
STATUTORY INSTRUMENTS

1996 No. 1632

**The Deregulation and Contracting
Out (Northern Ireland) Order 1996**

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Deregulation and Contracting Out (Northern Ireland) Order 1996.

(2) Article 17 comes into operation on the expiration of seven days from the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on the expiration of two months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“Department” means a Northern Ireland department or the Head of such a department;

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

“enactment”, in relation to a Department, Northern Ireland office-holder or district council, includes an enactment contained in any statutory provision (whenever passed or made);

“enactment”, in relation to a Minister or reserved office-holder, includes an enactment contained in any statutory provision (whenever passed or made), other than—

(a) an Act of the Parliament of the United Kingdom; or

(b) an instrument made under such an Act (except a Northern Ireland Order in Council);

“function”, in relation to a district council, includes any power to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of a function;

“instrument” has the meaning assigned by section 1(c) of the Interpretation Act (Northern Ireland) 1954;

“Joint committee” means a joint committee appointed under section 19 of the Local Government Act (Northern Ireland) 1972;

“Minister” has the same meaning as Minister of the Crown has in the Ministers of the Crown Act 1975;

“Northern Ireland office-holder” does not include a Department or an officer of the Assembly, but, subject to that, means—

- (a) the holder of an office created or continued in existence by a public general Act of the Parliament of Northern Ireland or the Parliament of Ireland or public general Measure of the Assembly or by a Northern Ireland Order in Council;
- (b) the holder of an office the remuneration in respect of which is paid out of money appropriated by Measure;
- (c) the registrar of companies; and
- (d) the official receiver;

“Northern Ireland Order in Council” means an Order in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972 or Schedule 1 to the Northern Ireland Act 1974;

“office-holder” means a Northern Ireland office-holder or a reserved office-holder;

“officer”—

- (a) in relation to a Department, means any person in the Northern Ireland civil service or the civil service of the Crown who is serving in the Department;
- (b) in relation to a Minister, means any person in the PART I civil service of the Crown or the Northern Ireland civil service who is serving in his department;
- (c) in relation to an office-holder, means any member of his staff, or any person in the Northern Ireland civil service or the civil service of the Crown who has been assigned or appointed to assist him in the exercise of his functions;

“reserved office-holder” does not include a Minister or an officer of the Assembly, but, subject to that, means—

- (a) the holder of an office created or continued in existence by a public general Act of the Parliament of the United Kingdom; and
- (b) the holder of an office the remuneration in respect of which is paid out of money provided by Parliament;

“statutory provision” has the meaning assigned by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) This Order has effect as if—

- (a) any reference in Part III to a district council included references to a joint committee and to an officer of such a council; and
- (b) any reference in Part III to that Part included a reference to an order made under Article 17.

PART II

DEREGULATION

Miscellaneous deregulatory provisions

Horticultural produce: repeal of licensing provisions, etc.

3.—(1) The Horticulture Act (Northern Ireland) 1966 is amended as follows.

(2) The following provisions are omitted—

- (a) sections 11 and 12 (licences required for processing horticultural produce);
- (b) section 13 (regulations as to standards of quality, etc. of horticultural produce processed in Northern Ireland);

- (c) section 14 (related offences);
 - (d) Part III (restrictions on sending certain horticultural produce out of Northern Ireland);
 - (e) sections 28 to 30 (ancillary provisions and exemptions);
 - (f) section 35(2)(b) and (c) (part of definition of “horticultural produce”);
 - (g) section 37 (repeals);
 - (h) the Schedule (provisions about licences).
- (3) In section 33(3), for “Food and Drugs Act (Northern Ireland) 1958” substitute “Food Safety (Northern Ireland) Order 1991”.
- (4) In section 35(2), for “24 to 30” substitute “24 to 27”.
- (5) In section 36—
- (a) in paragraph (a), for “Destructive Insects and Pests Acts (Northern Ireland) 1877 to 1934” substitute “Plant Health Act (Northern Ireland) 1967”.
 - (b) in paragraph (b), for “Food and Drugs Act (Northern Ireland) 1958” substitute “Food Safety (Northern Ireland) Order 1991”.

Repeal of Arts. 20(S), 22(10) of Weights and Measures (Northern Ireland) Order 1981

4. Articles 20(5) and 22(10) of the Weights and Measures (Northern Ireland) Order 1981 (under which the gas in foam on beer or cider is to be disregarded for certain purposes) are omitted.

Repeal of Auctions (Local Control) Act (Northern Ireland) 1957

5. The Auctions (Local Control) Act (Northern Ireland) 1957 is repealed.

Sunday Observance Act (Ireland) 1695: exclusion of sports, etc.

6.—(1) The Sunday Observance Act (Ireland) 1695 does not apply to any person by reason of his taking part in, or doing anything in connection-with, any sport or recreation, or any similar activity.

(2) In section 3 of that Act (hurling, football and other sports prohibited on Sunday), omit from the beginning to “conviction shall be: and that”.

Totalisators on licensed trucks: deductions, etc.

7. In Schedule 8 to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, in paragraph 3 (totalisator operators must post a notice on licensed tracks which must specify the percentage, not exceeding 17; per cent. or that specified by the Department of Health and Social Services by order, deducted by them from amounts staked using totalisators)—

- (a) after “licensed track” insert “or, where bets may be made by means of the totalisator in more than one distinct area of the track, in each such area”;
- (b) after “a notice” insert “in easily legible print”;
- (c) after “specify” insert “prominently”; and
- (d) from “not exceeding 17 f per cent.” to “by order” is omitted.

Taxi drivers — tests of competence, etc.

8. In Article 79A(3)(b)(ii) of the Road Traffic (Northern Ireland) Order 1981 (taxi driver’s licence not to be granted unless the applicant passes such test of driving competence to drive a vehicle of the type for which the licence is required and meets such other requirements as may be prescribed), from “passes” to “required and” is omitted.

*Enforcement procedures and appeals***Powers to improve enforcement procedures**

9.—(1) If, with respect to any provision made by an enactment, a Department or Minister 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, it would be possible, without jeopardising my necessary protection, to improve (so far as fairness, transparency and consistency are concerned) the procedures for enforcing the restriction, requirement or condition,

the Department or Minister may, subject to paragraphs (2) to (8), by order exercise the power or powers accordingly.

(2) No order may be made under this Article 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 Department or 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 Department or Minister must consult with that person before making an order under this Article.

(4) An order under this Article 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 Department or Minister to be appropriate;
- (d) make different provision for different areas.

(5) An order made by a Department under this Article is subject to negative resolution.

(6) An order made by a Minister under this Article is subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(7) Nothing in any order made under this Article—

- (a) precludes 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) requires such an officer to disclose any information the disclosure of which would be contrary to the public interest.

(8) In this Article and Schedule 1—

“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 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;

“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.

Model provisions with respect to appeals

10.—(1) The Department of Economic Development must 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 paragraph (2) applies.

(2) This paragraph 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 Department of Economic Development must perform its duty under this Article in the manner which it 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 incurred by the parties to appeals so determined are kept to the minimum.

(4) Model provisions prescribed by an order under this Article 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 witnesses;

(d) power to make interim orders, including orders staying enforcement action; and

(e) power to award costs 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 made by the Department of Economic Development under this Article is subject to negative resolution.
- (7) In this Article—
 - “enactment” includes an enactment (whenever passed) and an enactment contained in any instrument (whenever made);
 - “enforcement action” has the same meaning as in Article 9;
 - “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 is fulfilled.

PART III

CONTRACTING OUT

Registrar of companies, etc.

- 11.**—(1) Any function of the registrar of companies which is set out in Part I of Schedule 2 may be exercised by, or by employees of, any person authorised in that behalf by the registrar.
- (2) Any function of the Department of Economic Development which is set out in Part II of Schedule 2 may be exercised by, or by employees of, any person authorised in that behalf by that Department.
- (3) In so far as the registrar of companies 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.
- (4) Subject to paragraph (5), 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 registrar in his capacity as such.
- (5) Paragraph (4) does not apply for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that paragraph.

Official receiver

- 12.**—(1) Subject to paragraph (2), any function of the official receiver which is conferred by or under the insolvency legislation, except one set out in Schedule 3, may be exercised by, or by employees of, any person authorised in that behalf by the official receiver.
- (2) Where a function to which paragraph (1) applies involves the exercise of a right of audience in relation to any proceedings before the Court, it must not be exercised by any person unless he has such a right in relation to the proceedings in question.
- (3) In so far as the official receiver 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.
- (4) Subject to paragraph (5), 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 official receiver in his capacity as such.
- (5) Paragraph (4) does not apply for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that paragraph.
- (6) In this Article and Schedule 3—

“the Court” means the High Court; any expression used (other than “the Rules”) has the same meaning as in the Insolvency Order;

“the insolvency legislation” means the Companies (Northern Ireland) Order 1986, Part II of the Companies (Northern Ireland) Order 1989, the Insolvency Order, any instrument made under any of those Orders and any regulations made under rule 12.01 of the Rules;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989;

“right of audience” means the right to exercise any of the functions of appearing before and addressing the Court, including the calling and examining of witnesses;

“the Rules” means the Insolvency Rules (Northern Ireland) 1991.

Effect of contracting out

13.—(1) This Article applies where by virtue of this Part, or any provision amended by Part IV, a person is authorised to exercise any function of a Department or other person.

(2) Subject to paragraph (3), 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 in the case of a function of a Department or other person, by or in relation to the Department or person in its or his capacity as such.

(3) Paragraph (2) does not apply—

- (a) for the purposes of so much of any contract made between the authorised person and the Department or other person 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).

Termination of contracting out

14.—(1) This Article applies where—

- (a) by virtue of this Part, or any provision amended by Part IV, a person is authorised to exercise any function of a Department or other person; and
- (b) the 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 Department or person with whom it was made (and not as frustrated by reason of the revocation).

(3) In this Article “relevant contract” means so much of any contract made between the authorised person and the Department or person with whom it was made as relates to the exercise of the function.

Authorisations: ancillary provisions

15.—(1) An authorisation given by virtue of this Part, or any provision amended by Part IV, may authorise the exercise of a function—

- (a) either wholly or to such extent as may be specified in the 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.

(2) An authorisation given by virtue of this Part, or any provision amended by Part IV—

- (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 Department or person by whom the authorisation is given; and
- (c) does not prevent that Department or any other person from exercising the function to which the authorisation relates.

Restrictions on disclosure of information

16. Schedule 4 (which contains provisions modifying certain restrictions on the disclosure of information where functions of Departments, Ministers, office-holders or district councils are contracted out) has effect.

PART IV

SOCIAL SECURITY AND SUPPLEMENTARY

Social security: amendments following certain orders

17.—(1) Where the Secretary of State makes an order under Chapter I of Part I or Part II of the Deregulation and Contracting Out Act 1994 relating to any matter dealt with by or under any enactment specified in paragraph (2), the Department of Health and Social Services may make a corresponding order for Northern Ireland.

(2) Those enactments are—

- the Child Support Act 1991;
- the Social Security Contributions and Benefits Act 1992;
- the Social Security Administration Act 1992;
- the Social Security (Consequential Provisions) Act 1992;
- the Social Security Act 1993;
- the Pension Schemes Act 1993;
- the Social Security (Contributions) Act 1994;
- the Statutory Sick Pay Act 1994;
- the Social Security (Incapacity for Work) Act 1994;
- the Jobseekers Act 1995;
- the Pensions Act 1995;
- the Child Support Act 1995.

(3) An order under this Article may contain such incidental, consequential, supplemental and transitional provisions and such savings as may be necessary or expedient to give effect to the order or in consequence of any change in the law effected or to be effected by or under the order, including such provisions for the modification, application, adaptation or repeal of statutory provisions and for administration and enforcement as are specified in the order.

(4) Section 166(1) of the Social Security Administration (Northern Ireland) Act 1992 applies to an order made under this Article as it applies to an order made under section 129 of that Act.

Amendments

18. Schedule 5 (which contains amendments and other provisions for facilitating or otherwise in connection with the contracting out of particular functions, and a minor amendment) has effect.

Repeals

19. The enactments set out in Schedule 6 are hereby repealed to the extent specified in column 3 of that Schedule.

N. H. Nicholls
Clerk of the Privy Council