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Deregulation and Contracting Out Act 1994

1994 CHAPTER 40

PART I

DEREGULATION

CHAPTER II

MISCELLANEOUS DEREGULATORY PROVISIONS

7 Undertakings as alternative to monopoly reference by Director General of Fair Trading.

(1) In the Fair Trading Act ^{M1}1973, after section 56 there shall be inserted—

“ Undertakings as alternative to monopoly reference by Director

56A Proposals by Director.

- (1) The Director may propose that the Secretary of State accept undertakings in lieu of the Director making a monopoly reference if—
- (a) he considers that a monopoly situation exists and that there are facts relating to the monopoly situation which may now or in future operate against the public interest,
 - (b) he intends, apart from the question of undertakings being accepted in lieu, to make a monopoly reference with respect to the existence of the monopoly situation and that the reference should be a monopoly reference not limited to the facts, and

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- (c) he considers that undertakings offered to be given by particular persons would be sufficient to deal with such of the relevant adverse effects of the monopoly situation as he thinks need to be dealt with.
- (2) A proposal under this section shall include—
- (a) a statement of the terms of the proposed undertakings and the persons by whom they are proposed to be given,
 - (b) a statement of the facts relating to the monopoly situation which the Director considers may now or in future operate against the public interest, and
 - (c) a statement of the effects identified by the Director as the relevant adverse effects of the monopoly situation.
- (3) For the purposes of the law relating to defamation, absolute privilege shall attach to anything included in a proposal under this section pursuant to subsection (2)(b) or (c) of this section.
- (4) In this section, references to the relevant adverse effects of a monopoly situation are to the particular effects, adverse to the public interest, which the facts relating to the monopoly situation may now or in future have.

56B Proposals under section 56A: preparatory steps.

- (1) The Director may only make a proposal under section 56A of this Act if—
- (a) the first or second condition is met, and
 - (b) the third condition is met.
- (2) The first condition is that the Director has published in an appropriate manner a notice containing—
- (a) each of the matters mentioned in subsection (5) of this section, and
 - (b) the invitation mentioned in subsection (6) of this section.
- (3) The second condition is that the Director has published in an appropriate manner—
- (a) a notice containing the matters mentioned in paragraphs (a) and (b) of subsection (5) of this section, and
 - (b) a notice containing—
 - (i) the matters mentioned in paragraphs (c), (d), (e) and (f) of that subsection, and
 - (ii) the invitation mentioned in subsection (6) of this section.
- (4) The third condition is that the Director has considered any representations made to him in accordance with the notice under this section which contains the invitation mentioned in subsection (6) of this section.
- (5) The matters referred to above are—
- (a) the identity of the person or persons in whose favour the Director considers the monopoly situation exists,
 - (b) the terms of the proposed monopoly reference,
 - (c) the facts relating to the monopoly situation which the Director considers may now or in future operate against the public interest,

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- (d) the effects identified by the Director as the particular effects, adverse to the public interest, which the facts relating to the monopoly situation may now or in future have,
 - (e) the terms of the undertakings which the Director is, at the time of the notice, considering proposing the Secretary of State accept in lieu of the Director making the proposed monopoly reference (“the potential undertakings”), and
 - (f) the identity of the persons by whom the potential undertakings would be given.
- (6) The invitation referred to above is an invitation to make representations to the Director, within such time as he may specify, about the potential undertakings being the subject of a proposal under section 56A of this Act.
- (7) For the purposes of the law relating to defamation, absolute privilege shall attach to anything contained in a notice published under this section.
- (8) In this section, references to an appropriate manner, in relation to the publication of a notice by the Director, are to such manner as he considers most suitable for the purpose of bringing the notice to the attention of persons who, in his opinion, are likely to be interested in it.

56C Proposals under section 56A: exclusion of sensitive information.

- (1) The Director shall—
- (a) in formulating the statement required by section 56A(2)(b) or (c) of this Act, and
 - (b) in publishing a notice under section 56B of this Act containing the matters mentioned in subsection (5)(c) and (d) of that section,
- have regard to the need for excluding, so far as practicable, any matter to which subsection (2) or (3) of this section applies.
- (2) This subsection applies to any matter which relates to the private affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual.
- (3) This subsection applies to any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body, unless in his opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the statement or notice, as the case may be.

56D Acceptance by Secretary of State of proposals under section 56A.

- (1) Where the Secretary of State accepts a proposal under section 56A of this Act, then, within the period of twelve months from the date of acceptance of the undertakings to which the proposal relates, no monopoly reference may be made in the same, or substantially the same, terms as those published by the Director under section 56B of this Act preparatory to making the proposal.
- (2) Subsection (1) of this section shall not prevent a reference being made if the Director—

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- (a) considers that any of the undertakings has been breached, or needs to be varied or superseded, and
 - (b) has given notice of that fact to the person responsible for giving the undertaking.
- (3) The Secretary of State shall send to the Director a copy of every undertaking accepted pursuant to a proposal under section 56A of this Act.
- (4) For the purposes of subsection (1) of this section, the Secretary of State shall be treated as accepting a proposal under section 56A of this Act if he accepts the undertakings to which the proposal relates, either in the form in which they were proposed or with such modifications as he thinks fit; and references in this Act to an undertaking accepted pursuant to a proposal under that section shall be construed accordingly.

56E Review of undertakings.

- (1) The Director shall keep the carrying out of an undertaking to which this section applies under review, and from time to time consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either—
- (a) one or more of the parties to it can be released from it, or
 - (b) it needs to be varied or to be superseded by a new undertaking.
- (2) If it appears to the Director—
- (a) that any one or more of the parties to an undertaking to which this section applies can be released from it,
 - (b) that such an undertaking needs to be varied or to be superseded by a new undertaking, or
 - (c) that there has been any failure to carry out such an undertaking,
- he shall give to the Secretary of State such advice as he may think proper in the circumstances.
- (3) Where the Director advises the Secretary of State under subsection (2) of this section that an undertaking needs to be varied or to be superseded by a new undertaking, he shall propose the terms of variation or, as the case may be, the new undertaking.
- (4) The Director shall, if the Secretary of State so requests, give him advice with respect to the release, variation or superseding of an undertaking to which this section applies.
- (5) In this section, references to an undertaking to which this section applies are to an undertaking accepted—
- (a) pursuant to a proposal under section 56A of this Act, or
 - (b) under section 56F of this Act.

56F Release, variation and replacement of undertakings.

- (1) The Secretary of State may only—
- (a) accept a new undertaking in place of an undertaking to which this section applies,

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- (b) release a person from such an undertaking, or
 - (c) agree to the variation of such an undertaking,
- after considering the advice of the Director on the subject.
- (2) The Secretary of State shall send to the Director—
- (a) a copy of every undertaking accepted under this section,
 - (b) particulars of every variation of an undertaking agreed under this section, and
 - (c) particulars of every release of a person from an undertaking under this section.
- (3) In this section, references to an undertaking to which this section applies are to an undertaking accepted—
- (a) pursuant to a proposal under section 56A of this Act, or
 - (b) under this section.

56G Publication of undertakings etc.

- (1) The Secretary of State shall arrange for the publication in such manner as he considers appropriate of—
- (a) every undertaking accepted—
 - (i) pursuant to a proposal under section 56A of this Act, or
 - (ii) under section 56F of this Act, and
 - (b) every variation or release under that section.
- (2) Where the Secretary of State accepts undertakings pursuant to a proposal under section 56A of this Act, he shall arrange for the statements included in the proposal under subsection (2)(b) and (c) of that section to be published in such manner as he considers appropriate.
- (3) If it appears to the Secretary of State that the publication of any matter contained in a statement which falls to be published under subsection (2) of this section would be against the public interest, he shall exclude that matter from the statement as published under that subsection.
- (4) Without prejudice to subsection (3) of this section, if the Secretary of State considers that it would not be in the public interest to disclose—
- (a) any matter contained in a statement which falls to be published under subsection (2) of this section relating to the private affairs of an individual whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter, or
 - (b) any matter contained in such a statement relating specifically to the affairs of a particular person whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter,
- the Secretary of State shall exclude that matter from the statement as published under subsection (2) of this section.”
- (2) Schedule 2 to this Act (sectoral regulators) shall have effect.

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Marginal Citations

M1 1973 c. 41.

8 Newspaper mergers: meaning of “newspaper proprietor” etc.

- (1) Section 57 of the Fair Trading Act ^{M2}1973 shall be amended as follows.
- (2) In subsection (1) (which defines “newspaper proprietor” and explains references to the newspapers of a newspaper proprietor) for the words from the beginning of paragraph (b) to the end of the subsection there shall be substituted—
- “(b) “newspaper proprietor” includes (in addition to an actual proprietor of a newspaper) any member of a group of persons of which another member is an actual proprietor of a newspaper.
- (1A) In this Part of this Act, any reference to the newspapers of a newspaper proprietor (“NP”) is to—
- (a) all newspapers of which NP is an actual proprietor, and
- (b) all newspapers of which a member of a group of persons of which NP is a member is an actual proprietor.”
- (3) In subsection (2) (definition of “transfer of a newspaper or of newspaper assets”) in paragraph (a), for “, a newspaper proprietor in relation to a newspaper;” there shall be substituted “—
- (i) an actual proprietor of a newspaper, or
- (ii) a person with a primary or secondary controlling interest in an actual proprietor of a newspaper;”.
- (4) In subsection (4) (definition of “controlling interest”) before “controlling” there shall be inserted “ primary ”.
- (5) After that subsection there shall be inserted—
- “(5) For the purposes of this section a person (“A”) has a secondary controlling interest in a body corporate (“B”) if, without having a primary controlling interest in B—
- (a) A has a primary controlling interest in a body corporate which has a primary controlling interest in B, or
- (b) A is connected to B by a chain of any number of other bodies corporate, in the first of which A has a primary controlling interest, in the second of which the first has a primary controlling interest, and so on, the last such body corporate having a primary controlling interest in B.
- (6) For the purposes of this section a group of persons consists of any number of persons of whom the first is—
- (a) a person other than a body corporate, or
- (b) a body corporate in which no other person has a primary controlling interest,
- and the others are the bodies corporate in which the first has a primary or secondary controlling interest.

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- (7) In determining for the purposes of subsection (6)(b) of this section whether a body corporate (“X”) is one in which another person has a primary controlling interest, there shall be disregarded any body corporate in which X has a primary or secondary controlling interest.”
- (6) Subsections (1) to (5) above shall be deemed always to have had effect.
- (7) Section 8 of ^{M3} the Monopolies and Mergers Act 1965 shall be deemed never to have applied to a transaction to which it would not have applied had there been in force at the time of the transaction amendments of that Act corresponding to the amendments of ^{M4} the Fair Trading Act 1973 made by this section.

Marginal Citations

- M2** 1973 c. 41.
M3 1965 c. 50.
M4 1973 c. 41.

9 Undertakings as alternative to merger reference: non-divestment matters.

- (1) In section 75G of the Fair Trading Act 1973 (acceptance of undertakings) subsections (2) and (3) (under which undertakings are limited to divestment matters) shall cease to have effect.
- (2) In section 75K of that Act (order of Secretary of State where undertaking not fulfilled) in subsection (2) (powers which he may exercise by order) for “powers specified in paragraphs 9A and 12 to 12C and Part II of Schedule 8 to this Act” there shall be substituted “relevant powers”.
- (3) In that section, there shall be inserted at the end—
- “(6) In subsection (2) of this section, “the relevant powers” means—
- (a) in relation to an undertaking to which subsection (7) of this section applies (“a divestment undertaking”), the powers specified in paragraphs 9A and 12 to 12C and Part II of Schedule 8 to this Act, and
 - (b) in relation to an undertaking which is not a divestment undertaking, the powers specified in that Schedule.
- (7) This subsection applies to an undertaking which provides for—
- (a) the division of a business by the sale of any part of the undertaking or assets or otherwise (for which purpose all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business),
 - (b) the division of a group of interconnected bodies corporate, or
 - (c) the separation, by the sale of any part of the undertaking or assets concerned or other means, of enterprises which are under common control otherwise than by reason of their being enterprises of interconnected bodies corporate.
- (8) Schedule 8 to this Act shall, to such extent as is necessary for the purpose of giving effect to subsection (2) of this section, have effect as if, in paragraph 1 of that Schedule, after “section 73” there were inserted “or section 75K”.

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10 Restrictive trade practices: non-notifiable agreements.

(1) In the Restrictive Trade Practices Act^{M5} 1976, after section 27 there shall be inserted—

“ Non-notifiable agreements

27A Non-notifiable agreements.

- (1) For the purposes of this Act, a non-notifiable agreement is one which—
- (a) is subject to registration under this Act,
 - (b) is, and has always been, of a description specified for the purposes of this section by order made by the Secretary of State,
 - (c) is not, and has never been, a price-fixing agreement, and
 - (d) is not an agreement in respect of which the Director has entered or filed particulars under section 1(2)(b) above.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1) above, an order under that paragraph may frame a description by reference—
- (a) to the size of the businesses of the parties to an agreement, whether expressed by reference to turnover, as defined in the order, or to market share, as so defined, or in any other manner, or
 - (b) to exemption under, or any steps taken or decision given under or for the purpose of, any directly applicable Community provision (including any such provision as it has effect from time to time).
- (3) In subsection (1)(c) above, the reference to a price-fixing agreement is to an agreement to which this Act applies by virtue of—
- (a) a restriction in respect of any of the matters set out in section 6(1)(a) or (b) or 11(2)(a) above, or
 - (b) an information provision in respect of any of the matters set out in section 7(1)(a) or (b) or 12(2)(a) above.
- (4) An order under subsection (1)(b) above shall be made by statutory instrument and may contain such transitional provisions as the Secretary of State considers appropriate.”
- (2) In section 42(1) of that Act (statutory instruments subject to negative resolution procedure) in paragraph (a) (orders) after “18(5)” there shall be inserted “, 27A(1)(b) ”.
- (3) In section 43(1) of that Act (interpretation) there shall be inserted at the appropriate place—
- ““non-notifiable agreement” has the meaning given by section 27A(1) above;”.
- (4) Schedule 3 to this Act (which modifies the 1976 Act in relation to non-notifiable agreements) shall have effect.

Marginal Citations

M5 1976 c. 34.

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11 Restrictive trade practices: registration of commercially sensitive information.

In section 23(3) of the Restrictive Trade Practices Act ^{M6}1976 (certain categories of information to be entered or filed in a special section of the register of agreements) for paragraph (b) there shall be substituted—

“(b) particulars containing information whose publication would, in the Secretary of State’s opinion, substantially damage the legitimate business interests of any person, not being information whose publication is, in the Secretary of State’s opinion, in the public interest.”

Marginal Citations

M6 1976 c. 34.

12 Anti-competitive practices: competition references.

(1) In section 5 of the Competition Act ^{M7}1980 (grounds for competition reference) for subsection (1)(a) there shall be substituted—

“(a) there are reasonable grounds for believing that any person is pursuing, or has pursued, a course of conduct which constitutes an anti-competitive practice,”.

(2) In consequence of subsection (1) above, that Act shall be amended as mentioned in subsections (3) to (6) below.

(3) In section 3 of that Act (preliminary investigation by Director General of Fair Trading of possible anti-competitive practice) subsections (2) to (6), (9) and (10) (which provide for the formal constitution, carrying out and discontinuation of an investigation and the publication by the Director of a report following completion of an investigation) shall cease to have effect.

(4) In section 4 of that Act (undertakings) for subsections (1) to (3) there shall be substituted—

“(1) Where it appears to the Director—

- (a) that there are reasonable grounds for believing that any person is pursuing, or has pursued, a course of conduct which constitutes an anti-competitive practice,
- (b) that the practice may operate, now or in future, or have operated, against the public interest, and
- (c) that an undertaking offered to be given to the Director by that person, or by a person associated with that person, would remedy or prevent effects adverse to the public interest which the practice may now or in future have,

he may, at any time before making a reference under section 5(1)(a) below in relation to the course of conduct in question, accept the undertaking by giving notice to the person by whom it is offered.

(2) The Director may not accept an undertaking under subsection (1) above unless he has—

- (a) arranged for the publication of an appropriate notice, and

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- (b) considered any representations made to him in accordance with the notice.
- (3) Publication under subsection (2)(a) above shall be in such manner as the Director considers most suitable for bringing the notice to the attention of persons who, in his opinion, would, if the course of conduct in question were the subject of a reference under section 5(1)(a) below, be affected by the reference or be likely to have an interest in it.
- (3A) In subsection (2)(a) above, the reference to an appropriate notice is to a notice which—
- (a) states that the Director is proposing to exercise his power under subsection (1) above,
 - (b) identifies the course of conduct whose pursuit prompts the exercise of that power,
 - (c) identifies the person who the Director believes is pursuing, or has pursued, that course of conduct,
 - (d) identifies the goods or services in relation to which the Director believes that person is pursuing, or has pursued, that course of conduct,
 - (e) specifies the effects which the Director has identified as effects adverse to the public interest which that course of conduct may now or in future have,
 - (f) sets out the terms of the undertaking which the Director is proposing to accept,
 - (g) identifies the person by whom the undertaking is to be given, and
 - (h) specifies a deadline for the making to the Director of representations about what he proposes to do.
- (3B) Once the Director has considered any representations made to him in accordance with a notice under paragraph (a) of subsection (2) above, that subsection shall not apply to the acceptance of a modified version of the undertaking set out in the notice.”
- (5) In that section, at the end there shall be inserted—
- “(10) Subsection (6) of section 2 above shall apply for the purposes of this section as it applies for the purposes of that.”
- (6) In section 6 of that Act (scope of competition references) for subsections (3) and (4) there shall be substituted—
- “(3) Where the Director has accepted an undertaking under section 4 above with respect to the pursuit by any person of a course of conduct in relation to any goods or services, the Director may not, while the undertaking is in force, make a competition reference by virtue of section 5(1)(a) above with respect to the pursuit by that person of that course of conduct in relation to those goods or services.”
- (7) Schedule 4 to this Act (which makes provision about sectoral regulators and with respect to transition) shall have effect.

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Marginal Citations

M7 1980 c. 21.

VALID FROM 01/07/1995

13 Striking off of non-trading private companies.

- (1) Schedule 5 to this Act (which amends the Companies Act ^{M8}1985 for the purpose of facilitating the striking off of non-trading private companies registered in Great Britain) shall have effect.
- (2) Schedule 6 to this Act (which amends the ^{M9}Companies (Northern Ireland) Order 1986 for the purpose of facilitating the striking off of non-trading companies registered in Northern Ireland) shall have effect.

Commencement Information

II S. 13 wholly in force at 1.11.1995; s. 13 not in force at Royal Assent see s. 82(4); s. 13(1) in force at 1.7.1995; s. 13(2) in force for certain purposes at 1.7.1995 by S.I. 1995/1433, arts. 2, 3(a)(b); s. 13(2) in force in so far as not already in force at 1.11.1995 by S.I. 1995/1433, art. 5(a)

Marginal Citations

M8 1985 c. 6.

M9 S.I. 1986/1032 (N.I. 6).

VALID FROM 01/01/1996

14 Repeal of section 43 of the Weights and Measures Act 1985.

Section 43 of the ^{M10}Weights and Measures Act 1985 (which provides for the gas comprised in any foam on beer or cider to be disregarded for certain purposes) shall cease to have effect.

Marginal Citations

M10 1985 c. 72.

15 Building societies: issue of deferred shares at a premium.

In section 7 of the ^{M11}Building Societies Act 1986 (power to raise funds) after subsection (2) there shall be inserted—

“(2A) In the case of deferred shares, the power to raise funds by the issue of shares includes the issue of shares at a premium.

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(2B) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society’s reserves.”

Marginal Citations

M11 1986 c. 53.

16 Building societies: class 1 and 2 advances—third party mortgages.

- (1) The Building Societies Act 1986 shall be amended as follows.
- (2) In section 10 (advances secured on land), after subsection (4) there shall be inserted—
 - “(4A) The power to make an advance secured on land includes power to make an advance which is secured as mentioned in subsection (1) above by virtue of security granted otherwise than by the borrower (in this Act referred to as “an advance secured on third party land”).”
- (3) In section 11, in subsection (2) (definition of class 1 advances)—
 - (a) in paragraph (b), at the beginning there shall be inserted “ where the advance is not an advance secured on third party land, ”,
 - (b) after that paragraph, there shall be inserted—
 - “(ba) where the advance is an advance secured on third party land—
 - (i) the borrower intends that the advance will be used for the purpose of acquiring land for the residential use of himself or a dependant of his of a prescribed description; and
 - (ii) the land on which the advance is secured is for the residential use of the mortgagor or a dependant of his of a prescribed description;”, and
 - (c) in paragraph (c), for the words from “mortgage debt” to “land)” there shall be substituted “ outstanding amount secured by a mortgage of the land in favour of the society)”.
- (4) In subsection (3) of that section (when requirement as to use of land for residential purposes to be treated as satisfied) the words from “the requirement” to the end shall become paragraph (a) and at the end there shall be inserted—
 - “(b) the requirement in subsection (2)(ba)(i) above shall be treated as satisfied if the borrower intends that no less than 40 per cent. of the area of the land will be for the residential use of himself or a dependant of his of a prescribed description; and
 - (c) the requirement in subsection (2)(ba)(ii) above shall be treated as satisfied if no less than 40 per cent. of the area of the land is used for residential purposes by the mortgagor or a dependant of his of a prescribed description.”
- (5) In subsection (4) of that section (definition of class 2 advances) in paragraph (c), for the words from “mortgage debt” to “land)” there shall be substituted “ outstanding amount secured by a mortgage of the land) ”.

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(6) In section 12 (class 1 and class 2 advances: supplementary provisions) after subsection (5) there shall be inserted—

“(5A) Subsection (5) above shall also apply as respects advances secured on third party land which is to any extent used for the residential use of mortgagors or persons who are dependants of theirs for the purposes of section 11(2).”

(7) In section 12(10) (reclassification of class 1 and class 2 advances following a material change of circumstances)—

(a) in paragraph (c), there shall be inserted at the beginning “ in the case of an advance which is not an advance secured on third party land, ” ,and

(b) for “or” at the end of that paragraph there shall be substituted—

“(ca) in the case of an advance which is an advance secured on third party land—

(i) is satisfied on notice given to it by the borrower that there has been a change in the use of the land acquired with the advance, or

(ii) is satisfied on notice given to it by the mortgagor that there has been a change in the use of the land on which the advance is secured, or”.

(8) In section 16 (power to lend to individuals otherwise than by class 1 or 2 advances) in subsection (15) (reclassification of loans under section 16 as class 1 or 2 advances)—

(a) in paragraph (b), there shall be inserted at the beginning “ where the mortgage is granted by the borrower ” ,and

(b) for the words from “or” at the end of paragraph (b) to “notice” in paragraph (c) there shall be substituted—

“(c) where the mortgage is granted otherwise than by the borrower and the loan has been used to purchase land—

(i) on notice given to it by the borrower that there has been a change in the use of the land purchased, or

(ii) on notice given to it by the mortgagor that there has been a change in the use of the mortgaged land, or

(d) on notice given to it—

(i) where the mortgage is granted by the borrower, by him, and

(ii) where the mortgage is granted otherwise than by the borrower, by the mortgagor.”.

17 Building societies: direct participation in syndicated lending.

(1) In the Building Societies Act ^{M12}1986, after section 14 there shall be inserted—

“14A Power to participate in secured syndicated lending.

(1) Subject to subsection (2) below, a building society may participate in syndicated lending—

(a) as a member of the lending syndicate, or

(b) as a person whose rights as a participant arise under an arrangement with a member of the lending syndicate (“a sub-participant”).

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- (2) Subsection (1) above only applies if—
- (a) the syndicated lending is appropriately secured, and
 - (b) where the society's participation is as a sub-participant, the society's rights as such a participant are appropriately secured.
- (3) The Commission may, with the consent of the Treasury, by order—
- (a) make provision with respect to what constitutes appropriate security for the purposes of subsection (2)(a) or (b) above;
 - (b) make provision with respect to the classification, for the purposes of the requirements of this Part for the structure of commercial assets, of a society's participation under this section in syndicated lending; and
 - (c) provide for the application of the provisions of this Part, with such modifications as appear to the Commission to be appropriate, to a society's participation under this section in syndicated lending.
- (4) The power conferred by subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A building society may only exercise the power conferred by this section if it has adopted it.”
- (2) Where, immediately before the day on which this section comes into force, a building society is entitled to exercise powers conferred by section 18 of the Building Societies Act ^{M13}1986 in relation to—
- (a) bodies of the description specified in Part I of the Schedule to the Building Societies (Designation of Qualifying Bodies) ^{M14}Order 1992 (appropriate lending vehicle), or
 - (b) bodies of the description specified in item 9 of Part I of the Schedule to the Building Societies (Designation ^{M15}of Qualifying Bodies) (No. 3) Order 1993 (lending body),
- the society shall be deemed to have adopted the power conferred by section 14A of that Act in accordance with sub-paragraph (1) of paragraph 4 of Schedule 2 to that Act (alteration of powers by the adoption of an adoptable power) and to have determined under sub-paragraph (3) of that paragraph (duty to determine the date on which it intends the alteration to take effect) that it intends the alteration to take effect on the day on which this section comes into force.
- (3) In relation to a deemed alteration under subsection (2) above, Schedule 2 to the Building Societies Act 1986 shall have effect with the following modifications—
- (a) in paragraph 4(2)(b) (statutory declaration by secretary with respect to alteration) for the words from “a resolution” to the end there shall be substituted “ section 17(2) of the Deregulation and Contracting Out Act 1994 and that the record is a true record of the alteration ”,
 - (b) in paragraph 4(4) (functions of central office on receipt of record of alteration) the words from “and the central office” to “under it” shall be omitted, and
 - (c) in paragraph 16(3) (declaration by society of non-anticipation of powers) in paragraphs (a) and (b), the words “and expired with the date of the meeting at which the power was adopted” shall be omitted.

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Marginal Citations

- M12 1986 c. 53.
- M13 1986 c. 53.
- M14 S.I. 1992/649.
- M15 S.I. 1993/2706.

18 Licensed premises at international ports: permitted hours.

(1) In the Licensing Act ^{M16}1964, after section 86 there shall be inserted—

“86A International ports.

- (1) At a port where this section is in operation section 59 of this Act shall not apply to licensed premises within an approved wharf.
- (2) The Secretary of State may by order bring this section into operation at any port which appears to him to be one at which there is a substantial amount of international passenger traffic.
- (3) Before the Secretary of State makes an order bringing this section into operation at a port, he shall satisfy himself that arrangements have been made for affording reasonable facilities on licensed premises within any approved wharf at that port for obtaining hot and cold beverages other than intoxicating liquor at all times when intoxicating liquor is obtainable on those premises.
- (4) If it appears to the Secretary of State that at any port where this section is in operation such arrangements as are mentioned in subsection (3) of this section are not being maintained, he shall revoke the order bringing this section into operation at that port, but without prejudice to his power of making a further order with respect to that port.
- (5) In this section, “approved wharf” has the same meaning as in the Customs and ^{M17}Excise Management Act 1979.”

(2) In the Licensing ^{M18}(Scotland) Act 1976, after section 63 there shall be inserted—

“63A Exemption of international ports from restrictions on permitted hours.

- (1) The Secretary of State may by order made by statutory instrument bring this section into operation at any port which appears to him to be a port at which there is a substantial amount of international passenger traffic.
- (2) At a port where this section is in operation, neither section 54 nor section 119 of this Act nor any provision or rule of law prohibiting or restricting the sale or supply of alcoholic liquor on Sunday shall apply to licensed premises which are within an approved wharf.
- (3) Before the Secretary of State makes an order bringing this section into operation at a port, he shall satisfy himself that arrangements have been made for affording reasonable facilities in licensed premises within any approved wharf at that port for obtaining hot and cold beverages other than alcoholic

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liquor at all times when alcoholic liquor is obtainable for consumption in those premises.

(4) If it appears to the Secretary of State that at any port where this section is in operation such arrangements as are mentioned in subsection (3) above are not being maintained, he shall revoke the order bringing this section into operation as respects that port, but without prejudice to his power of making a further order with respect to that port.

(5) In this section, “approved wharf” has the same meaning as in the Customs and Excise Management Act 1979..”

Marginal Citations

M16 1964 c. 26.

M17 1979 c. 2.

M18 1976 c. 66.

19 Bars in licensed premises in England and Wales: children’s certificates.

(1) In section 168 of the Licensing Act ^{M19}1964 (children prohibited from bars) after subsection (3) there shall be inserted—

“(3A) No offence shall be committed under subsection (1) of this section if—

- (a) the person under fourteen is in the bar in the company of a person who is eighteen or over,
- (b) there is in force a certificate under section 168A(1) of this Act relating to the bar, and
- (c) the certificate is operational or subsection (3B) of this section applies.

(3B) This subsection applies where—

- (a) the person under fourteen, or a person in whose company he is, is consuming a meal purchased before the certificate ceased to be operational, and
- (b) no more than thirty minutes have elapsed since the certificate ceased to be operational.

(3C) No offence shall be committed under subsection (2) of this section if the person causes or procures, or attempts to cause or procure, the person under fourteen to be in the bar in the circumstances mentioned in paragraphs (a) to (c) of subsection (3A) of this section.”

(2) After that section there shall be inserted—

“168A Children’s certificates.

- (1) The holder of a justices’ licence may apply to the licensing justices for the grant of a certificate in relation to any area of the premises for which the licence is in force which consists of or includes a bar.
- (2) Licensing justices may grant an application for a certificate under subsection (1) of this section (“a children’s certificate”) if it appears to them to be appropriate to do so, but shall not do so unless they are satisfied—

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- (a) that the area to which the application relates constitutes an environment in which it is suitable for persons under fourteen to be present, and
 - (b) that meals and beverages other than intoxicating liquor will be available for sale for consumption in that area.
 - (3) Where a children’s certificate is in force, the holder of the justices’ licence for the licensed premises to which the certificate relates shall keep posted in some conspicuous place in the area to which the certificate relates a notice which—
 - (a) states that a children’s certificate is in force in relation to the area, and
 - (b) explains the effect of the certificate and of any conditions attached to it.
 - (4) A person who fails to perform the duty imposed on him by subsection (3) of this section shall be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 1 on the standard scale.
 - (5) In any proceedings for an offence under subsection (4) of this section, it shall be a defence for the accused to prove that he took all reasonable precautions, and exercised all due diligence, to avoid the commission of the offence.
 - (6) Schedule 12A to this Act (supplementary provisions) shall have effect.
 - (7) Subsection (1) of this section shall apply to an applicant for a justices’ licence as it applies to the holder of a justices’ licence, and, in its application by virtue of this subsection, shall have effect as if the reference to the premises for which the licence is in force were to the premises which are the subject of the application for a justices’ licence.”
- (3) After Schedule 12 to that Act there shall be inserted the Schedule set out in Schedule 7 to this Act (supplementary provisions).

Marginal Citations

M19 1964 c. 26.

20 Betting on Sundays.

- (1) The Betting, Gaming and Lotteries Act ^{M20}1963 shall be amended as set out in subsections (2) to (5) below.
- (2) In section 5(1), for “Good Friday, Christmas Day or Sunday” there shall be substituted “ Good Friday or Christmas Day ”.
- (3) After section 31 there shall be inserted—

“ Betting workers: Sunday working

31A Rights of betting workers as respects Sunday working.

Schedule 5A to this Act shall have effect for the purpose of making provision about the rights of betting workers as respects Sunday working.”

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(4) In Schedule 4, in paragraph 1, for “Good Friday, Christmas Day and every Sunday” there shall be substituted “ Good Friday and Christmas Day ”.

(5) After Schedule 5 there shall be inserted the Schedule set out in Schedule 8 to this Act.

Marginal Citations

M20 1963 c. 2.

21 Sporting events and activities on Sundays.

The entertainments and amusements to which the Sunday Observance Act ^{M21}1780 applies shall not include any sporting event or activity.

Marginal Citations

M21 1780 c. 49.

22 Sunday opening of certain licensed premises in Scotland.

For section 119(3) of the Licensing (Scotland) Act ^{M22}1976 (trading hours for off-sale premises and off-sale parts of public houses and hotels and prohibition of Sunday opening), there shall be substituted the following subsection—

“(3) Off-sale premises and the off-sale part of premises shall not be opened for the serving of customers with alcoholic liquor—

- (a) on a day other than a Sunday, earlier than eight in the morning, and
- (b) on a Sunday, earlier than half past twelve in the afternoon,

and shall be closed for the serving of customers with such liquor not later than ten in the evening.”

Marginal Citations

M22 1976 c. 66.

23 Repeal of Part I of the Shops Act 1950.

Part I of the Shops Act ^{M23}1950 (hours of closing) shall cease to have effect.

Marginal Citations

M23 1950 c. 28.

24 Repeal of remainder of the Shops Act 1950.

In then ^{M24}Shops Act 1950—

- (a) Part II (conditions of employment), and

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- (b) section 67 (business of hairdresser or barber not to be carried on in Scotland on Sunday),
shall cease to have effect.

Marginal Citations

M24 1950 c.28.

25 Controls on fund-raising for charitable institutions: exclusion of connected companies.

- (1) In Part II of the Charities Act ^{M25}1992 (control of fund-raising for charitable institutions) section 58(1) (definitions) shall be amended as follows.
- (2) In the definition of “commercial participator”, after “person” there shall be inserted “ (apart from a company connected with the institution) ”.
- (3) In paragraph (a) of the definition of “professional fund-raiser”, after “institution” there shall be inserted “ or a company connected with such an institution ”.

Marginal Citations

M25 1992 c. 41.

26 Offences under section 63 of the Charities Act 1992: creation of statutory defence.

- (1) Section 63 of the Charities Act 1992 (which makes it an offence to solicit property for an institution while falsely representing that it is a registered charity) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
- “(1A) In any proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that he believed on reasonable grounds that the institution was a registered charity.”
- (3) In subsection (2) (meaning of “registered charity”) for the words “subsection (1)” there shall be substituted “ this section ”.

27 Applications for permits to conduct public charitable collections: time-limits.

In section 67 of the Charities Act 1992 (applications for permits to conduct public charitable collections) paragraph (b) of subsection (3) (which provides that an application shall not be made more than six months before the relevant day) and the word “but” immediately preceding it shall be omitted.

28 Annual audit or examination of charity accounts.

- (1) Section 43 of the Charities Act ^{M26}1993 (annual audit or examination of charity accounts) shall be amended as follows.

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- (2) In subsection (3) (which requires a charity’s accounts for a financial year to be audited or independently examined if its gross income and total expenditure in that year, and each of the two previous financial years, is £100,000 or less) after “a charity” there shall be inserted “ and its gross income or total expenditure in that year exceeds £10,000 ”.
- (3) In subsection (8) (power of Secretary of State to amend sum specified in subsection (1)) after “(1)” there shall be inserted “ or (3) ”.

Marginal Citations

M26 1993 c. 10.

29 Annual reports of charities.

- (1) In section 45 of the Charities Act 1993 (annual reports) in subsection (3) (automatic duty to transmit annual report to the Commissioners) for the words from the beginning to “a charity” there shall be substituted “ Where in any financial year of a charity its gross income or total expenditure exceeds £10,000, the annual report required to be prepared under this section in respect of that year ”.
- (2) After that subsection there shall be inserted—
- “(3A) Where in any financial year of a charity neither its gross income nor its total expenditure exceeds £10,000, the annual report required to be prepared under this section in respect of that year shall, if the Commissioners so request, be transmitted to them by the charity trustees—
- (a) in the case of a request made before the end of seven months from the end of the financial year to which the report relates, within ten months from the end of that year, and
- (b) in the case of a request not so made, within three months from the date of the request,
- or, in either case, within such longer period as the Commissioners may for any special reason allow in the case of that report.”
- (3) In subsection (4) of that section, for “any such annual report” there shall be substituted “ any annual report transmitted to the Commissioners under this section ”.
- (4) In subsection (5) of that section, for “subsection (3) above” there shall be substituted “ this section ”.
- (5) In subsection (6) of that section, for “subsection (3) above” there shall be substituted “ this section ”.
- (6) At the end of that section there shall be inserted—
- “(7) The charity trustees of a charity shall preserve, for at least six years from the end of the financial year to which it relates, any annual report prepared by them under subsection (1) above which they have not been required to transmit to the Commissioners.
- (8) Subsection (4) of section 41 above shall apply in relation to the preservation of any such annual report as it applies in relation to the preservation of any

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accounting records (the references in subsection (3) of that section being read as references to subsection (7) above).

(9) The Secretary of State may by order amend subsection (3) or (3A) above by substituting a different sum for the sum for the time being specified there.”

(7) In section 46(7) of that Act (application of section 45(3) to (6) to annual reports under section 46(5)) after “section 45” there shall be inserted “ (as originally enacted) ”.

(8) In section 49 of that Act (penalty for persistent default in relation to certain requirements) in paragraph (a), after “45(3)” there shall be inserted “ or (3A) ”.

30 Annual returns by charities.

(1) Section 48 of the Charities Act ^{M27}1993 (annual returns by registered charities) shall be amended as follows.

(2) In subsection (1) (duty to prepare annual return) at the beginning there shall be inserted “ Subject to subsection (1A) below, ”.

(3) After subsection (1) there shall be inserted—

“(1A) Subsection (1) above shall not apply in relation to any financial year of a charity in which neither the gross income nor the total expenditure of the charity exceeds £10,000.”

(4) At the end there shall be inserted—

“(4) The Secretary of State may by order amend subsection (1A) above by substituting a different sum for the sum for the time being specified there.”

Marginal Citations

M27 1993 c. 10.

31 Slaughterhouses and knackers’ yards: uniting of enforcement functions.

Schedule 9 to this Act (which contains provisions designed to facilitate the uniting of enforcement functions relating to slaughterhouses and knackers’ yards) shall have effect.

32 Building regulations: power to repeal or modify provisions of local Acts.

(1) In Schedule 1 to the ^{M28}Building Act 1984 (building regulations) in paragraph 11(1), after paragraph (b) there shall be inserted “or

(c) any provision of a local Act passed before the day on which the Deregulation and Contracting Out Act 1994 is passed,”.

(2) In section 14 of that Act (consultation) there shall be inserted at the end—

“(4) Before making any building regulations containing provision of the kind authorised by paragraph 11(1)(c) of Schedule 1 to this Act, the Secretary of State shall consult—

(a) the Building Regulations Advisory Committee,

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- (b) such persons or bodies as appear to him to be representative of local authorities, and
- (c) such other bodies as appear to him to be representative of the interests concerned.”

Marginal Citations

M28 1984 c. 55.

33 Amendment of duty of care etc. as respects waste.

- (1) In section 34 of the Environmental Protection Act ^{M29}1990 (duty of care etc. as respects controlled waste), after subsection (4) there shall be inserted—

“(4A) For the purposes of subsection (1)(c)(ii) above—

- (a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and
- (b) a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place when the first of the transfers in the series takes place.”

- (2) Subsection (1) above shall be deemed always to have had effect, except in relation to any proceedings for failure to comply with the duty imposed by section 34(1) of that Act which were commenced before the coming into force of subsection (1) above.

- (3) Where any such proceedings have not been disposed of before the coming into force of subsection (1) above, it shall be a defence to show that the conduct in question would not have constituted a breach of the duty concerned had subsection (1) above been in force at the time.

Commencement Information

I2 S. 33 in force at Royal Assent (subject as mentioned in s. 33(2))

Marginal Citations

M29 1990 c. 43.

34 Controls on London lorries: replacement of discretionary exceptions.

- (1) Subsection (3) below applies to any order having effect under or by virtue of section 6 (orders similar to traffic regulation orders) or 9 (experimental traffic orders) of the Road Traffic Regulation Act ^{M30}1984 (“the 1984 Act”) which provides for a relevant traffic control to be subject to a relevant exception, being an order in relation to which the appropriate authority is a London borough council or the Common Council of the City of London.

- (2) For the purposes of this section—

- (a) a relevant traffic control is a prohibition or restriction on the use of a road for traffic which does not apply to motor vehicles generally but applies to some or all heavy commercial vehicles, and

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- (b) a relevant exception is an exception whose application, in the case of any heavy commercial vehicles, depends to any extent on the exercise of a delegated discretion.
- (3) The Secretary of State may, for the purpose of replacing a relevant exception to a relevant traffic control with such other exception as he thinks fit, by order make any such variation of an order to which this subsection applies as the appropriate authority may make.
- (4) The Secretary of State shall only exercise the power conferred by subsection (3) above if he is satisfied that doing so—
- (a) will have the effect that less of a burden is imposed on the carrying on of business, and
- (b) will not have the effect of removing any necessary protection.
- (5) The Secretary of State may, for the purpose of amending as he thinks fit an exception introduced under subsection (3) above (including such an exception as amended), by order make any such variation of the order varied under that subsection as the appropriate authority may make.
- (6) The Secretary of State may, for the purpose of amending as he thinks fit a provision of an order having effect under or by virtue of section 6 or 9 of the 1984 Act which re-enacts (with or without modification) an exception introduced under subsection (3) above (including such an exception as amended) (“a re-enactment order”), by order make any such variation of the order as the appropriate authority may make.
- (7) The Secretary of State shall only exercise the power conferred by subsection (5) or (6) above if he is satisfied—
- (a) that, if he does so, it will still be the case that less of a burden is imposed on the carrying on of business than was imposed before the replacement under subsection (3) above, and
- (b) that doing so will not have the effect of removing any necessary protection.
- (8) Paragraphs 35 to 37 of Part VI of Schedule 9 to the 1984 Act (validity of certain orders) shall apply to an order under this section as they apply to an order to which that Part applies; and in those paragraphs, in their application by virtue of this subsection—
- (a) “the relevant powers” means the powers conferred by this section with respect to the order in question, and
- (b) “the relevant requirements” means the requirements of this section with respect to that order.
- (9) Before making any order under this section, the Secretary of State shall consult with such representative organisations as he thinks fit; and any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Where in the case of any order proposed to be made by the council of a London borough or the Common Council of the City of London under or by virtue of section 6 or 9 of the 1984 Act, it is proposed to include in the order any provision—
- (a) varying or revoking an order under this section,
- (b) varying or revoking an order having effect under or by virtue of section 6 or 9 of that Act which is varied by an order under this section, or
- (c) varying or revoking a re-enactment order,
- the order shall not be made except with the consent of the Secretary of State.

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(11) Where, in the case of any order proposed to be made by the council of a London borough or the Common Council of the City of London under or by virtue of section 9 of the 1984 Act, it is proposed to include in the order provision under section 10(1) (a) of that Act relating to—

- (a) an order under this section,
- (b) an order having effect under or by virtue of section 6 or 9 of that Act which is varied by an order under this section, or
- (c) a re-enactment order,

the order shall not be made except with the consent of the Secretary of State.

(12) In this section—

“appropriate authority”, in relation to an order having effect under or by virtue of section 6 or 9 of the 1984 Act, means the authority by which the order is, or is deemed to be, made;

“heavy commercial vehicle” and “road” have the same meanings as in the 1984 Act;

“motor vehicle” means a vehicle treated as a motor vehicle for the purposes of the 1984 Act;

“re-enactment order” has the meaning given by subsection (6) above; and

“the 1984 Act” has the meaning given by subsection (1) above.

Marginal Citations

M30 1984 c. 27.

35 Employment agencies etc.: replacement of licensing.

Schedule 10 to this Act (which provides for the replacement of licensing in relation to employment agencies etc.) shall have effect.

36 Unfair dismissal: selection for redundancy.

(1) In section 59(1) of ^{M31} the Employment Protection (Consolidation) Act 1978 (circumstances in which dismissal for redundancy to be regarded as unfair) paragraph (b) (selection for dismissal in contravention of customary arrangement or agreed procedure) shall be omitted.

(2) Article 22C(1)(e) of ^{M32} the Industrial Relations (Northern Ireland) Order 1976 (corresponding provision for Northern Ireland) shall be omitted.

Commencement Information

I3 S. 36 wholly in force; s. 36 not in force at Royal Assent see s. 82; s. 36(1) in force at 3.1.1995 by S.I. 1994/3188, art. 3(e) (with transitional provisions in arts. 5, 6); s. 36(2) in force at 3.1.1995 by S.R. 1994/488, art. 2

Marginal Citations

M31 1978 c. 44.

M32 S.I. 1976/1043 (N.I. 16).

Status: Point in time view as at 01/03/1995. This version of this chapter contains provisions that are not valid for this point in time.

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37 Power to repeal certain health and safety provisions.

- (1) The appropriate authority may by regulations repeal or, as the case may be, revoke—
 - (a) any provision which is an existing statutory provision for the purposes of Part I of ^{M33} the Health and Safety at Work etc. Act 1974 (“the 1974 Act”),
 - (b) any provision of regulations under section 15 of the 1974 Act (health and safety regulations) which has effect in place of a provision which was an existing statutory provision for the purposes of that Part,
 - (c) any provision which is an existing statutory provision for the purposes of ^{M34} the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”), or
 - (d) any provision of regulations under Article 17 of the 1978 Order (health and safety regulations) which has effect in place of a provision which was an existing statutory provision for the purposes of that Order.
- (2) Before making regulations under subsection (1) above, the appropriate authority shall consult—
 - (a) in the case of regulations under paragraph (a) or (b) of that subsection, the Health and Safety Commission,
 - (b) in the case of regulations under paragraph (c) or (d) of that subsection, the Health and Safety Agency for Northern Ireland,and, in either case, such other persons as the appropriate authority considers appropriate.
- (3) Instead of consulting such other persons as the appropriate authority considers it appropriate to consult under subsection (2) above, the authority may require the Health and Safety Commission or, as the case may be, the Health and Safety Agency for Northern Ireland to consult such persons as it considers appropriate for the purpose of deciding how it should respond to consultation under that subsection.
- (4) Instead of consulting a person whom the appropriate authority considers it appropriate to consult under subsection (2) above, the authority may require the Health and Safety Commission or, as the case may be, the Health and Safety Agency for Northern Ireland to consult the person for the purpose of deciding how it should respond to consultation under that subsection.
- (5) The appropriate authority may require consultation under subsection (3) or (4) above to be carried out in accordance with the authority’s directions.
- (6) Regulations under subsection (1) above may contain such transitional provisions and savings as the appropriate authority considers appropriate.
- (7) Regulations under paragraph (a) or (b) of subsection (1) above shall be made by statutory instrument, and no instrument shall be made under that paragraph unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (8) Regulations under subsection (1)(c) or (d) above—
 - (a) shall be statutory rules for the purposes of ^{M35} the Statutory Rules (Northern Ireland) Order 1979, and
 - (b) shall be subject to affirmative resolution, as defined in section 41(4) of ^{M36} the Interpretation Act (Northern Ireland) 1954, as if they were statutory instruments within the meaning of that Act.

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- (9) In this section, “appropriate authority”—
- (a) in relation to regulations under subsection (1)(a) or (b) above, means the Secretary of State, and
 - (b) in relation to regulations under subsection (1)(c) or (d) above, means the Department concerned (within the meaning of the 1978 Order, but as if any reference to that Order included a reference to this section).

Marginal Citations

- M33** 1974 c. 37.
M34 S.I. 1978/1039 (N.I. 9).
M35 S.I. 1979/1573 (N.I. 12).
M36 1954 c. 33 (N.I.).

VALID FROM 01/01/1996

38 Inspection of independent schools.

After section 87 of the Children Act ^{M37}1989 there shall be inserted—

“87A Suspension of duty under section 87(3).

- (1) The Secretary of State may appoint a person to be an inspector for the purposes of this section if—
 - (a) that person already acts as an inspector for other purposes in relation to independent schools to which section 87(1) applies, and
 - (b) the Secretary of State is satisfied that the person is an appropriate person to determine whether the welfare of children provided with accommodation by such schools is adequately safeguarded and promoted while they are accommodated by them.
- (2) Where—
 - (a) the proprietor of an independent school to which section 87(1) applies enters into an agreement in writing with a person appointed under subsection (1),
 - (b) the agreement provides for the person so appointed to have in relation to the school the function of determining whether section 87(1) is being complied with, and
 - (c) the local authority in whose area the school is situated receive from the person with whom the proprietor of the school has entered into the agreement notice in writing that the agreement has come into effect,

the authority’s duty under section 87(3) in relation to the school shall be suspended.
- (3) Where a local authority’s duty under section 87(3) in relation to any school is suspended under this section, it shall cease to be so suspended if the authority receive—

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- (a) a notice under subsection (4) relating to the person with whom the proprietor of the school entered into the relevant agreement, or
 - (b) a notice under subsection (5) relating to that agreement.
- (4) The Secretary of State shall terminate a person’s appointment under subsection (1) if—
- (a) that person so requests, or
 - (b) the Secretary of State ceases, in relation to that person, to be satisfied that he is such a person as is mentioned in paragraph (b) of that subsection,
- and shall give notice of the termination of that person’s appointment to every local authority.
- (5) Where—
- (a) a local authority’s duty under section 87(3) in relation to any school is suspended under this section, and
 - (b) the relevant agreement ceases to have effect,
- the person with whom the proprietor of the school entered into that agreement shall give to the authority notice in writing of the fact that it has ceased to have effect.
- (6) In this section—
- (a) “proprietor” has the same meaning as in the ^{M38}Education Act 1944, and
 - (b) references to the relevant agreement, in relation to the suspension of a local authority’s duty under section 87(3) as regards any school, are to the agreement by virtue of which the authority’s duty under that provision as regards that school is suspended.

87B Duties of inspectors under section 87A.

- (1) The Secretary of State may impose on a person appointed under section 87A(1) (“an authorised inspector”) such requirements relating to, or in connection with, the carrying out under substitution agreements of the function mentioned in section 87A(2)(b) as the Secretary of State thinks fit.
- (2) Where, in the course of carrying out under a substitution agreement the function mentioned in section 87A(2)(b), it appears to an authorised inspector that there has been a failure to comply with section 87(1) in the case of a child provided with accommodation by the school to which the agreement relates, the inspector shall give notice of that fact to the Secretary of State.
- (3) Where, in the course of carrying out under a substitution agreement the function mentioned in section 87A(2)(b), it appears to an authorised inspector that a child provided with accommodation by the school to which the agreement relates is suffering, or is likely to suffer, significant harm, the inspector shall—
 - (a) give notice of that fact to the local authority in whose area the school is situated, and
 - (b) where the inspector is required to make inspection reports to the Secretary of State, supply that local authority with a copy of the

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latest inspection report to have been made by the inspector to the Secretary of State in relation to the school.

(4) In this section—

- (a) “proprietor” has the same meaning as in the Education ^{M39} Act 1944, and
- (b) references to substitution agreement are to an agreement between an authorised inspector and the proprietor of an independent school by virtue of which the local authority’s duty in relation to the school under section 87(3) is suspended.”

Marginal Citations

M37 1989 c. 41.

M38 1944 c. 31.

M39 1944 c. 31.

39 Chapter II: consequential amendments.

Schedule 11 to this Act (which contains amendments consequential on certain provisions of this Chapter) shall have effect.

Commencement Information

I4 S. 39 wholly in force at 1.1.1996; s. 39 in force for certain purposes at Royal Assent see s. 82(2)(3); s. 39 in force for certain purposes at 3.1.1995 by S.I. 1994/3188, arts. 2, 3; s. 39 in force for certain purposes at 1.7.1995 by S.I. 1995/1433, art. 3(e); s. 39 in force for certain purposes at 1.11.1995 by S.I. 1995/1433, arts. 4, 5(b); s. 39 in force at 1.1.1996 in so far as not already in force by S.I. 1995/2835, art. 2 (with transitional provisions in Sch.)

40 Extent of Chapter II.

- (1) The following provisions of this Chapter extend to England and Wales only—
 sections 18(1), 19, 20(3), 21, 25 to 30, 32, 34 and 38,
 paragraphs 8 to 10 of Schedule 2,
 Schedules 7 and 8, and
 paragraph 2 of Schedule 9.
- (2) Sections 18(2), 22 and 24(b) and paragraph 3 of Schedule 9 extend to Scotland only.
- (3) The following provisions of this Chapter extend to Northern Ireland only—
 sections 13(2) and 36(2),
 paragraphs 5, 6(2) and 7(2) of Schedule 2,
 Schedule 6, and
 paragraphs 2 and 5 of Schedule 10.
- (4) The following provisions of this Chapter also extend to Northern Ireland—
 sections 7 to 12,
 sections 15 to 17,

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sections 35, 37 and 39,
this section,
paragraphs 1 to 3 and 15 of Schedule 2,
Schedule 3,
paragraphs 1 and 5 to 8 of Schedule 4, and
paragraph 3 of Schedule 10.

- (5) The extent of any amendment of an enactment in paragraph 2 or 3 of Schedule 4 to this Act or Schedule 11 to this Act is the same as that of the enactment amended.
- (6) Subject to subsections (3) to (5) above, this Chapter does not extend to Northern Ireland.

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