



# Deregulation and Contracting Out Act 1994

## 1994 CHAPTER 40

### PART I

#### DEREGULATION

#### CHAPTER I

#### GENERAL

#### *Removal or reduction of burdens*

**[<sup>F1</sup>1 Power to remove or reduce certain statutory burdens on businesses, individuals etc.**

- (1) If, with respect to any provision made by an enactment, a Minister of the Crown is of the opinion—
- (a) that the effect of the provision is such as to impose, or authorise or require the imposition of, a burden affecting any person in the carrying on of any trade, business or profession or otherwise, and
  - (b) that, by amending or repealing the enactment concerned and, where appropriate, by making such other provision as is referred to in subsection (4) (a) below, it would be possible, without removing any necessary protection, to remove or reduce the burden or, as the case may be, the authorisation or requirement by virtue of which the burden may be imposed,
- he may, subject to the following provisions of this section and sections 2 to 4 below, by order amend or repeal that enactment.
- (2) The reference in subsection (1)(b) above to reducing the authorisation or requirement by virtue of which a burden may be imposed includes a reference to shortening any period of time within which the burden may be so imposed.

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*Status: Point in time view as at 17/12/2009.*

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- (3) In this section and sections 2 to 4 below, in relation to an order under this section,—
- (a) “the existing provision” means the provision by which the burden concerned is imposed or, as the case may be, is authorised or required to be imposed; and
  - (b) “the relevant enactment” means the enactment containing the existing provision.
- (4) An order under this section shall be made by statutory instrument and may do all or any of the following—
- (a) make provision (whether by amending any enactment or otherwise) creating a burden which relates to the subject matter of, but is less onerous than that imposed by, the existing provision;
  - (b) make such modifications of enactments as, in the opinion of the Minister concerned, are consequential upon, or incidental to, the amendment or repeal of the relevant enactment;
  - (c) contain such transitional provisions and savings as appear to the Minister to be appropriate;
  - (d) make different provision for different cases or different areas;
- but no order shall be made under this section unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) In this section and sections 2 to 4 below—
- (a) “Minister of the Crown” has the same meaning as in the Ministers of the Crown <sup>M1</sup>Act 1975 [<sup>F2</sup>and includes the Scottish Ministers where the functions of a Minister of the Crown under this section have transferred to them under section 53 of the Scotland Act 1998] and “Minister” shall be construed accordingly;
  - (b) “burden” includes a restriction, requirement or condition (including one requiring the payment of fees), together with—
    - (i) any sanction (whether criminal or otherwise) for failure to observe the restriction or to comply with the requirement or condition; and
    - (ii) any procedural provisions (including provisions for appeal) relevant to that sanction; and
  - (c) “enactment”, subject to subsection (6) below, means an enactment contained in this Act or in any other Act passed before or in the same Session as this Act, or any provision of an order under this section.
- (6) In paragraph (c) of subsection (5) above—
- (a) “Act” does not include anything contained in Northern Ireland legislation, within the meaning of section 24 of the Interpretation <sup>M2</sup> Act 1978; and
  - (b) the reference to an enactment is a reference to an enactment as for the time being amended, extended or applied by or under any Act mentioned in that paragraph.
- (7) Where a restriction, requirement or condition is subject to a criminal sanction (as mentioned in subsection (5)(b)(i) above), nothing in this section shall authorise the making of an amendment which would have the effect of leaving the restriction, requirement or condition in place but producing a different criminal sanction or altering any procedural provisions relevant to the criminal sanction.]

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### Textual Amendments

- F1** Ss. 1-5 and Sch. 1 shall cease to have effect except for specified purposes (S.) (10.4.2001) by virtue of 2001 c. 6, s. 12(1) (with s. 12(2)-(4)) and are repealed (E.W.N.I.) (10.4.2001) by 2001 c. 6, s. 12(1) (with s. 12(2)-(4))
- F2** Words in s. 1(5)(a) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 117(2) (with art. 5)

### Marginal Citations

- M1** 1975 c. 26.
- M2** 1978 c. 30.

## [<sup>F3</sup>2 Limitations on the power under section 1.

- (1) If an order under section 1 above creates a new criminal offence, then, subject to subsections (2) and (3) below, that offence shall not be punishable—
- on indictment with imprisonment for a term of more than two years; or
  - on summary conviction with imprisonment for a term exceeding six months or a fine exceeding level 5 on the standard scale or both.
- (2) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of—
- Part V of <sup>M3</sup> the Criminal Justice Act 1988, or
  - [ section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995,]
- <sup>F4</sup>(b) the reference in subsection (1)(b) above to level 5 on the standard scale shall be construed as a reference to the statutory maximum.
- (3) If an order under section 1 above abolishes an offence contained in the relevant enactment and the maximum penalties for that offence are greater than those specified in subsection (1) above, the order may create a new criminal offence having maximum penalties not exceeding those applicable to the offence which is abolished.
- (4) An order under section 1 above shall not contain any provision—
- providing for any forcible entry, search or seizure, or
  - compelling the giving of evidence,
- unless, and then only to the extent that, a provision to that effect is contained in the relevant enactment and is abolished by the order.]

### Textual Amendments

- F3** Ss. 1-5 and Sch. 1 shall cease to have effect except for specified purposes (S.) (10.4.2001) by virtue of 2001 c. 6, s. 12(1) (with s. 12(2)-(4)) and are repealed (E.W.N.I.) (10.4.2001) by 2001 c. 6, s. 12(1) (with s. 12(2)-(4))
- F4** S. 2(2)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 96

### Marginal Citations

- M3** 1988 c.33.

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**[<sup>F5</sup>3 Preliminary consultation.**

- (1) Before a Minister makes an order under section 1 above, he shall—
  - (a) consult such organisations as appear to him to be representative of interests substantially affected by his proposals; and
  - (b) consult such other persons as he considers appropriate.
- (2) If it appears to the Minister, as a result of the consultation required by subsection (1) above, that it is appropriate to vary the whole or any part of his proposals, he shall undertake such further consultation with respect to the variations as appears to him to be appropriate.
- (3) If, after the conclusion of—
  - (a) the consultation required by subsection (1) above, and
  - (b) any further consultation undertaken as mentioned in subsection (2) above,the Minister considers it appropriate to proceed with the making of an order under section 1 above, he shall lay before Parliament [<sup>F6</sup>or, where the Minister is a Scottish Minister, before the Scottish Parliament] a document containing his proposals in the form of a draft of the order, together with details of the matters specified in subsection (4) below.
- (4) The matters referred to in subsection (3) above are—
  - (a) the burden, authorisation or requirement which it is proposed to remove or reduce;
  - (b) whether the existing provision affords any necessary protection and, if so, how that protection is to be continued if the burden, authorisation or requirement is removed or reduced;
  - (c) whether any savings in cost are estimated to result from the proposals and, if so, either the estimated amount or the reasons why savings should be expected;
  - (d) any other benefits which are expected to flow from the removal or reduction of the burden, authorisation or requirement;
  - (e) any consultation undertaken as required by subsection (1) or subsection (2) above;
  - (f) any representations received as a result of that consultation; and
  - (g) the changes (if any) which the Minister has made to his original proposals in the light of those representations.
- (5) In giving details of the representations referred to in subsection (4)(f) above, the Minister shall not disclose any information relating to a particular person or business except—
  - (a) with the consent of that person or of the person carrying on that business; or
  - (b) in such a manner as not to identify that person or business.
- (6) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of subsection (1) above, those requirements shall to that extent be taken to have been satisfied.]

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#### Textual Amendments

- F5** Ss. 1-5 and Sch. 1 shall cease to have effect except for specified purposes (S.) (10.4.2001) by virtue of 2001 c. 6, s. 12(1) (with s. 12(2)-(4)) and are repealed (E.W.N.I.) (10.4.2001) by 2001 c. 6, s. 12(1) (with s. 12(2)-(4))
- F6** Words in s. 3(3) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 117(3)** (with art. 5)

#### [<sup>F7</sup>4] Parliamentary consideration of proposals.

- (1) Where a document has been laid before Parliament under section 3(3) above, no draft of an order under section 1 above to give effect (with or without variations) to proposals in that document shall be laid before Parliament until after the expiry of the period for Parliamentary consideration, as defined in subsection (2) below.
- (2) In this section “the period for Parliamentary consideration”, in relation to a document, means the period of sixty days beginning on the day on which it was laid before Parliament.
- (3) In reckoning the period of sixty days referred to in subsection (2) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days [<sup>F8</sup>and, in relation to the Scottish Parliament, no account shall be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.].
- (4) In preparing a draft of an order under section 1 above to give effect, with or without variations, to proposals in a document laid before Parliament under section 3(3) above, the Minister concerned shall have regard to any representations made during the period for Parliamentary consideration and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document.
- (5) Together with a draft of an order laid before Parliament under section 1(4) above, the Minister concerned shall lay a statement giving details of—
  - (a) any representations, resolution or report falling within subsection (4) above; and
  - (b) the changes (if any) which, in the light of any such representations, resolution or report, the Minister has made to his proposals as contained in the document previously laid before Parliament under section 3(3) above.
- (6) Subsection (5) of section 3 above shall apply in relation to the representations referred to in subsection (5)(a) above as it applies in relation to the representations referred to in subsection (4)(f) of that section.]

#### Textual Amendments

- F7** Ss. 1-5 and Sch. 1 shall cease to have effect except for specified purposes (S.) (10.4.2001) by virtue of 2001 c. 6, s. 12(1) (with s. 12(2)-(4)) and are repealed (E.W.N.I.) (10.4.2001) by 2001 c. 6, s. 12(1) (with s. 12(2)-(4))
- F8** Words in s. 4(3) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 117(4)(b)** (with art. 5)

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

**C1** S. 4 amended (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 117(4)(a)** (with art. 5)

### *Enforcement procedures and appeals*

#### **[F9]5 Powers to improve enforcement procedures.**

- (1) If, with respect to any provision made by an enactment, a Minister of the Crown is of the opinion—
  - (a) that the effect of the provision is such as to impose, or authorise or require the imposition of, a restriction, requirement or condition affecting any person in the carrying on of any trade, business or profession or otherwise, and
  - (b) that, by exercising any one or more of the powers conferred by Schedule 1 to this Act, it would be possible, without jeopardising any necessary protection, to improve (so far as fairness, transparency and consistency are concerned) the procedures for enforcing the restriction, requirement or condition,
 he may, subject to the following provisions of this section, by order exercise the power or powers accordingly.
- (2) No order shall be made under this section in any case where the sole or main effect which the restriction, requirement or condition may be expected to have on each person on whom it is imposed is an effect on him in his personal capacity, and not as a person carrying on a trade, business or profession.
- (3) Where the relevant enactment—
  - (a) contains a power for the Minister to make regulations or orders; and
  - (b) provides for that power to be exercisable so as to give effect, with or without modifications, to proposals submitted by some other person,
 the Minister shall consult with that person before he makes an order under this section.
- (4) An order under this section shall be made by statutory instrument and may do all or any of the following—
  - (a) make provision as to the consequences of any failure to comply with a provision made by the order;
  - (b) contain provisions (including provisions modifying enactments relating to the periods within which proceedings must be brought) which are consequential upon, or supplemental or incidental to, the provisions made by the order;
  - (c) contain such transitional provisions and savings as appear to the Minister to be appropriate;
  - (d) make different provision for different cases or different areas;
 and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in any order made under this section shall—
  - (a) preclude an enforcement officer from taking immediate enforcement action against any person, or from requiring any person to take immediate remedial action, in any case where it appears to the officer to be necessary to take such action or impose such a requirement; or
  - (b) require such an officer to disclose any information the disclosure of which would be contrary to the public interest.

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(6) In this section and Schedule 1 to this Act—

“enactment” means an enactment within the meaning of section 1 above, and any subordinate legislation made under such an enactment;

“enforcement action”—

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

“enforcement officer” does not include—

- (a) the Director of Public Prosecutions;
- (b) the Lord Advocate or a procurator fiscal; or
- (c) the Director of Public Prosecutions for Northern Ireland,

but, subject to that, means any person who is authorised, whether by or under the relevant enactment or otherwise, to take enforcement action;

“licence” includes any authorisation (by whatever name called) to do anything which would otherwise be unlawful;

“Minister of the Crown” and “Minister” have the same meanings as in section 1 above;

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

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

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

#### Textual Amendments

**F9** Ss. 1-5 and Sch. 1 shall cease to have effect except for specified purposes (S.) (10.4.2001) by 2001 c. 6, s. 12(1) (with s. 12(2)-(4)) and are repealed (E.W.N.I.) (10.4.2001) by 2001 c. 6, s. 12(1) (with s. 12(2)-(4))

#### Marginal Citations

**M4** 1978 c. 30.

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

- (1) The Secretary of State shall by order prescribe model provisions with respect to appeals against enforcement action with a view to their being incorporated, if thought fit and with or without modifications, in enactments to which subsection (2) below applies.
- (2) This subsection applies to enactments which include provision the effect of which is to impose, or authorise or require the imposition of, a restriction, requirement or

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condition affecting any person in the carrying on of any trade, business or profession or otherwise.

- (3) The Secretary of State shall perform his duty under this section in the manner which he considers is best calculated to secure—
- (a) that appeals determined in accordance with the model provisions are determined without unnecessary delay; and
  - (b) that the costs or expenses incurred by the parties to appeals so determined are kept to the minimum.
- (4) Model provisions prescribed by an order under this section may provide for the appointment of persons to hear and determine appeals and confer powers on persons so appointed, including in particular—
- (a) power to appoint experts and their own counsel or solicitor;
  - (b) power to require respondents to disclose documents and other material;
  - (c) power to summon or, in Scotland, to cite witnesses;
  - (d) power to make interim orders, including orders staying or, in Scotland, suspending enforcement action; and
  - (e) power to award costs or expenses to appellants and, in certain cases, against them.
- (5) Model provisions so prescribed may also—
- (a) confer a right for interested persons to make representations before enforcement action is taken;
  - (b) require the giving of reasons to such persons for any decision to take such action;
  - (c) require appellants to state their grounds of appeal and respondents to furnish statements by way of answer;
  - (d) enable appellants to amend their grounds of appeal before the hearing;
  - (e) require appeals to be determined on the merits rather than by way of review; and
  - (f) provide for further appeals to courts on points of law.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
- “enactment” does not include anything contained in Northern Ireland legislation but, subject to that, includes an enactment contained in an Act (whenever passed) and an enactment contained in subordinate legislation (whenever made);
  - “enforcement action” has the same meaning as in [F10]section 9 of the Regulatory Reform Act 2001];
  - [F11]“interested person” means—
- (a) the person against whom enforcement action may be or has been taken;
  - (b) any other person who will or may be required to meet, or to make a significant contribution towards, the cost of observing the restriction or complying with the requirement or condition; or
  - (c) where the enforcement action which may be or has been taken relates specifically to goods or services which are to be or have been supplied by a



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person other than the one against whom enforcement action may be or has been taken, that person;]

“Northern Ireland legislation” means—

(a) Northern Ireland legislation within the meaning of section 24 of the Interpretation <sup>M5</sup>Act 1978; and

(b) instruments, within the meaning of the Interpretation <sup>M6</sup>Act (Northern Ireland) 1954, made under such legislation;

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

#### Extent Information

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

#### Textual Amendments

**F10** Words in the definition of “enforcement action” in s. 6(7) substituted (10.4.2001) by 2001 c. 6, s. 13(1)(a)

**F11** Definition of “interested person” in s. 6(7) substituted (10.4.2001) by 2001 c. 6, s. 13(1)(b)

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

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

#### Marginal Citations

**M5** 1978 c. 30.

**M6** 1954 c. 33 (N.I.).

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

- (1) The Secretary of State shall by order prescribe model provisions with respect to appeals against enforcement action with a view to their being incorporated, if thought fit and with or without modifications, in enactments to which subsection (2) below applies.
- (2) This subsection applies to enactments which include provision the effect of which is to impose, or authorise or require the imposition of, a restriction, requirement or condition affecting any person in the carrying on of any trade, business or profession or otherwise.
- (3) The Secretary of State shall perform his duty under this section in the manner which he considers is best calculated to secure—
  - (a) that appeals determined in accordance with the model provisions are determined without unnecessary delay; and
  - (b) that the costs or expenses incurred by the parties to appeals so determined are kept to the minimum.
- (4) Model provisions prescribed by an order under this section may provide for the appointment of persons to hear and determine appeals and confer powers on persons so appointed, including in particular—
  - (a) power to appoint experts and their own counsel or solicitor;

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- (b) power to require respondents to disclose documents and other material;
  - (c) power to summon or, in Scotland, to cite witnesses;
  - (d) power to make interim orders, including orders staying or, in Scotland, suspending enforcement action; and
  - (e) power to award costs or expenses to appellants and, in certain cases, against them.
- (5) Model provisions so prescribed may also—
- (a) confer a right for interested persons to make representations before enforcement action is taken;
  - (b) require the giving of reasons to such persons for any decision to take such action;
  - (c) require appellants to state their grounds of appeal and respondents to furnish statements by way of answer;
  - (d) enable appellants to amend their grounds of appeal before the hearing;
  - (e) require appeals to be determined on the merits rather than by way of review; and
  - (f) provide for further appeals to courts on points of law.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
- “enactment” does not include anything contained in Northern Ireland legislation but, subject to that, includes an enactment contained in an Act (whenever passed) and an enactment contained in subordinate legislation (whenever made);
  - “enforcement action” has the same meaning as in section 5 above;
  - “interested person” means—
    - (a) the person against whom enforcement action may be or has been taken; and
    - (b) any other person in respect of whom either of the conditions mentioned in paragraph 5(1) of Schedule 1 to this Act is fulfilled;
  - “Northern Ireland legislation” means—
    - (a) Northern Ireland legislation within the meaning of section 24 of the Interpretation <sup>M56</sup>Act 1978; and
    - (b) instruments, within the meaning of the Interpretation <sup>M57</sup>Act (Northern Ireland) 1954, made under such legislation;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

#### **Extent Information**

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

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

**C18** *S. 6*: power to apply (with modifications) conferred (3.8.1999 for certain purposes only and 1.11.1999 otherwise) by 1999 c. 8, s. 37(6); S.I. 1999/2177, arts. 2(2)(c), 4(a)

*Status: Point in time view as at 17/12/2009.*

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**Marginal Citations**

- M56** 1978 c. 30.
- M57** 1954 c. 33 (N.I.).

**CHAPTER II**

MISCELLANEOUS DEREGULATORY PROVISIONS

**F127 Undertakings as alternative to monopoly reference by Director General of Fair Trading.**

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**Textual Amendments**

- F12** 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)

**F138 Newspaper mergers: meaning of “newspaper proprietor” etc.**

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**Textual Amendments**

- F13** 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)

**F149 Undertakings as alternative to merger reference: non-divestment matters.**

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**Textual Amendments**

- F14** 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)

**F1510** .....

**Textual Amendments**

- F15** 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.**

**F1611** .....

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#### Textual Amendments

- F16** 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.

- <sup>F17</sup>(1) .....
- <sup>F17</sup>(2) .....
- <sup>F17</sup>(3) .....
- <sup>F17</sup>(4) .....
- <sup>F17</sup>(5) .....
- <sup>F17</sup>(6) .....

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

#### Textual Amendments

- F17** 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.**

### 13 Striking off of non-trading private companies.

- <sup>F18</sup>(1) .....
- <sup>F19</sup>(2) .....

#### Textual Amendments

- F18** S. 13(1) repealed (1.10.2009) by **Companies Act 2006 (c. 46)**, s. 1300(2), **Sch. 16**; S.I. 2008/2860, art. 4, **Sch. 1 Pt. 1** (with arts. 78Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)
- F19** S. 13(1) repealed (1.10.2009) by **Companies Act 2006 (c. 46)**, s. 1300(2), **Sch. 16**; S.I. 2008/2860, art. 4, **Sch. 1 Pt. 2** (with arts. 78Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

### <sup>F20</sup>14 Repeal of section 43 of the Weights and Measures Act 1985.

.....

#### Textual Amendments

- F20** S. 14(2) repealed (22.7.2004) by **Statute Law (Repeals) Act 2004 (c. 14)**, **Sch. 1 Pt. 16** Group 2

*Status: Point in time view as at 17/12/2009.*

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

In section 7 of the <sup>M7</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**

M7 1986 c. 53.

<sup>F21</sup>16 .....

**Textual Amendments**

F21 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

<sup>F22</sup>17 .....

**Textual Amendments**

F22 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.**

<sup>F23</sup>(1) .....

(2) In the Licensing <sup>M8</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..”

**Textual Amendments**

**F23** S. 18(1) repealed (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), s. 201(2), [Sch. 7](#) (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2) (with art. 4)

**Marginal Citations**

**M8** 1976 c. 66.

**<sup>F24</sup>19 Bars in licensed premises in England and Wales: children’s certificates.**

.....

**Textual Amendments**

**F24** S. 19 repealed (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), s. 201(2), [Sch. 7](#) (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2) (with art. 4)

**<sup>F25</sup>20 Betting on Sundays.**

.....

**Textual Amendments**

**F25** S. 20 repealed (1.9.2007) by [Gambling Act 2005 \(c. 19\)](#), s. 358(1), [Sch. 17](#) (with ss. 352, 354); S.I. 2006/3272, art. 2(4)(5), Sch. 3B (with arts. 7-11arts. 7-12Sch. 4) (as inserted by S.I. 2007/2169, arts. 3, 6, Sch.)

**<sup>F26</sup>21 Sporting events and activities on Sundays.**

.....

**Textual Amendments**

**F26** S. 21 repealed (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), s. 201(2), [Sch. 6 para. 112](#), [Sch. 7](#) (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2) (with art. 4)

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**F27 22 Sunday opening of certain licensed premises in Scotland.**

.....

**Textual Amendments**

**F27** S. 22 repealed (1.9.2009 at 5.00 a.m.) by [The Licensing \(Scotland\) Act 2005 \(Consequential Provisions\) Order 2009 \(S.S.I. 2009/248\)](#), art. 1(1), [Sch. 2](#) (with art. 3)

**F28 23 Repeal of Part I of the Shops Act 1950.**

.....

**Textual Amendments**

**F28** S. 23 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 16](#) Group 2

**F29 24 Repeal of remainder of the Shops Act 1950.**

.....

**Textual Amendments**

**F29** S. 24 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 16](#) Group 2

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

- (1) In Part II of the Charities Act <sup>M9</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**

**M9** 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—

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“(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.

## <sup>F30</sup>28 Annual audit or examination of charity accounts.

.....

### Textual Amendments

**F30** S. 28 repealed (1.4.2008) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 9](#); S.I. 2008/945, art. 2, [Sch. 1](#)

## 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 ”.



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(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.”

<sup>F31</sup>(7) .....

<sup>F31</sup>(8) .....

#### Textual Amendments

**F31** S. 29(7)(8) repealed (1.4.2008) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 9](#); [S.I. 2008/945](#), art. 2, [Sch. 1](#)

### 30 Annual returns by charities.

(1) Section 48 of the Charities Act <sup>M10</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

**M10** [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.

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

- (1) In Schedule 1 to the <sup>M11</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**

**M11** 1984 c. 55.

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

- (1) In section 34 of the Environmental Protection Act <sup>M12</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**

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

#### **Marginal Citations**

**M12** 1990 c. 43.

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*Status: Point in time view as at 17/12/2009.*

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### **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 <sup>M13</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—
  - (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.

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- (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.
- (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

M13 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.

<sup>F32</sup>(1) . . . . .

- (2) Article 22C(1)(e) of <sup>M14</sup> the Industrial Relations (Northern Ireland) Order 1976 (corresponding provision for Northern Ireland) shall be omitted.

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#### Textual Amendments

**F32** 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

**I2** 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

**M14** S.I. 1976/1043 (N.I. 16).

### 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<sup>M15</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,
  - (c) any provision which is an existing statutory provision for the purposes of<sup>M16</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—
- <sup>F33</sup>(a) in the case of regulations under paragraph (a) of that subsection repealing or revoking a provision specified in section 117(4) of the Railways Act 1993, the Office of Rail Regulation,
- (aa) in the case of regulations under paragraph (a) of that subsection not falling within paragraph (a) of this subsection, [<sup>F34</sup> the Health and Safety Executive ],
  - (ab) in the case of regulations under paragraph (b) of that subsection revoking a provision of regulations which make provision exclusively in relation to transport systems falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005, the Office of Rail Regulation,
  - (ac) in the case of regulations under paragraph (b) of that subsection not falling within paragraph (ab) of this subsection, [<sup>F34</sup> the Health and Safety Executive ],
  - (b) in the case of regulations under paragraph (c) or (d) of that subsection, the Health and Safety Agency for Northern Ireland,
- and, in [<sup>F35</sup> either][<sup>F35</sup> any ] 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 [<sup>F36</sup> the Health and Safety Commission or, as the case may be, the Health and Safety Agency for Northern Ireland ][<sup>F36</sup> the required consultee ] to consult such persons as it considers

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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 <sup>F37</sup> the Health and Safety Commission or, as the case may be, the Health and Safety Agency for Northern Ireland <sup>F37</sup> the required consultee ] to consult the person for the purpose of deciding how it should respond to consultation under that subsection.

<sup>F38</sup>(4A) In subsections (3) and (4), “ the required consultee ” means the body which the appropriate authority is required to consult by virtue of subsection (2)(a) to (b). ]

(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>M17</sup> the Statutory Rules (Northern Ireland) Order 1979, and
- (b) shall be subject to affirmative resolution, as defined in section 41(4) of <sup>M18</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).

#### Textual Amendments

- F33** S. 37(2)(a)-(ac) substituted for s. 37(2)(a) (E.W.S.) (1.4.2006) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 12 para. 12\(2\)\(a\)](#); S.I. 2006/266, art. 2(2)
- F34** Words in s. 37(2)(aa)(ac) substituted (1.4.2008) by [Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\), art. 1, Sch. 3](#) (with art. 21, Sch. 2)
- F35** Word in s. 37(2) substituted (E.W.S.) (1.4.2006) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 12 para. 12\(2\)\(b\)](#); S.I. 2006/266, art. 2(2)
- F36** Words in s. 37(3) substituted (E.W.S.) (1.4.2006) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 12 para. 12\(3\)](#); S.I. 2006/266, art. 2(2)
- F37** Words in s. 37(4) substituted (E.W.S.) (1.4.2006) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 12 para. 12\(3\)](#); S.I. 2006/266, art. 2(2)
- F38** S. 37(4A) inserted (E.W.S.) (1.4.2006) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 12 para. 12\(4\)](#); S.I. 2006/266, art. 2(2)

#### Marginal Citations

- M15** 1974 c. 37.

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**M16** S.I. 1978/1039 (N.I. 9).

**M17** S.I. 1979/1573 (N.I. 12).

**M18** 1954 c. 33 (N.I.).

### **38 Inspection of independent schools.**

After section 87 of the Children Act <sup>M19</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.
- (5) Where—
  - (a) a local authority’s duty under section 87(3) in relation to any school is suspended under this section, and

*Status: Point in time view as at 17/12/2009.*

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(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>M20</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>M21</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**

**M19** 1989 c. 41.

**M20** 1944 c. 31.

**M21** 1944 c. 31.



*Status: Point in time view as at 17/12/2009.*

*Changes to legislation: Deregulation and Contracting Out Act 1994 is up to date with all changes known to be in force on or before 10 May 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)*

### 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

**I3** 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.

- (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.

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## [<sup>F39</sup>CHAPTER III]

### Textual Amendments

**F39** Pt. I Chapter III (ss. 41-57) repealed (1.1.1996) by 1995 c. 23, s. 60(2), **Sch. 8 Pt. I** (with ss. 54, 55); S.I. 1995/2181, **art. 2** (with transitional provisions in **Sch.**)

## CHAPTER IV

### PUBLIC SERVICE VEHICLE OPERATOR LICENSING ETC.

#### 58 The 1981 Act.

In this Chapter “the 1981 Act” means <sup>M33</sup> the Public Passenger Vehicles Act 1981.

### Marginal Citations

**M33** 1981 c. 14.

#### 59 Undertakings given on applications.

- (1) The 1981 Act shall be amended as follows.
- (2) After section 14(3) (which provides that an application for a PSV operator’s licence shall not be granted unless there will be adequate facilities or arrangements for

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maintaining the vehicles proposed to be used under the licence etc.) there shall be inserted—

“(3A) In considering on an application for a PSV operator’s licence whether the requirements mentioned in subsection (3) above are satisfied, the traffic commissioner may take into account any undertakings given by the applicant (or procured by him to be given) for the purposes of the application and may assume that those undertakings will be fulfilled.”

(3) After section 14(4) there shall be inserted—

“(5) In any case where the traffic commissioner grants an application for a PSV operator’s licence, any undertakings taken into account by him under subsection (3A) above that he considers to be material to the granting of the application shall be recorded in the licence issued to the applicant.”

(4) In section 16(6) (which provides that, on the application of the holder of a PSV operator’s licence, a traffic commissioner may vary or remove conditions attached to the licence) after paragraph (b) there shall be inserted—

“or

(c) vary or remove any undertaking recorded in the licence;”.

(5) After section 16(6) there shall be inserted—

“(6A) In considering whether to grant an application under subsection (6) above, the traffic commissioner may take into account any undertakings given by the applicant (or procured by him to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.

(6B) In any case where the traffic commissioner grants an application under subsection (6) above, any undertakings taken into account by him under subsection (6A) above that he considers to be material to the granting of the application shall be recorded in the licence as varied.”

(6) In section 17(3) (which sets out the grounds on which a licence may be revoked, suspended or varied under section 17(2)) after paragraph (a) there shall be inserted—

“(aa) that any undertaking recorded in the licence has not been fulfilled;”.

## **60 Objections to applications for licences.**

After section 14A(2) of the 1981 Act (which requires objections to applications for PSV operators’ licences to be made within the prescribed time and in the prescribed manner) there shall be inserted—

“(2A) Where the traffic commissioner considers there to be exceptional circumstances that justify his doing so, he may direct that an objection be treated for the purposes of this Part of this Act as duly made under this section, notwithstanding that it was not made within the prescribed time or in the prescribed manner.”

## **61 Duration of licences.**

In section 15 of the 1981 Act (duration of licences) for the words from “and the date on which it is to expire” to the end there shall be substituted—

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- “(2) Subject to its revocation or other termination under any provision of this Act or another statutory provision, a PSV operator’s licence shall continue in force indefinitely.
- (3) If the holder of a PSV operator’s licence requests the traffic commissioner by whom it was granted to terminate it at any time, the commissioner shall, subject to subsection (4) below, comply with the request.
- (4) The traffic commissioner may refuse to comply with the request if he is considering taking action in respect of the licence under section 17(1) or (2) of this Act.”

## 62 Suspension of licences.

- (1) Section 17 of the 1981 Act (revocation, suspension etc. of licences) shall be amended as follows.
- <sup>F40</sup>(2) .....
- (3) After subsection (5) there shall be inserted—
- “(5A) Where a licence is suspended under this section, it remains in force during the time of its suspension subject to the limitation that no vehicles are authorised to be used under it.
- (5B) A traffic commissioner who has suspended a licence under this section may at any time—
- (a) cancel the suspension; or
  - (b) with the consent of the holder of the licence, vary the period for which it is suspended.”

### Textual Amendments

**F40** S. 62(2) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 16](#) Group 2

## 63 Operators’ discs.

- (1) Section 18 of the 1981 Act (duty to exhibit operator’s disc) shall be amended as follows.
- (2) For subsection (2) (which requires the holder of a PSV operator’s licence to be supplied with a number of operators’ discs equal to the maximum number of vehicles that he may use under the licence) there shall be substituted—
- “(2) A traffic commissioner on granting a PSV operator’s licence shall supply the person to whom the licence is granted—
- (a) with a number of operators’ discs equal to the maximum number of vehicles that he may use under the licence in accordance with the condition or conditions attached to the licence under section 16(1) of this Act; or
  - (b) with such lesser number of operators’ discs as he may request.

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(2A) Where, in the case of any PSV operator’s licence, the maximum number referred to in subsection (2)(a) above is increased on the variation of one or more of the conditions there referred to, the traffic commissioner on making the variation shall supply the holder of the licence—

- (a) with such number of additional operators’ discs as will bring the total number of operators’ discs held by him in respect of the licence to that maximum number, or
- (b) with such lesser number of additional operators’ discs as he may request.

(2B) Where the number of operators’ discs currently held in respect of a PSV operator’s licence is less than the maximum number referred to in subsection (2)(a) above, the traffic commissioner by whom the licence was granted shall on the application of the holder of the licence supply him with such number of additional operators’ discs as is mentioned in subsection (2A) (a) or (b) above.

(2C) Where, in accordance with regulations under subsection (3)(aa) below, all the operators’ discs held in respect of a PSV operator’s licence expire at the same time, the traffic commissioner by whom the licence was granted shall supply the holder of the licence with a number of new operators’ discs equal to the number of discs that have expired.”

(3) In subsection (3) (provision that may be made by regulations)—

- (a) after paragraph (a) there shall be inserted—
  - “(aa) as to the expiry of operators’ discs;”, and
- (b) at the end there shall be added—
  - “(e) for the voluntary return of operators’ discs by the holder of a PSV operator’s licence.”

<sup>F41</sup>**64 Repeal of section 27 of the 1981 Act.**

.....

**Textual Amendments**

**F41** S. 64 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 16 Group 2

**65 Review of decisions and correction of errors.**

(1) After section 49 of the 1981 Act there shall be inserted—

**“49A Review of decisions.**

- (1) Subject to subsection (2) below, a traffic commissioner may review and, if he thinks fit, vary or revoke any decision of his—
  - (a) to grant or refuse an application for a PSV operator’s licence; or
  - (b) to grant or refuse an application for the variation of a PSV operator’s licence,

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if he is satisfied that a procedural requirement imposed by or under this Act has not been complied with in relation to the decision.

- (2) A traffic commissioner may only review a decision under subsection (1) above—
- (a) if, within such period after taking the decision as may be prescribed, he has given notice to the applicant or (as the case may be) the licence-holder that he intends to review the decision;
  - (b) if, within that period, a person who appears to him to have an interest in the decision has requested him to review it; or
  - (c) where neither paragraph (a) nor paragraph (b) above applies, if he considers there to be exceptional circumstances that justify the review.
- (3) Regulations may make provision as to the manner in which notices under subsection (2)(a) above are to be or may be served, including provision as to the circumstances in which and time at which any such notice is to be treated as having been duly served (whether or not it has in fact been served).
- (4) The variation or revocation of a decision under this section shall not make unlawful anything done in reliance on the decision before the variation or revocation takes effect.”

- (2) In section 50 of the 1981 Act (appeals to the Transport Tribunal) after subsection (4) there shall be inserted—

“(4A) A person who—

- (a) within the prescribed period has made an application for a review under section 49A of this Act; and
- (b) has been certified by the traffic commissioner as a person such as is mentioned in subsection (2)(b) of that section,

may appeal to the Transport Tribunal against the refusal of the application.”

- (3) After section 56 of the 1981 Act there shall be inserted—

**“56A Correction of errors.**

Where it appears to the traffic commissioner for a traffic area that a document purporting to record, or issued in consequence of, a decision taken in the exercise of his functions contains a clerical error, he may issue a corrected document or a notice in writing that the document is to have effect with such corrections as are stated in the notice.”

**66 Fees.**

- (1) The 1981 Act shall be amended as follows.
- (2) In section 52(1)(a) (which sets out matters in respect of which the traffic commissioner for an area is to charge fees) after sub-paragraph (i) there shall be inserted—
- “(ia) applications under section 16(6) of this Act and the grant of such applications;
  - (ib) the continuation in force of PSV operators’ licences;”.

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- (3) For section 52(2)(b) there shall be substituted—
- “(b) the grant of any PSV operator’s licence or of any application under section 16(6) of this Act;
  - (bb) the issue of any certificate, disc or other document referred to in subsection (1) above; or”.
- (4) After section 52(2) there shall be inserted—
- “(2A) If, in the case of any application for a PSV operator’s licence, any fee or instalment of a fee in respect of the application, the grant of the licence or the issue of operators’ discs under section 18(2) of this Act is not duly paid by the prescribed time—
- (a) the application shall be treated as withdrawn at that time;
  - (b) any decision made on the application ceases to have effect at that time; and
  - (c) any licence granted in pursuance of such a decision terminates at that time.
- (2B) If, in the case of any application under section 16(6) of this Act, any fee or instalment of a fee in respect of the application, the grant of the application or the issue of operators’ discs under section 18(2A) of this Act is not duly paid by the prescribed time—
- (a) the application shall be treated as withdrawn at that time;
  - (b) any decision made on the application, and any variation effected in pursuance of such a decision, ceases to have effect at that time.
- (2C) If, in the case of any PSV operator’s licence, any fee or instalment of a fee in respect of—
- (a) the continuation in force of the licence; or
  - (b) the issue of operators’ discs under section 18(2C) of this Act,
- is not duly paid by the prescribed time, the licence terminates at that time.
- (2D) If any fee or instalment of a fee in respect of any operators’ discs that have been issued under section 18 of this Act is not duly paid by the prescribed time, the discs cease to have effect at that time.
- (2E) The traffic commissioner by whom a PSV operator’s licence was granted may, if he considers there to be exceptional circumstances that justify his doing so in any case where subsection (2A), (2B), (2C) or (2D) above has applied, direct that as from the time mentioned in that subsection its effect in that case be disregarded.
- (2F) Where the traffic commissioner has given a direction under subsection (2E) above in respect of a PSV operator’s licence in a case where subsection (2A) or (2C) above has applied, it shall not for the purposes of section 20(1) or (2) of this Act be regarded as having been practicable for the licence-holder to—
- (a) report any matter to the Secretary of State; or
  - (b) give him notice of any alteration,
- during the period beginning with the time mentioned in subsection (2A) or (2C) and ending when the direction came into force.”

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(5) In section 60 (general power to make regulations for purposes of Act) for subsection (1)(e) there shall be substituted—

“(e) the fees to be payable under this Act, the persons liable to pay them, and the repayment (or partial repayment), in prescribed circumstances, of fees paid under this Act;”.

## 67 Disqualification of PSV operators.

(1) Section 28 of the Transport Act <sup>M34</sup>1985 (power to disqualify PSV operators) shall be amended as follows.

(2) In subsection (2) (so long as a person is disqualified, no licence shall be granted to him and any obtained by him shall be of no effect) for the words from “no PSV” to the end there shall be substituted—

“(a) any PSV operator’s licence held by him at the date of the making of the order under subsection (1) above (other than the licence revoked) shall be suspended (that is, shall remain in force subject to the limitation that no vehicles are authorised to be used under it); and

(b) notwithstanding section 14(4) of the 1981 Act, no PSV operator’s licence may be granted to him.”

(3) After subsection (2) there shall be inserted—

“(2A) If a person obtains a PSV operator’s licence while he is disqualified under subsection (1) above, the licence shall be void.”

(4) At the end of subsection (5) (the traffic commissioner may exercise his powers under section 28 in relation to officers of corporate licence-holders and partners of licence-holders) there shall be added— “ and any reference in subsection (6A) below to subsection (1) above or to subsection (4) above includes that subsection as it applies by virtue of this subsection. ”

(5) After subsection (6) there shall be inserted—

“(6A) The traffic commissioner by whom any order disqualifying a person was made under subsection (1) above may at any time—

(a) cancel that order together with any direction that was given under subsection (4) above when the order was made;

(b) cancel any such direction; or

(c) with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction).”

### Marginal Citations

M34 1985 c. 67.

## 68 Chapter IV: minor and consequential amendments.

The 1981 Act and <sup>M35</sup> the Transport Act 1985 shall have effect with the further amendments set out in Schedule 14 to this Act.



**Status:** Point in time view as at 17/12/2009.

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#### Commencement Information

- I5** S. 68 wholly in force; s. 68 not in force at Royal Assent see s. 82(4); s. 68 in force for certain purposes at 3.1.1995 by S.I. 1994/3188, arts. 2, 3; s. 68 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.)

#### Marginal Citations

- M35** 1985 c. 67.

## PART II

### CONTRACTING OUT

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

- C3** Pt. II (ss. 69-79) extended (E.W.) (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), Sch. 8 para. 13 (with ss. 7(6), 115, 117, Sch. 8 para. 7)  
Pt. II (ss. 69-79) extended (S.) (8.9.2000) by 2000 asp. 10, s. 9, Sch. 2 para. 14 (with s. 32); S.S.I. 2000/312, art. 2  
Pt. II (ss. 69-79) modified (1.10.2001 (W.) 25.3.2002 (E.)) for specified purposes, otherwise *prosp.* by 2000 c. 14, ss. 67(7), 122; S.I. 2001/2538, art. 2(2)(4)(a); S.I. 2002/1245, art. 2
- C4** Pt. II modified (29.12.2003) by Communications Act 2003 (c. 21), ss. 1(7), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C5** Pt. II applied (with modifications) (E.W.) (22.7.2004) by The Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1778), arts. 1, 34
- C6** Pt. II modified (E.W.) (22.7.2004) by The Cotswolds Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1777), arts. 1, 34

#### *Contracting out of functions*

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

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

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

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

- C7 S. 69 extended (1.10.2000) by 2000 c. 21, s. 136(3); S.I. 2000/2559, art. 2, Sch. Pt. I  
 S. 69 applied (with modifications) (27.7.2000) by S.I. 2000/2040, art. 2, Sch. Pt. I para. 16

**70 Functions of local authorities.**

- (1) This section applies to any function of a local authority—
- (a) which is conferred by or under any enactment; and
  - (b) which, by virtue of section 101 of <sup>M36</sup> the Local Government Act 1972 or section 56 of <sup>M37</sup> the Local Government (Scotland) Act 1973 [<sup>F42</sup> or an enactment mentioned in subsection (1ZA) below ], may be exercised by an officer of the authority; and
  - (c) which is not excluded by section 71 below.

[<sup>F43</sup>(1A) This section also applies to any function of a local authority—

- (a) if, and to the extent that, it is the responsibility of an executive of that local authority under executive arrangements, within the meaning of Part II of the Local Government Act 2000;
- (b) which is conferred by or under any enactment;
- (c) which, by virtue of any of sections 14 to 16, or any provisions made under sections 17 to 20, of the Local Government Act 2000 (provisions with respect to executive arrangements—discharge of functions etc. ), may be exercised by an officer of the local authority; and
- (d) which is not excluded by section 71 below.]

[<sup>F44</sup>(1ZA) The enactments referred to in subsection (1)(b) above are—

- (a) paragraph 7 of Schedule 2 to the Regional Development Agencies Act 1998 (delegation of functions by London Development Agency etc );
- (b) section 38 or 380 of the Greater London Authority Act 1999 (delegation of functions exercisable by the Mayor of London);
- (c) paragraph 7 of Schedule 10 to that Act (delegation by Transport for London).

(1ZB) In its application in relation to a local authority which is a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or

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a scheme to which section 4 of that Act applies, subsection (1) above has effect as if paragraph (b) were omitted.]

- (2) If a Minister by order so provides, a function to which this section applies may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the local authority whose function it is.
- (3) A Minister shall not make an order under this section in relation to a local authority without first consulting—
- (a) in the case of an authority in England or Wales, such representatives of local government;
  - (b) in the case of an authority in Scotland, such associations of local authorities, as he considers appropriate.
- (4) Subsections (4) and (5) of section 69 above shall apply for the purposes of this section as they apply for the purposes of that section; and in subsection (5) of that section as so applied any reference to the Minister or office-holder by whom the authorisation is given shall be construed as a reference to the local authority by which the authorisation is given.
- (5) Where at any time—
- (a) an order is in force under this section in relation to any function of a local authority (“authority A”); and
  - (b) arrangements are in force under section 101 of <sup>M38</sup> the Local Government Act 1972 or section 56 of <sup>M39</sup> the Local Government (Scotland) Act 1973 for the exercise of that function by another local authority (“authority B”),

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

<sup>F45</sup>[( 6) Any reference in subsection (5) above to arrangements under section 101 of the <sup>M40</sup> Local Government Act 1972 includes a reference to an authorisation under section 38 or 380 of the Greater London Authority Act 1999. ]

[<sup>F46</sup>(7) Where at any time—

- (a) an order is in force under this section in relation to any function of a local authority (“authority A”);
- (b) that function, to any extent, is the responsibility of an executive of authority A under executive arrangements, within the meaning of Part II of the Local Government Act 2000; and
- (c) arrangements are in force under regulations made under section 19 of the Local Government Act 2000 (discharge of functions of and by another local authority) for the exercise of that function, to any extent, by another local authority (“authority B”) or by any executive of authority B,

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

#### Textual Amendments

**F42** Words in s. 70(1)(b) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\), ss. 239\(1\)\(a\), 245\(5\); S.I. 2008/917, art. 2\(1\)\(u\) \(with art. 6\(6\)\)](#)

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- F43** S. 70(1A) inserted (E.) (11.7.2001) by S.I. 2001/2237, **art. 29**, and the same subsection inserted (W.) (1.4.2002) by S.I. 2002/808, **art. 28(a)**
- F44** S. 70(1ZA)(1ZB) inserted (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 239(1)(b)**, 245(5); S.I. 2008/917, art. 2(1)(u) (with art. 6(6))
- F45** S. 70(6) inserted (8.5.2000) by 1999 c. 29, **s. 40(3)**; S.I. 2000/801, art. 2(2)(b), **Sch. Part 2**
- F46** S. 70(7) inserted (E.) (11.7.2001) by S.I. 2001/2237, **art. 29**, and the same subsection inserted (W.) (1.4.2002) by S.I. 2002/808, **art. 28(b)**

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

- C8** S. 70 modified (16.7.1998) by 1998 c. 30, **s. 23(3)(b)** (with s. 42(8))  
 S. 70 extended (27.9.1999 with effect in relation to England and Wales and 27.7.2000 otherwise) by 1999 c. 27, **ss. 18**, 27(1)(2)(c); S.I. 1999/2169, **art. 3(1)**  
 S. 70 extended (*prosp.*) by 2002 c. 32, **ss. 183(4)(a)**, 216 (with ss. 210(8), 214(4))
- C9** S. 70 extended (1.9.2003) by Education Act 2002 (c. 32), **ss. 183(4)(a)**, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2003/1718, art. 5, Sch. Pt. II

**Marginal Citations**

- M36** 1972 c. 70.  
**M37** 1973 c. 65.  
**M38** 1972 c. 70.  
**M39** 1973 c. 65.  
**M40** 1972 c. 70.

**71 Functions excluded from sections 69 and 70.**

- (1) Subject to subsections (2) and (3) below, a function is excluded from sections 69 and 70 above if—
- (a) its exercise would constitute the exercise of jurisdiction of any court or of any tribunal which exercises the judicial power of the State; or
  - (b) its exercise, or a failure to exercise it, would necessarily interfere with or otherwise affect the liberty of any individual; or
  - (c) it is a power or right of entry, search or seizure into or of any property; or
  - (d) it is a power or duty to make subordinate legislation.
- (2) Subsection (1)(b) and (c) above shall not exclude any function of the official receiver attached to any court.
- (3) Subsection (1)(c) above shall not exclude any function of a local authority under, or under regulations made under, any of the following enactments, namely—
- (a) section 247 of <sup>M41</sup> the Local Government (Scotland) Act 1947 (enforcement of non-domestic rates);
  - (b) Part VI of <sup>M42</sup> the General Rate Act 1967 (distress for general rates);
  - (c) paragraphs 7 and 7A of Schedule 2 and paragraph 11 of Schedule 5 to <sup>M43</sup> the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (enforcement of community charges and community water charges);
  - (d) paragraphs 5 to 7 of Schedule 4 to <sup>M44</sup> the Local Government Finance Act 1988 (enforcement of community charge);
  - (e) paragraph 3(2)(b) of Schedule 9 to that Act (enforcement of non-domestic rates);

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- [<sup>F47</sup>(ea) section 48 of the Local Government Act 2003 (administration etc of BID levy) if the function corresponds to any function falling within paragraph (e) above.,  
I
- (f) paragraphs 5 to 7 of Schedule 4 to <sup>M45</sup> the Local Government Finance Act 1992 (enforcement of council tax);
  - (g) paragraphs 2 and 6 of Schedule 8 and paragraph 11 of Schedule 11 to that Act (enforcement of council tax and council water charge); and
  - (h) paragraph 2 of Schedule 10 to the Local <sup>M46</sup>Government etc. (Scotland) Act 1994 (enforcement of water and sewerage charges).

#### Textual Amendments

- F47** S. 71(3)(ea) inserted (18.11.2003 for E., 27.11.2003 for W.) by [Local Government Act 2003 \(c. 26\)](#), s. 128(6), [Sch. 7 para. 59](#); [S.I. 2003/2938](#), art. 3(a) (with [art. 8Sch.](#)); [S.I. 2003/3034](#), art. 2, Sch. 1 Pt. I

#### Marginal Citations

- M41** 1947 c.43.  
**M42** 1967 c.9.  
**M43** 1987 c.47.  
**M44** 1988 c.41.  
**M45** 1992 c.14.  
**M46** 1994 c. 39.

## 72 Effect of contracting out.

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

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

- C10** S. 72 applied by 1998 c. 37, s. 1F(7)(a) (as inserted (E.W.) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), [ss. 142\(1\)](#), 178(8); [S.I. 2005/1521](#), art. 3(1)(s))
- C11** S. 72 applied by 2003 c. 38, s. 28A(7) (as inserted (1.8.2007 for E.) by [Police and Justice Act 2006 \(c. 48\)](#), [ss. 25](#), 53(1); [S.I. 2007/1614](#), art. 3(a))

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### 73 Termination of contracting out.

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

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

- C12** S. 73 applied by 1998 c. 37, s. 1F(7)(b) (as inserted (E.W.) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 142(1)**, 178(8); S.I. 2005/1521, art. 3(1)(s))
- C13** S. 73 applied by 2003 c. 38, s. 28A(7) (as inserted (1.8.2007 for E.) by [Police and Justice Act 2006 \(c. 48\)](#), **ss. 25**, 53(1); S.I. 2007/1614, art. 3(a))

#### *Provisions for facilitating contracting out*

### 74 Powers of certain office-holders.

- (1) In so far as an office-holder to whom this section applies does not already have power to do so, he may authorise an officer of his to exercise any function of his which is conferred by or under any enactment.
- (2) Subject to subsection (3) below, anything done or omitted to be done by an officer so authorised in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by the office-holder in his capacity as such.
- (3) Subsection (2) above shall not apply for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.
- (4) The office-holders to whom this section applies are—
  - <sup>F48</sup>(a) the registrar of companies for England and Wales, Scotland or Northern Ireland;]
  - (b) the official receiver attached to any court;
  - (c) the Comptroller-General of Patents, Designs and Trade Marks;
  - (d) the Public Trustee;
  - (e) the traffic commissioner for any traffic area;
  - (f) the registrar of approved driving instructors;
  - (g) the Registrar General of Births, Deaths and Marriages for Scotland;
  - (h) the Keeper of the Registers of Scotland; and
  - (i) the Keeper of the Records of Scotland.

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#### Textual Amendments

**F48** S. 74(4)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 148(2)** (with art. 10)

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

**C14** S. 74(4)(a) applied (3.12.1998) by [1998 c. 48, ss. 23, 25\(3\)](#), **Sch. 3 para. 4**

### 75 Restrictions on disclosure of information.

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

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

**C15** S. 75 applied by [1998 c. 37, s. 1F\(7\)\(c\)](#) (as inserted (E.W.) (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 142(1), 178(8)**; [S.I. 2005/1521](#), art. 3(1)(s))

**C16** S. 75 applied by [2003 c. 38, s. 28A\(7\)](#) (as inserted (1.8.2007 for E.) by [Police and Justice Act 2006 \(c. 48\)](#), **ss. 25, 53(1)**; [S.I. 2007/1614](#), art. 3(a))

### 76 Amendments of enactments etc.

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

#### *Supplemental*

### 77 Provisions with respect to orders.

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

### 78 Extent of Part II.

- (1) The following provisions of this Part extend to Northern Ireland, namely—
  - (a) sections 69 and 74 above;

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

## 79 Interpretation of Part II.

(1) In this Part—

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

“enactment” does not include an enactment contained in Northern Ireland legislation but, subject to that, includes an enactment contained in an Act (whenever passed) and an enactment contained in subordinate legislation (whenever made);

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

“joint board”—

- (a) in relation to England and Wales, means a joint or special planning board constituted for a National Park by order under paragraph 1, 3 or 3A of Schedule 17 to <sup>M47</sup> the Local Government Act 1972, or a joint planning board within the meaning of section 2 of <sup>M48</sup> the Town and Country Planning Act 1990;
- (b) in relation to Scotland, has the same meaning as in the Local <sup>M49</sup>Government (Scotland) Act 1973;

“joint committee”—

- (a) in relation to England and Wales, means a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;
- (b) in relation to Scotland, has the same meaning as in the Local Government (Scotland) Act 1973;

“local authority”—

- (a) in relation to England, [<sup>F49</sup> has the meaning given by section 79A; ]
- (b) in relation to Wales, [<sup>F50</sup> has the meaning given by section 79B; ]
- (c) in relation to Scotland, has the same meaning as in the Local Government (Scotland) Act 1973;

“Minister” has the same meaning as Minister of the Crown has in the Ministers <sup>M50</sup>of the Crown Act 1975;

“Northern Ireland legislation” means—

- (a) Northern Ireland legislation within the meaning of section 24 of <sup>M51</sup>the Interpretation Act 1978; and
- (b) instruments, within the meaning of <sup>M52</sup> the Interpretation Act (Northern Ireland) 1954, made under such legislation;

“office-holder” does not include a Minister, an officer of either House of Parliament, [<sup>F51</sup>the Auditor General for Wales,] the Parliamentary Commissioner for Administration, [<sup>F52</sup> the Public Services Ombudsman for Wales ]<sup>F53</sup>... [<sup>F54</sup> the Health Service Commissioner for England <sup>F55</sup>... or the Scottish Public Services Ombudsman] but, subject to that, means—



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- (a) the holder of an office created or continued in existence by a public general Act of Parliament;
  - (b) the holder of an office the remuneration in respect of which is paid out of money provided by Parliament;
  - (c) [<sup>F56</sup>the registrar of companies for England and Wales, Scotland or Northern Ireland; and]
  - (d) the registrar of approved driving instructors;  
“officer”—
    - (a) in relation to a Minister, means any person in the civil service of the Crown who is serving in his department;
    - (b) in relation to an office-holder, means any member of his staff, or any person in the civil service of the Crown who has been assigned or appointed to assist him in the exercise of his functions;“the registrar of approved driving instructors” means the officer of the Secretary of State by whom the register of approved driving instructors established in pursuance of section 23 of <sup>M53</sup> the Road Traffic Act 1962 is compiled and maintained;  
“subordinate legislation” has the same meaning as in the Interpretation <sup>M54</sup> Act 1978.
- (2) In relation to any time before 1st April 1996, subsection (1) above shall have effect as if, in paragraph (b) of the definition of “local authority”, for the words “county borough” there were substituted the word “ district ”.
- (3) Subject to subsection (4) below, this Part shall have effect as if—
  - [<sup>F57</sup>(a) any reference to a Minister included a reference to the Forestry Commissioners or to the Charity Commission;]
  - [<sup>F57</sup>(b) any reference to an officer in relation to the Charity Commission were a reference to a member or member of staff of the Commission; and.]
- (4) Nothing in subsection (3) above shall be construed as enabling those Commissioners [<sup>F58</sup> or that Commission ]<sup>F59</sup> . . . to make an order under section 69 or 70 above <sup>F59</sup> . . .
- (5) Subject to subsection (6) below, any function of an examiner or other officer of the Patent Office which is conferred by or under any enactment shall be treated for all purposes of this Part as if it were a function of the Comptroller-General of Patents, Designs and Trade Marks.
- (6) In any case where by virtue of an order made under section 69 above a person is authorised by that Comptroller to exercise any such function as is mentioned in subsection (5) above, section 72(2) above shall have effect as if for paragraphs (a) and (b) there were substituted the words “ by or in relation to an examiner or other officer of the Patent Office in his capacity as such ”.

#### Textual Amendments

- F49** Words in s. 79(1) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), **ss. 239(2)(a)**, 245(5); S.I. 2008/917, art. 2(1)(u) (with art. 6(6))
- F50** Words in s. 79(1) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), **ss. 239(2)(b)**, 245(5); S.I. 2008/917, art. 2(1)(u) (with art. 6(6))
- F51** Words in the definition in s. 79(1) inserted (1.4.1999) by [1998 c. 38, s. 125](#), **Sch. 12 para. 36(a)** (with [ss. 139\(2\), 143\(2\)](#)); S.I. 1999/782, **art. 2**

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- F52** Words in s. 79(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 55(a)**; S.I. 2005/2800, art. 5(1)(3)
- F53** Words in s. 79(1) omitted (14.7.2004) by virtue of Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **18**
- F54** Words in s. 79(1) substituted (14.7.2004) by Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **18**
- F55** Words in s. 79(1) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 55(b), **Sch. 7**; S.I. 2005/2800, art. 5(1)(3)
- F56** Words in s. 79(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 148(3)** (with art. 10)
- F57** S. 79(3)(a)(b) substituted for s. 79(3)(a) (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 179(2)**; S.I. 2007/309, art. 2
- F58** Words in s. 79(4) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 179(3)**; S.I. 2007/309, art. 2
- F59** Words in s. 79(4) repealed (15.11.2001) by S.I. 2001/3686, **regs. 1(1), 6(11)(b)**

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

- C17** S. 79(1) extended (1.7.1999) by S.I. 1999/1351, **arts. 1, 17(2)(f)** (with art. 8)

#### **Marginal Citations**

- M47** 1972 c.70.  
**M48** 1990 c.8.  
**M49** 1973 c.65.  
**M50** 1975 c. 26.  
**M51** 1978 c.30.  
**M52** 1954 c.33 (N.I.).  
**M53** 1962 c.59.  
**M54** 1978 c.30.

### **[<sup>F60</sup>79A “Local authority”: England**

In this Part, “local authority” in relation to England means—

- (a) a county council;
- (b) a district council;
- (c) a London borough council;
- (d) the Greater London Authority acting through the Mayor of London;
- (e) the Common Council of the City of London;
- (f) the sub-treasurer of the Inner Temple;
- (g) the under treasurer of the Middle Temple;
- (h) the Council of the Isles of Scilly;
- (i) a parish council;
- (j) a National Park authority;
- (k) a functional body within the meaning of the Greater London Authority Act 1999;
- (l) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
- (m) a joint authority established by Part 4 of that Act (fire and rescue services and transport);

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- [  
F61 (ma) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;  
(mb) a combined authority established under section 103 of that Act;]  
(n) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;  
(o) a police authority established under section 3 of the Police Act 1996;  
(p) an authority established by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities);  
(q) any body specified for the purposes of this paragraph by regulations under section 79C.

#### Textual Amendments

**F60** Ss. 79A-79C inserted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), [ss. 239\(3\)](#), 245(5); S.I. 2008/917, art. 2(1)(u) (with art. 6(6))

**F61** S. 79A(ma)(mb) inserted (17.12.2009) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), s. 148(6), [Sch. 6 para. 87](#); S.I. 2009/3318, art. 2(c)

## 79B “Local authority”: Wales

In this Part, “local authority” in relation to Wales means—

- (a) a county council;
- (b) a county borough council;
- (c) a community council;
- (d) a National Park authority;
- (e) a joint planning board constituted for an area in Wales outside a National Park by an order under section 2(1B) of the Town and Country Planning Act 1990;
- (f) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;
- (g) a police authority established under section 3 of the Police Act 1996;
- (h) any body specified for the purposes of this paragraph by regulations under section 79C.

#### Textual Amendments

**F60** Ss. 79A-79C inserted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), [ss. 239\(3\)](#), 245(5); S.I. 2008/917, art. 2(1)(u) (with art. 6(6))

## 79C Regulations for the purposes of section 79A and 79B

- (1) The Secretary of State may by regulations made by statutory instrument specify for the purposes of section 79A(q) or 79B(h) any body which is (or any class of bodies each of which is)—
  - (a) a levying body, within the meaning of section 74 of the Local Government Finance Act 1988;

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- (b) a body to which section 75 of that Act applies (bodies with power to issue special levies);
  - (c) a body to which section 118 of that Act applies (other bodies with levying powers);
  - (d) a local precepting authority as defined in section 69 of the Local Government Finance Act 1992.
- (2) Regulations under subsection (1)—
- (a) may provide for this Part to have effect, in relation to a body specified under that subsection, subject to exceptions or modifications;
  - (b) may contain transitional provisions and savings.
- (3) Any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F60** Ss. 79A-79C inserted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007](#) (c. 28), **ss. 239(3)**, 245(5); S.I. 2008/917, art. 2(1)(u) (with art. 6(6))

## PART III

### SUPPLEMENTARY

#### 80 Financial provisions.

- (1) There shall be paid out of money provided by Parliament—
- (a) any sums required by a Minister of the Crown, an office-holder [<sup>F62</sup>or the Forestry Commissioners] for making payments under contracts entered into under or by virtue of Part II of this Act;
  - (b) any administrative expenses incurred by a Minister of the Crown or office-holder in consequence of the provisions of this Act; and
  - (c) any increase attributable to this Act in the sums so payable under any other Act.
- (2) In this section—
- “Minister of the Crown” has the same meaning as in <sup>M55</sup>the Ministers of the Crown Act 1975;
- “office-holder” has the same meaning as in Part II of this Act.

#### Textual Amendments

**F62** Words in s. 80(1)(a) substituted (15.11.2001) by [S.I. 2001/3686](#), **regs. 1(1)**, 6(11)(c)

#### Marginal Citations

**M55** 1975 c. 26.

*Status: Point in time view as at 17/12/2009.*

*Changes to legislation: Deregulation and Contracting Out Act 1994 is up to date with all changes known to be in force on or before 10 May 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)*

## 81 Repeals.

- (1) The enactments mentioned in Schedule 17 to this Act (which include enactments which are spent) are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The extent of any repeal in that Schedule of an enactment is the same as that of the enactment repealed.

### Commencement Information

- I6** S. 81 wholly in force; s. 81 in force for certain purposes at Royal Assent and at 3.1.1995 see s. 82(2) (3); s. 81 in force for certain purposes at 1.12.1994 by S.I. 1994/3037, arts. 2, 3; s. 81 in force for certain purposes at 3.1.1995 by S.I. 1994/3188, arts. 2, 3(n)(s); s. 81 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.)

## 82 Short title, commencement and extent.

- (1) This Act may be cited as the Deregulation and Contracting Out Act 1994.

<sup>F63</sup>(2) .....

<sup>F63</sup>(3) .....

<sup>F63</sup>(4) .....

<sup>F63</sup>(5) .....

<sup>F63</sup>(6) .....

<sup>F63</sup>(7) .....

- (8) Except in so far as any provision of this Act otherwise provides, this Act, other than Chapter I of Part I and this section, does not extend to Northern Ireland.

### Subordinate Legislation Made

- P1** S. 82(4) power partly exercised: 1.12.1994 appointed for specified provisions by S.I. 1994/3037, arts. 2, 3  
S. 82(4) power partly exercised: different dates appointed for specified provisions by S.I. 1994/3188, arts. 2-4 (with transitional provisions in arts. 5, 6)  
S. 82(4) power partly exercised: 1.7.1995 and 1.11.1995 appointed for specified provisions by S.I. 1995/1433, arts. 2-5  
S. 82(4) power partly exercised (2.11.1995): 1.1.1996 appointed for specified provisions by S.I. 1995/2835, art. 2 (with transitional provisions in Sch.)
- P2** S. 82(5) power fully exercised (2.11.1995): 1.1.1996 appointed for specified provisions by S.I. 1995/2835, art. 2 (with transitional provisions in Sch.)

### Textual Amendments

- F63** S. 82(2)-(7) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 16 Group 2

**Status:**

Point in time view as at 17/12/2009.

**Changes to legislation:**

Deregulation and Contracting Out Act 1994 is up to date with all changes known to be in force on or before 10 May 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.