is conferred by or under any enactment; and
  - (b) which, by virtue of any enactment or rule of law, may be exercised by an officer of his; and
  - (c) which is not excluded by section 71 below.
- (2) If a Minister by order so provides, a function to which this section applies may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the office-holder or Minister whose function it is.
- (3) A Minister shall not make an order under this section in relation to an office-holder without first consulting him.

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- (4) An order under this section may provide that a function to which this section applies may be exercised, and an authorisation given by virtue of such an order may (subject to the provisions of the order) authorise the exercise of such a function—
- (a) either wholly or to such extent as may be specified in the order or authorisation;
  - (b) either generally or in such cases or areas as may be so specified; and
  - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (5) An authorisation given by virtue of an order under this section—
- (a) shall be for such period, not exceeding 10 years, as is specified in the authorisation;
  - (b) may be revoked at any time by the Minister or office-holder by whom the authorisation is given; and
  - (c) shall not prevent that Minister or office-holder or any other person from exercising the function to which the authorisation relates.

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

- C2** S. 69 extended (1.10.2000) by 2000 c. 21, s. 136(3); S.I. 2000/2559, art. 2, Sch. Pt. I  
S. 69 applied (with modifications) (27.7.2000) by S.I. 2000/2040, art. 2, Sch. Pt. I para. 16

**70 Functions of local authorities.**

- (1) This section applies to any function of a local authority—
- (a) which is conferred by or under any enactment; and
  - (b) which, by virtue of section 101 of <sup>M1</sup> the Local Government Act 1972 or section 56 of <sup>M2</sup> the Local Government (Scotland) Act 1973 (arrangements for discharge of functions by local authorities), may be exercised by an officer of the authority; and
  - (c) which is not excluded by section 71 below.
- (2) If a Minister by order so provides, a function to which this section applies may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the local authority whose function it is.
- (3) A Minister shall not make an order under this section in relation to a local authority without first consulting—
- (a) in the case of an authority in England or Wales, such representatives of local government;
  - (b) in the case of an authority in Scotland, such associations of local authorities, as he considers appropriate.
- (4) Subsections (4) and (5) of section 69 above shall apply for the purposes of this section as they apply for the purposes of that section; and in subsection (5) of that section as so applied any reference to the Minister or office-holder by whom the authorisation is given shall be construed as a reference to the local authority by which the authorisation is given.
- (5) Where at any time—

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- (a) an order is in force under this section in relation to any function of a local authority (“authority A”); and
- (b) arrangements are in force under section 101 of <sup>M3</sup> the Local Government Act 1972 or section 56 of <sup>M4</sup> the Local Government (Scotland) Act 1973 for the exercise of that function by another local authority (“authority B”),

it shall be an implied term of those arrangements that, except with the consent of authority A, authority B shall not give any authorisation by virtue of the order in relation to that function.

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

- C3** S. 70 modified (16.7.1998) by 1998 c. 30, s. 23(3)(b) (with s. 42(8))  
 S. 70 extended (27.9.1999 with effect in relation to England and Wales and *prosp.* otherwise) by 1999 c. 27, ss. 18, 27(1)(2)(c); S.I. 1999/2169, art. 3(1)

#### Marginal Citations

- M1** 1972 c.70.  
**M2** 1973 c.65.  
**M3** 1972 c.70.  
**M4** 1973 c.65.

## 71 Functions excluded from sections 69 and 70.

- (1) Subject to subsections (2) and (3) below, a function is excluded from sections 69 and 70 above if—
- (a) its exercise would constitute the exercise of jurisdiction of any court or of any tribunal which exercises the judicial power of the State; or
  - (b) its exercise, or a failure to exercise it, would necessarily interfere with or otherwise affect the liberty of any individual; or
  - (c) it is a power or right of entry, search or seizure into or of any property; or
  - (d) it is a power or duty to make subordinate legislation.
- (2) Subsection (1)(b) and (c) above shall not exclude any function of the official receiver attached to any court.
- (3) Subsection (1)(c) above shall not exclude any function of a local authority under, or under regulations made under, any of the following enactments, namely—
- (a) section 247 of <sup>M5</sup> the Local Government (Scotland) Act 1947 (enforcement of non-domestic rates);
  - (b) Part VI of <sup>M6</sup> the General Rate Act 1967 (distress for general rates);
  - (c) paragraphs 7 and 7A of Schedule 2 and paragraph 11 of Schedule 5 to <sup>M7</sup> the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (enforcement of community charges and community water charges);
  - (d) paragraphs 5 to 7 of Schedule 4 to <sup>M8</sup> the Local Government Finance Act 1988 (enforcement of community charge);
  - (e) paragraph 3(2)(b) of Schedule 9 to that Act (enforcement of non-domestic rates);
  - (f) paragraphs 5 to 7 of Schedule 4 to <sup>M9</sup> the Local Government Finance Act 1992 (enforcement of council tax);

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- (g) paragraphs 2 and 6 of Schedule 8 and paragraph 11 of Schedule 11 to that Act (enforcement of council tax and council water charge); and
- (h) paragraph 2 of Schedule 10 to the Local <sup>M10</sup>Government etc. (Scotland) Act 1994 (enforcement of water and sewerage charges).

#### Marginal Citations

**M5** 1947 c.43.

**M6** 1967 c.9.

**M7** 1987 c.47.

**M8** 1988 c.41.

**M9** 1992 c.14.

**M10** 1994 c. 39.

## 72 Effect of contracting out.

- (1) This section applies where by virtue of an order made under section 69 or 70 above a person is authorised to exercise any function of a Minister, office-holder or local authority.
- (2) Subject to subsection (3) below, anything done or omitted to be done by or in relation to the authorised person (or an employee of his) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done—
  - (a) in the case of a function of a Minister or office-holder, by or in relation to the Minister or office-holder in his capacity as such;
  - (b) in the case of a function of a local authority, by or in relation to that authority.
- (3) Subsection (2) above shall not apply—
  - (a) for the purposes of so much of any contract made between the authorised person and the Minister, office-holder or local authority as relates to the exercise of the function, or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of his).

## 73 Termination of contracting out.

- (1) This section applies where—
  - (a) by virtue of an order made under section 69 or 70 above a person is authorised to exercise any function of a Minister, office-holder or local authority; and
  - (b) the order or authorisation is revoked at a time when a relevant contract is subsisting.
- (2) The authorised person shall be entitled to treat the relevant contract as repudiated by the Minister, office-holder or local authority (and not as frustrated by reason of the revocation).
- (3) In this section “relevant contract” means so much of any contract made between the authorised person and the Minister, office-holder or local authority as relates to the exercise of the function.

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### *Provisions for facilitating contracting out*

#### **74 Powers of certain office-holders.**

- (1) In so far as an office-holder to whom this section applies does not already have power to do so, he may authorise an officer of his to exercise any function of his which is conferred by or under any enactment.
- (2) Subject to subsection (3) below, anything done or omitted to be done by an officer so authorised in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by the office-holder in his capacity as such.
- (3) Subsection (2) above shall not apply for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.
- (4) The office-holders to whom this section applies are—
  - (a) the registrar of companies for England and Wales and the registrar of companies for Scotland;
  - (b) the official receiver attached to any court;
  - (c) the Comptroller-General of Patents, Designs and Trade Marks;
  - (d) the Public Trustee;
  - (e) the traffic commissioner for any traffic area;
  - (f) the registrar of approved driving instructors;
  - (g) the Registrar General of Births, Deaths and Marriages for Scotland;
  - (h) the Keeper of the Registers of Scotland; and
  - (i) the Keeper of the Records of Scotland.

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

**C4** S. 74(4)(a) applied (3.12.1998) by 1998 c. 48, ss. 23, 25(3), **Sch. 3 para. 4**

#### **75 Restrictions on disclosure of information.**

Schedule 15 to this Act (which contains provisions modifying certain restrictions on the disclosure of information where functions of Ministers, office-holders or local authorities are contracted out) shall have effect.

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#### **76 Amendments of enactments etc.**

Schedule 16 to this Act (which contains amendments and other provisions for facilitating or otherwise in connection with the contracting out of particular functions, whether in pursuance of an order made under section 69 or 70 above or otherwise) shall have effect.

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## *Supplemental*

### **77 Provisions with respect to orders.**

- (1) An order under section 69 or 70 above—
  - (a) shall be made by statutory instrument;
  - (b) may contain provisions (including provisions modifying enactments) which are consequential upon, or supplemental or incidental to, the provisions made by the order which fall within subsection (2) of that section; and
  - (c) may contain such transitional provisions and savings as appear to the Minister by whom the order is made to be appropriate.
- (2) No order shall be made under section 69 or 70 above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

### **78 Extent of Part II.**

- (1) The following provisions of this Part extend to Northern Ireland, namely—
  - (a) sections 69 and 74 above;
  - (b) the other provisions of this Part in so far as they relate to orders under section 69 or to functions of Ministers or office-holders; and
  - (c) paragraphs 4, 24 and 25 of Schedule 16.
- (2) In so far as they relate to functions under enactments relating to patents, registered designs or trade marks, the provisions of this Part also extend to the Isle of Man, subject to such exceptions and modifications as Her Majesty may specify by Order in Council.

### **79 Interpretation of Part II.**

- (1) In this Part—
 

“employee”, in relation to a body corporate, includes any director or other officer of that body;

“enactment” does not include an enactment 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);

“function”, in relation to a local authority, includes any power to do any thing which is calculated to facilitate, or is conducive or incidental to, the exercise of a function;

“joint board”—

  - (a) in relation to England and Wales, means a joint or special planning board constituted for a National Park by order under paragraph 1, 3 or 3A of Schedule 17 to <sup>M11</sup> the Local Government Act 1972, or a joint planning board within the meaning of section 2 of <sup>M12</sup> the Town and Country Planning Act 1990;
  - (b) in relation to Scotland, has the same meaning as in the Local <sup>M13</sup>Government (Scotland) Act 1973;

“joint committee”—

  - (a) in relation to England and Wales, means a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;

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(b) in relation to Scotland, has the same meaning as in the Local Government (Scotland) Act 1973;

“local authority”—

(a) in relation to England, means a county council, district council or London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple, the Council of the Isles of Scilly or a parish council;

(b) in relation to Wales, means a county council, county borough council or community council;

(c) in relation to Scotland, has the same meaning as in the Local Government (Scotland) Act 1973;

“Minister” has the same meaning as Minister of the Crown has in the Ministers<sup>M14</sup> of the Crown Act 1975;

“Northern Ireland legislation” means—

(a) Northern Ireland legislation within the meaning of section 24 of<sup>M15</sup> the Interpretation Act 1978; and

(b) instruments, within the meaning of<sup>M16</sup> the Interpretation Act (Northern Ireland) 1954, made under such legislation;

“office-holder” does not include a Minister, an officer of either House of Parliament, the Parliamentary Commissioner for Administration or the Health Service Commissioner for England, for Wales or for Scotland but, subject to that, means—

(a) the holder of an office created or continued in existence by a public general Act of Parliament;

(b) the holder of an office the remuneration in respect of which is paid out of money provided by Parliament;

(c) the registrar of companies for England and Wales and the registrar of companies for Scotland; and

(d) the registrar of approved driving instructors;

“officer”—

(a) in relation to a Minister, means any person in the civil service of the Crown who is serving in his department;

(b) in relation to an office-holder, means any member of his staff, or any person in the civil service of the Crown who has been assigned or appointed to assist him in the exercise of his functions;

“the registrar of approved driving instructors” means the officer of the Secretary of State by whom the register of approved driving instructors established in pursuance of section 23 of<sup>M17</sup> the Road Traffic Act 1962 is compiled and maintained;

“subordinate legislation” has the same meaning as in the Interpretation<sup>M18</sup> Act 1978.

(2) In relation to any time before 1st April 1996, subsection (1) above shall have effect as if, in paragraph (b) of the definition of “local authority”, for the words “county borough” there were substituted the word “district”.

(3) Subject to subsection (4) below, this Part shall have effect as if—

(a) any reference to a Minister included references to the Forestry Commissioners and the Intervention Board for Agricultural Produce; and

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- (b) any reference to a local authority included references to a joint board and a joint committee.
- (4) Nothing in subsection (3) above shall be construed as enabling those Commissioners or that Board to make an order under section 69 or 70 above; and any order under section 69 above which relates to a function of that Board shall be made by the Ministers (within the meaning of Part I of <sup>M19</sup> the Agriculture Act 1957).
- (5) Subject to subsection (6) below, any function of an examiner or other officer of the Patent Office which is conferred by or under any enactment shall be treated for all purposes of this Part as if it were a function of the Comptroller-General of Patents, Designs and Trade Marks.
- (6) In any case where by virtue of an order made under section 69 above a person is authorised by that Comptroller to exercise any such function as is mentioned in subsection (5) above, section 72(2) above shall have effect as if for paragraphs (a) and (b) there were substituted the words “by or in relation to an examiner or other officer of the Patent Office in his capacity as such”.

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**Marginal Citations**

- M11** 1972 c.70.  
**M12** 1990 c.8.  
**M13** 1973 c.65.  
**M14** 1975 c. 26.  
**M15** 1978 c.30.  
**M16** 1954 c.33 (N.I.).  
**M17** 1962 c.59.  
**M18** 1978 c.30.  
**M19** 1957 c.57.



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