



# Deregulation and Contracting Out Act 1994

1994 CHAPTER 40

PART I **U.K.**

DEREGULATION

CHAPTER II **U.K.**

MISCELLANEOUS DEREGULATORY PROVISIONS

<sup>F17</sup> **Undertakings as alternative to monopoly reference by Director General of Fair Trading.** **U.K.**

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**Textual Amendments**

**F1** S. 7(1) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1) (with art. 8)

<sup>F28</sup> **Newspaper mergers: meaning of “newspaper proprietor” etc.** **U.K.**

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**Textual Amendments**

**F2** S. 8 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Deregulation and Contracting Out Act 1994, Chapter II is up to date with all changes known to be in force on or before 31 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F<sup>3</sup>9 Undertakings as alternative to merger reference: non-divestment matters. U.K.**

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**Textual Amendments**  
**F3** S. 9 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1) (with art. 8)

**F<sup>4</sup>10 ..... U.K.**

**Textual Amendments**  
**F4** S. 10 repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 19(2)(a), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

**F<sup>5</sup>11 ..... U.K.**

**Textual Amendments**  
**F5** S. 11 repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 19(2)(b), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

**12 Anti-competitive practices: competition references. U.K.**

- F<sup>6</sup>(1) .....
- F<sup>6</sup>(2) .....
- F<sup>6</sup>(3) .....
- F<sup>6</sup>(4) .....
- F<sup>6</sup>(5) .....
- F<sup>6</sup>(6) .....

(7) Schedule 4 to this Act (which makes provision about sectoral regulators and with respect to transition) shall have effect.

**Textual Amendments**  
**F6** S. 12(1)-(6) repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 19(3), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

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**13 Striking off of non-trading private companies. U.K.**

- (1) Schedule 5 to this Act (which amends the Companies Act <sup>M1</sup>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 <sup>M2</sup>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**

**M1** 1985 c. 6.  
**M2** S.I. 1986/1032 (N.I. 6).

**<sup>F7</sup>14 Repeal of section 43 of the Weights and Measures Act 1985. E+W+S**

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**Textual Amendments**

**F7** S. 14 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 16 Group 2

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

In section 7 of the <sup>M3</sup>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.

(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**

**M3** 1986 c. 53.

**<sup>F8</sup>16 ..... U.K.**

**Textual Amendments**

**F8** S. 16 repealed (1.12.1997) by 1997 c. 32, s. 46(2), Sch. 9; S.I. 1997/2668, art. 2(2)(3)(5), Sch. Pt. II

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<sup>F9</sup>17 ..... **U.K.**

**Textual Amendments**

**F9** S. 17 repealed (1.12.1997) by 1997 c. 32, s. 46(2), **Sch. 9**; S.I. 1997/2668, art. 2(2)(3)(5), **Sch. Pt. II**

**18 Licensed premises at international ports: permitted hours. **E+W+S****

(1) In the Licensing Act <sup>M4</sup>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 <sup>M5</sup>Excise Management Act 1979.”

(2) In the Licensing <sup>M6</sup>(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

**M4** 1964 c. 26.

**M5** 1979 c. 2.

**M6** 1976 c. 66.

## 19 Bars in licensed premises in England and Wales: children’s certificates. **E+W**

(1) In section 168 of the Licensing Act <sup>M7</sup>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**  
M7 1964 c. 26.

**20 Betting on Sundays. E+W+S**

- (1) The Betting, Gaming and Lotteries Act <sup>M8</sup>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 ”.
- <sup>F10</sup>(3) .....
- (4) In Schedule 4, in paragraph 1, for “Good Friday, Christmas Day and every Sunday” there shall be substituted “ Good Friday and Christmas Day ”.
- <sup>F10</sup>(5) .....

**Textual Amendments**  
F10 S. 20(3)(5) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

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**Marginal Citations**

**M8** 1963 c. 2.

**21 Sporting events and activities on Sundays. E+W**

The entertainments and amusements to which the Sunday Observance Act <sup>M9</sup>1780 applies shall not include any sporting event or activity.

**Marginal Citations**

**M9** 1780 c. 49.

**22 Sunday opening of certain licensed premises in Scotland. S**

For section 119(3) of the Licensing (Scotland) Act <sup>M10</sup>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**

**M10** 1976 c. 66.

**<sup>F11</sup>23 Repeal of Part I of the Shops Act 1950. E+W+S**

**Textual Amendments**

**F11** S. 23 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 16 Group 2

**<sup>F12</sup>24 Repeal of remainder of the Shops Act 1950. E+W+S**

**Textual Amendments**

**F12** S. 24 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 16 Group 2

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**25 Controls on fund-raising for charitable institutions: exclusion of connected companies. E+W**

- (1) In Part II of the Charities Act <sup>M11</sup>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**

M11 1992 c. 41.

**26 Offences under section 63 of the Charities Act 1992: creation of statutory defence. E+W**

- (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. E+W**

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. E+W**

- (1) Section 43 of the Charities Act <sup>M12</sup>1993 (annual audit or examination of charity accounts) shall be amended as follows.
- (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) ”.



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## Marginal Citations

M12 1993 c. 10.

## 29 Annual reports of charities. **E+W**

- (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 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) ”.

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**30 Annual returns by charities. E+W**

- (1) Section 48 of the Charities Act <sup>M13</sup>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**

**M13** 1993 c. 10.

**31 Slaughterhouses and knackers’ yards: uniting of enforcement functions. E+W  
+S**

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. E+W**

- (1) In Schedule 1 to the <sup>M14</sup>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,
    - (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**

**M14** 1984 c. 55.

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### 33 Amendment of duty of care etc. as respects waste. **E+W+S**

(1) In section 34 of the Environmental Protection Act <sup>M15</sup>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

**M15** 1990 c. 43.

### 34 Controls on London lorries: replacement of discretionary exceptions. **E+W**

(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 <sup>M16</sup>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
- (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—

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- (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.
- (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.

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(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

M16 1984 c. 27.

### 35 Employment agencies etc.: replacement of licensing. **U.K.**

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. **U.K.**

<sup>F13</sup>(1) . . . . .

(2) Article 22C(1)(e) of <sup>M17</sup> the Industrial Relations (Northern Ireland) Order 1976 (corresponding provision for Northern Ireland) shall be omitted.

#### Textual Amendments

F13 S. 36(1) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

#### Commencement Information

I3 S. 36 wholly in force at 3.1.1995; 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

M17 S.I. 1976/1043 (N.I. 16).

### 37 Power to repeal certain health and safety provisions. **U.K.**

(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 <sup>M18</sup> 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,

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- (c) any provision which is an existing statutory provision for the purposes of <sup>M19</sup> 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 <sup>M20</sup> the Statutory Rules (Northern Ireland) Order 1979, and
  - (b) shall be subject to affirmative resolution, as defined in section 41(4) of <sup>M21</sup> the Interpretation Act (Northern Ireland) 1954, as if they were statutory instruments within the meaning of that Act.
- (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).

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#### Marginal Citations

- M18 1974 c. 37.
- M19 S.I. 1978/1039 (N.I. 9).
- M20 S.I. 1979/1573 (N.I. 12).
- M21 1954 c. 33 (N.I.).

### 38 Inspection of independent schools. **E+W**

After section 87 of the Children Act <sup>M22</sup>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—
  - (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.

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- (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 <sup>M23</sup>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 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 <sup>M24</sup>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**

**M22** 1989 c. 41.



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**M23** 1944 c. 31.

**M24** 1944 c. 31.

### 39 Chapter II: consequential amendments. **U.K.**

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(c); 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. **U.K.**

- (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,  
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.

**Status:**

Point in time view as at 22/07/2004.

**Changes to legislation:**

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