



Deregulation and Contracting Out Act 1994

1994 CHAPTER 40

PART II

CONTRACTING OUT

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—
 - (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.

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- (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)

- C1** 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 ^{M1} the Local Government Act 1972 or section 56 of ^{M2} the Local Government (Scotland) Act 1973 [^{F1}or section 38 or 380 of the Greater London Authority Act 1999] (arrangements for discharge of functions by local authorities), may be exercised by an officer of the authority; and
 - (c) which is not excluded by section 71 below.

[^{F2}(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.]
- (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

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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 ^{M3} the Local Government Act 1972 or section 56 of ^{M4} 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.

^{F3}[(6) Any reference in subsection (5) above to arrangements under section 101 of the ^{M5} Local Government Act 1972 includes a reference to an authorisation under section 38 or 380 of the Greater London Authority Act 1999.]

[^{F4}(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

- F1** Words in s. 70(1)(b) inserted (8.5.2000) by 1999 c. 29, s. 40(2); S.I. 2000/801, art. 2(2)(b), Sch. Pt. 2
- F2** 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)
- F3** 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
- F4** 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)

- C2** 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))
- C3** 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

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

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M4 1973 c.65.
M5 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 ^{M6} the Local Government (Scotland) Act 1947 (enforcement of non-domestic rates);
 - (b) Part VI of ^{M7} the General Rate Act 1967 (distress for general rates);
 - (c) paragraphs 7 and 7A of Schedule 2 and paragraph 11 of Schedule 5 to ^{M8} 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 ^{M9} 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);
 - [^{F5}(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,.
]
 - (f) paragraphs 5 to 7 of Schedule 4 to ^{M10} 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 ^{M11}Government etc. (Scotland) Act 1994 (enforcement of water and sewerage charges).

Textual Amendments

F5 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

M6 1947 c.43.
M7 1967 c.9.
M8 1987 c.47.
M9 1988 c.41.
M10 1992 c.14.

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M11 1994 c. 39.

72 Effect of contracting out.

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

73 Termination of contracting out.

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

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