
STATUTORY INSTRUMENTS

1996 No. 1632 (N.I. 11)

NORTHERN IRELAND

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

*Made - - - - 26th June 1996
Coming into operation in accordance with Article 1(2)
and (3)*

At the Court at Buckingham Palace, the 26th day of June 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

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 m 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

SCHEDULES

SCHEDULE 1

Article 9.

POWERS TO IMPROVE ENFORCEMENT PROCEDURES

Explanation of suggested remedial action

1.—(1) This paragraph confers power to provide that, where an enforcement officer expresses to any person any opinion as to what remedial action should be taken by that person, then, if that person so requests, the officer—

- (a) shall as soon as practicable give to him a written notice which satisfies the requirements of sub-paragraph (2); and
 - (b) shall not take any enforcement action against him until after the end of such period beginning with the giving of the notice as may be determined by or under the order.
- (2) A notice satisfies the requirements of this sub-paragraph if it—
- (a) states the nature of the remedial action which in the officer's opinion should be taken, and explains why and within what period;
 - (b) explains what constitutes the failure to observe the restriction or to comply with the requirement or condition; and
 - (c) states the nature of the enforcement action which could be taken and states whether there is a right to make representations before, or a right of appeal against, the taking of such action.

Explanation of immediate enforcement action, etc.

2.—(1) This paragraph confers power to provide that, where an enforcement officer—

- (a) takes immediate enforcement action against any person; or
- (b) requires any person to take immediate remedial action,

the officer shall as soon as practicable give to that person a written notice explaining why it appeared to him to be necessary to take such action or impose such a requirement.

(2) The power conferred by this paragraph is not exercisable unless the restriction, requirement or condition is such that observance of or compliance with it would be likely to involve expenditure of a significant amount.

Right to make representations

3. This paragraph confers power to provide that, before an enforcement officer takes any enforcement action against any person, the officer—

- (a) shall give to that person a written notice stating—
 - (i) that he is considering taking the action and the reasons why he is considering it; and

- (ii) that the person may, within a period specified in the notice, make written representations to him or, if the person so requests, make oral representations to him in the presence of a person determined by or under the order; and
- (b) shall consider any representations which are duly made and not withdrawn.

Explanation of right of appeal

4. This paragraph confers power to provide that, where—
- (a) an enforcement officer has taken enforcement action against any person; and
 - (b) the relevant enactment contains any provision conferring a right of appeal against such action,

the officer shall as soon as practicable give to that person a written notice explaining how, where, within what period, and on what grounds, an appeal may be brought, and whether the enforcement action would be stayed while an appeal were pending.

Application of provisions to other interested persons

- 5.—(1) This paragraph confers power to provide that, where—
- (a) a third person will or may be required to meet or make a significant contribution towards the cost of observing the restriction or complying with the requirement or condition; or
 - (b) the enforcement action which may be or has been taken specifically relates to goods or services which are to be or have been supplied by a third person,

any relevant provision shall, with any modifications specified in the order, apply in relation to that person.

- (2) In this paragraph—
- “relevant provision” means any provision made by virtue of paragraphs 1 to 4 or any provision of the relevant enactment which is to the like effect;
- “third person” means any person other than the one against whom enforcement action may be or has been taken.

SCHEDULE 2

Article 11:

FUNCTIONS RELATING TO COMPANIES WHICH MAY BE CONTRACTED OUT

PART I

FUNCTIONS OF THE REGISTRAR OF COMPANIES

General

1. Any function of receiving—
- (a) any return, account or other document required to be filed with, delivered or sent, or
 - (b) notice of any matter required to be given,
- to the registrar of companies which is conferred by or under any enactment.

The Companies (Northern Ireland) Order 1986 (NI 6)

2. Any functions in relation to—
- (a) the incorporation of companies and the change of name of companies by or under Chapters I and II of Part II of the Companies (Northern Ireland) Order 1986 (company formation and company names);
 - (b) the re-registration and change of status of companies by or under Part III re-registration as a means of altering a company's status) and Articles 148 (registration of order and minute of reduction), 149 and 157 (re-registration of public companies on reduction of capital) of that Order.
3. Functions conferred by or under any of the following provisions of the Companies (Northern Ireland) Order 1986—
- (a) Articles 654 and 654A (companies' registered numbers and registration of branches of Part XXIII companies), except insofar as they relate respectively to the determination of the form of companies' registered numbers and branches' registered numbers;
 - (b) Article 655 (delivery to the registrar of documents in legible form), except insofar as it relates to the specification of requirements for the purpose of enabling the copying of documents delivered to the registrar;
 - (c) Article 656 (delivery to the registrar of documents other than in legible form), except insofar as it relates to the approval of the non-legible form in which information may be conveyed to the registrar;
 - (d) Article 658 (inspection, etc. of records kept by the registrar), except insofar as it relates to the determination of the means of facilitating the exercise of the right of persons to inspect records kept by the registrar, or the form in which copies of the information contained in those records may be made available;
 - (e) Article 659 (certificate of incorporation); and
 - (f) Article 659A (provision and authentication by registrar of documents in non-legible form), except insofar as it relates to the, approval of the means of communication by the registrar of information in non-legible form.

The Newspaper Libel and Registration Act 1881 (c. 60)

4. Functions conferred by or under section 13 of the Newspaper Libel and m Registration Act 1881 (registrar to enter returns on register).

The Limited Partnerships Act 1907 (c. 24)

5. Functions conferred by or under section 16 of the Limited Partnerships Act 1907 (inspection of statements registered).

The Insurance Companies Act 1982 (c. 50)

6. Functions conferred by or under section 47 or 66 of the Insurance Companies Act 1982 (rescission, variation and publication of requirements and documents deposited).

The European Economic Interest Grouping Regulations (Northern Ireland) 1989 (No. 216)

7. Functions conferred by or under regulation 14 of the EEIG Regulations (inspection of documents).

8. Functions conferred by or under any provision of the Companies (Northern Ireland) Order 1986 listed in paragraphs 2 and 3 to the extent specified in those paragraphs where any such provision is applied to EEIGs by regulation 18 of the EEIG Regulations.

PART II

FUNCTIONS OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT

The Companies (Northern Ireland) Order 1986 (NI 6)

9. Functions conferred by or under any of the following provisions of the Companies (Northern Ireland) Order 1986

- (a) Article 36(2) (prohibition on registration of certain names except with the approval of the Department);
- (b) Article 252(5) (extension by Department of the period allowed for laying and delivering accounts and reports); and
- (c) Article 651(5) (extension by Department of period allowed for delivering accounts and reports of a Part XXIII company).

The Business Names (Northern Ireland) Order 1986 (NI 7)

10. Functions conferred by or under Article 4 of the Business Names (Northern Ireland) Order 1986.

11. Functions conferred by or under Article 4 of the Business Names (Northern Ireland) Order 1986, as applied to EEIGs by regulation 17 of the EEIG Regulations.

PART III

INTERPRETATION

12. In this Schedule—

“EEIG” (European Economic Interest Grouping) has the meaning assigned by regulation 2 of the EEIG Regulations;

“the EEIG Regulations” means the European Economic Interest Grouping Regulations (Northern Ireland) 1989.

SCHEDULE 3

Article 12.

FUNCTIONS OF OFFICIAL RECEIVER WHICH CANNOT BE CONTRACTED OUT

1. The functions of the official receiver as—

- (a) a receiver appointed pursuant to Article 42 (power of the Court to appoint official receiver);
- (b) a provisional liquidator appointed pursuant to Article 115 (appointment and powers of provisional liquidator); or
- (c) an interim receiver appointed pursuant to Article 259 (power of the Court to appoint interim receiver).

2. The receipt of any deposit which relates to a bankruptcy or winding-up petition.
3. The chairing—
 - (a) by virtue of rule 4.062 of the first meeting of creditors (as defined by rule 4.055(7)) or the first meeting of contributories (as so defined) in a winding up by the Court; or
 - (b) by virtue of rule 6.080 of the first meeting of creditors (as defined by rule 6.077(7)) in a bankruptcy.
4. The making of an application to the Department—
 - (a) under Article 117(1) for the appointment of another person as liquidator in the place of the official receiver; or
 - (b) under Article 269(1) for the appointment of a person as trustee instead of the official receiver.
5. The taking of a decision—
 - (a) pursuant to Article 117(2), whether to refer to the Department the need for an appointment of a liquidator in any case where at meetings held in pursuance of a decision under Article 116(5)(a) no person is chosen to be liquidator;
 - (b) pursuant to Article 268(1), whether to refer to the Department the need for an appointment of a trustee in any case where at a meeting summoned under Article 266 or 267 no appointment of a person as trustee is made.
6. The making of a reference to the Department under paragraph (4) of Article 273 of the need for an appointment of a trustee by the Department in the circumstances referred to in that paragraph.
7. The making of a reference to the Court or the Department, as the case may be, under paragraph (5) of Article 273 of the need to fill any vacancy in the circumstances referred to in that paragraph.
8. The functions of the official receiver—
 - (a) exercisable under rule 4.180(2) (functions of liquidation committee exercisable by official receiver), rule 6.163(2) (functions of creditors' committee exercisable by official receiver) or rule 6.230(2) (bankrupt may, with official receiver's consent, travel to Great Britain or the Republic of Ireland); or
 - (b) in relation to the hearing of an application made under—
 - (i) Article 254 (discharge by order of the Court);
 - (ii) rule 4.040(2) (application to the Court for a release or extension of time in respect of statement of affairs in a winding up by the Court); or
 - (iii) rule 6.060(2) (application to the Court by bankrupt for a release or extension of time in respect of statement of affairs).
9. The bringing or the conduct of proceedings under Part II of the Companies (Northern Ireland) Order 1989.
10. The giving of notice to the Department pursuant to Article 148(3) (release of official receiver in winding up by the Court) or Article 272(2) (release of official receiver as trustee).
11. Considering—
 - (a) pursuant to rule 4.064(3), whether a request by creditors for a meeting of creditors or contributories, or meetings of both, or
 - (b) pursuant to rule 4.064(3), as it applies by virtue of rule 4.064(5), whether a request by contributories for a meeting of contributories, or
 - (c) pursuant to rule 6.081(3), whether a request by creditors for a meeting of creditors,

has been properly made in accordance with the Insolvency Order.

- 12.** The making or conduct of any application to the Court—
 - (a) to commit a bankrupt for contempt of court for failure to comply with a duty imposed on him by—
 - (i) Article 261 (statement of affairs);
 - (ii) Article 264 (duties of bankrupt in relation to official receiver);
 - (iii) Article 285 (obligation to surrender control to trustee);
 - (iv) Article 306 (duties of bankrupt in relation to trustee); or
 - (v) Article 334 (general control of the Court); or
 - (b) pursuant to Article 253(3) (suspension of discharge on application by official receiver).
- 13.** The making or conduct of any application to the Court to commit for contempt of court—
 - (a) a person who has failed to attend his public examination under Article 113 (public examination of officers, etc.); or
 - (b) a bankrupt who has failed to attend his public examination under Article 263 (public examination of bankrupt).
- 14.** The making of a report to the Court pursuant to—
 - (a) Article 112(1) (investigation by official receiver where a winding-up order is made by the Court);
 - (b) Article 262(1) (investigation by official receiver of bankrupt's affairs);
 - (c) Article 262(2) (report to the Court on application by bankrupt for discharge from bankruptcy);
 - (d) rule 4.040(6) (report to the Court, etc. on application by officers of company, etc. for release from duty to submit statement of affairs or for extension of time);
 - (e) rule 6.060(6) (report to the Court, etc. on application by bankrupt for release from duty to submit statement of affairs or for extension of time); or
 - (f) rule 6.213(2) (report in support of application for suspension of discharge).
- 15.** The making or conduct of an application to the Court for a public examination under Article 113(1) or 263(1) and the making or conduct of any application in relation to any public examination.
- 16.** The making or conduct of an application to the Court to relieve the official receiver from an obligation to make an application for a public examination requested pursuant to Article 113(2) or required pursuant to Article 263(2).
- 17.** The taking part in a public examination or the questioning of a person pursuant to Article 113(4)(a) or the taking part in a public examination or the questioning of a bankrupt pursuant to Article 263(4)(a).
- 18.** The making or conduct of an application to the Court—
 - (a) pursuant to Article 114(2) for the issue of a warrant for the arrest of a person and for the seizure of any books, papers, records, money or goods in that person's possession; or
 - (b) pursuant to Article 335, for the issue of a warrant for the arrest of a debtor, an undischarged bankrupt or a discharged bankrupt and for the seizure of any books, papers, records, money or goods in the debtor's or bankrupt's possession, as the case may be.
- 19.** The making or conduct of an application to the Court pursuant to Article 135 for the arrest of a contributory and for the seizure of his books, papers and movable personal property.

20. The taking of affidavits and declarations pursuant to rule 7.52(5) (taking of affidavits and declarations).

21. Any function of the official receiver in relation to the hearing of—

- (a) an application by a bankrupt for leave to act as a director of, or directly or indirectly to take part in or be concerned in the promotion, formation or management of, a company; or
- (b) an application by a director in respect of whom a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 is in force, for leave—
 - (i) to be a director of a company;
 - (ii) to be a liquidator or administrator of a company;
 - (iii) to be a receiver or manager of a company's property; or
 - (iv) to be concerned or to take part in the promotion, formation or management of a company in any way, whether directly or indirectly.

22. The making of a report to the Department pursuant to Article 10(3) of the Companies (Northern Ireland) Order 1989.

23. Any function corresponding to one referred to in paragraphs 1 to 22 which is exercisable by the official receiver by virtue of the application (with or without modifications) of any provision of the insolvency legislation to insolvent partnerships or unregistered companies.

24. The presentation of a winding-up petition pursuant to Article 104(6) (application by official receiver for winding up of company being wound up voluntarily).

25. In this Schedule—

except where otherwise expressly provided, an Article referred to by number means that Article in the Insolvency Order;

a rule referred to by number means that rule in the Rules.

SCHEDULE 4

Article 16.

RESTRICTIONS ON DISCLOSURE OF INFORMATION

Preliminary

1.—(1) Paragraphs 2 to 5, 7 and 8 apply where—

- (a) a person (“contractor A”) is authorised to exercise any function (“the relevant function”) of a Department, Minister, office holder or district council (“authority A”); and
- (b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Order, in or in connection with the exercise of the relevant function or a related function, is restricted by any enactment or by any obligation of confidentiality.

(2) Paragraphs 6 to 8 apply where—

- (a) a person (“contractor A”) is authorised to exercise any function (“the relevant function”) of a Department, Minister, office-holder or district council (“authority A”); and
- (b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Order, in or in connection with the exercise of any function of

another Department, Minister, office-holder or district council (“authority F”), is restricted by any enactment or by any obligation of confidentiality.

Disclosure between contracting parties, etc.

2. The enactment or obligation does not prevent or penalise the disclosure of relevant information

- (a) between contractor A or an employee of his and authority A or an authorised officer of that authority;
- (b) between contractor A and an employee of his or between one such employee and another; or
- (c) where the relevant function has been delegated to authority A by another Department, Minister, office-holder or district council (“authority B”), between contractor A or an employee of his and authority B or an authorised officer of that authority,

if the disclosure is necessary or expedient in or in connection with, or for the purpose of facilitating, the exercise of the relevant function or a related function or the performance of ancillary services.

Disclosures by contracting parties to contractor B

3.—(1) This paragraph applies where another person (“contractor B”) is authorised to exercise the relevant function or a related function.

(2) The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, or authority A or an authorised officer of that authority, to contractor B or an employee of his, if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function or a related function; and
- (b) where the disclosure is by contractor A or an employee of his, the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient.

Disclosures by contracting parties to contractor C

4.—(1) This paragraph applies where another person (“contractor C”) is authorised to exercise a function of another Department, Minister, office-holder or district council (“authority C”).

(2) The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, or authority A or an authorised officer of that authority; to contractor C or an employee of his, if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority C;
- (b) where the disclosure is by contractor A or an employee of his, the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient; and
- (c) the information could be lawfully disclosed, for that purpose, by authority A to authority C.

Disclosures by contractor A to authority D

5. The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his to another Department, Minister, office-holder or district council (“authority D”) or an authorised officer of that authority if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority D;
- (b) the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient; and
- (c) the information could be lawfully disclosed, for that purpose, by authority A to authority D.

Disclosures to contractor A by authority E

6. The enactment or obligation does not prevent or penalise the disclosure of relevant information by authority E or an authorised officer of that authority to contractor A or an employee of his, if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority E; and
- (b) the information could be lawfully disclosed, for that purpose, by authority E to authority A.

Disclosures for audit purposes

7.—(1) Where authority A is a Department, Minister or office-holder, the enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, if—

- (a) the disclosure is to the Comptroller, or a person exercising an audit function of his, and the information could be lawfully disclosed to the Comptroller or that person by authority A; or
- (b) the disclosure is to an accounting officer, or a person exercising an audit function of his, and the information could be lawfully disclosed to that officer or person by authority A.

(2) Where authority A is a district council, the enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, if—

- (a) the disclosure is to the council’s chief financial officer, or a person exercising an audit function of his; and
- (b) the information could be lawfully disclosed to that officer or person by the council.

(3) In this paragraph—

“accounting officer” means—

- (a) an officer appointed as such an officer by the Department of Finance and Personnel;
- (b) an officer appointed by the Treasury under section 22 of the Exchequer and Audit Departments Act 1866 or section 4 of the Government Trading Funds Act 1973;

“audit function”, in relation to the Comptroller, includes any function under Part III of the Audit (Northern Ireland) Order 1987 or Part II of the National Audit Act 1983 (examinations into economy, efficiency and effectiveness);

“chief financial officer” has the meaning assigned by section 148(1) of the Local Government Act (Northern Ireland) 1972;

“Comptroller” means the Comptroller and Auditor General for Northern Ireland or the Comptroller and Auditor General of the United Kingdom,

Implied term of contractor A's contract

8. It is an implied term of any contract made between contractor A and authority A and relating to the exercise of the relevant function that contractor A shall take all reasonable steps to secure that any relevant information—

- (a) which is obtained by him or an employee of his; and
- (b) the disclosure of which is restricted by any enactment or obligation,

is not disclosed at any time (whether or not during the subsistence of the contract) to any other person in contravention of the enactment or in breach of the obligation.

Unauthorised disclosures

9.—(1) This paragraph applies where—

- (a) any information is disclosed to any person in accordance with paragraphs 2 to 7 (“the original disclosure”); and
- (b) that person, or any other person to whom the information is subsequently so disclosed, discloses the information otherwise than in accordance with paragraphs 2 to 7 (“the unauthorised disclosure”).

(2) If the original disclosure was restricted by an enactment, the enactment shall apply in relation to the person making the unauthorised disclosure as if—

- (a) he had obtained the information by virtue of the same provision as the person who made the original disclosure;
- (b) where the enactment would not have restricted that disclosure if the person who made it had not fallen within a particular class, he fell within that class.

(3) If the original disclosure was restricted by an obligation, the person making the unauthorised disclosure shall be treated for all purposes as if he were subject to that obligation.

Interpretation

10.—(1) In this Schedule—

“ancillary services” means services certified by authority A (whether in the authorisation or otherwise) to be services appearing to it to be calculated to facilitate, or to be conducive or incidental to, the exercise of the relevant function;

“authorised officer”, in relation to a Department, Minister, office-holder or district council, means any officer of the Department, Minister, office-holder or council who is authorised by it or him to disclose or (as the case may be) obtain the information in question;

“employee”, in relation to contractor A, includes any person who performs ancillary services for that contractor, and any employee of such a person;

“related function” means any function of authority A which is certified by that authority (whether in the authorisation or otherwise) to be a function which is related to the relevant function.

(2) For the purposes of sub-paragraph (1), a function of authority A is related to another function of that authority if information—

- (a) which is obtained in or in connection with the exercise of either function; and
- (b) the disclosure of which is restricted by any enactment or by any obligation of confidentiality,

can lawfully be used by that authority for the purpose of facilitating the exercise of the other function.

(3) In this Schedule—

- (a) any reference to another person is a reference to a person other than contractor A;
- (b) any reference to another Department, Minister, office-holder or district council is a reference to a Department, Minister, office-holder or district council other than authority A.

SCHEDULE 5

Article 18.

AMENDMENTS ETC.

*The Newspaper Libel and Registration Act 1881
(c. 60) and the Limited Partnerships Act 1907 (c. 24)*

1.—(1) This paragraph applies where by virtue of Article 11(1) a person is authorised by the registrar to accept delivery of any class of documents which are under any provision of the Newspaper Libel and Registration Act 1881 or the Limited Partnerships Act 1907 to be delivered to the registrar.

(2) If—

- (a) the registrar directs that documents of that class shall be delivered to a specified address of the authorised person; and
- (b) the direction is printed and made available to the public (with or without payment),

any document of that class which is delivered to an address other than the specified address shall be treated for the purposes of that Act as not having been delivered.

(3) In this paragraph “the registrar” has the same meaning as in the Companies (Northern Ireland) Order 1986.

The Agricultural Returns Act (Northern Ireland) 1939 (c. 35)

2.—(1) The Agricultural Returns Act (Northern Ireland) 1939 is amended as follows.

(2) In section 1(1) (Department of Agriculture (formerly the Ministry of Agriculture) may require returns as to agricultural land to be furnished to the Department—

- (a) after “referred to as “the Ministry”)” insert “, or a person authorised by it, or any employee of his,”;
- (b) after “to the Ministry” insert “or, as the case may be, a person authorised by it, or any employee of his,”.

(3) In section 1(2) (Department to cause a notice of the prescribed day to be published in the Belfast Gazette and in such other manner as the Department thinks best for informing persons affected by the notice)—

- (a) for “The Ministry shall” substitute “The Department, or a person authorised by it under subsection (1), shall”;
- (b) after “as the Ministry” insert “or that person, as the case may be,”.

(4) In section 1(3) (required return to be furnished to the Department) after “to the Ministry” insert “, or a person authorised by it under subsection (1), or any employee of his,”.

The Dogs (Northern Ireland) Order 1983 (NI 8)

3. After Article 2(2) of the Dogs (Northern Ireland) Order 1983, insert—

“(2A) An officer may, by an authorisation, delegate to another person such of his functions under this Order as are specified in the authorisation, but he shall remain responsible for securing that the functions are properly discharged.”.

The Companies (Northern Ireland) Order 1986 (NI 6)

4.—(1) In Article 2A(3) of the Companies (Northern Ireland) Order 1986 (relationship of Order to Insolvency Order), after “In Articles” insert “653(4) and (5)”.

(2) In Article 2B of that Order (relationship of Order to Parts IV and V of the Financial Services Act 1986), after “In Articles” insert “653(4) and (5)”.

(3) After paragraph (3) of Article 653 of that Order (registration offices) insert—

“(4) Paragraph (5) applies where by virtue of Article 11(1) of the Deregulation and Contracting Out (Northern Ireland) Order 1996 a person is authorised by the registrar to accept delivery of any class of documents which are under any provision of the Companies Orders to be delivered to the registrar.

(5) If—

- (a) the registrar directs that documents of that class shall be delivered to a specified address of the authorised person; and
- (b) the direction is printed and made available to the public (with or without payment),

any document of that class which is delivered to an address other than the specified address shall be treated for the purposes of those Orders as not having been delivered.”

The Social Security Administration (Northern Ireland) Act 1992 (c. 8)

5. After section 120(3) of the Social Security Administration (Northern Ireland) Act 1992 (housing benefit) insert—

“(4) Where a person is authorised by the Housing Executive to exercise any of its functions relating to housing benefit—

- (a) subsection (1) above shall have effect in relation to information required in connection with the exercise of those functions; and
- (b) subsection (2) above shall have effect in relation to information obtained by reason of their exercise,

as if the authorised person were the Executive.”.

The Deregulation and Contracting Out Act 1994 (c. 40)

6. Paragraph 3(2) of Schedule 6 to the Deregulation and Contracting Out Act 1994 (amendment of Article 604(1) of the Companies (Northern Ireland) Order 1986) shall have effect, and shall be deemed always to have had effect, as if for “The following” there were substituted “This Article”.

SCHEDULE 6

Article 19.

REPEALS

Chapter or Number	Short title	Extent of repeal
1695 c. 17 (Ir.).	The Sunday Observance Act (Ireland) 1695.	In section 3, from the beginning to “conviction shall be: and that”.
1957 c. 4 (N.I.).	The Auctions (Local Control) Act (Northern Ireland) 1957.	The whole Act.
1966 c. 15 (N.I.).	The Horticulture Act (Northern Ireland) 1966.	Sections 11 to 14. Part III. In section 26(a), “or 20” and “or 13(a)”. Sections 28 to 30. In section 31(1), “section 23(1) (e), or” and “or section 30(5)”. Section 35(2)(b) and (c). Section 37. The Schedule.
1981 NI 1.	The Road Traffic (Northern Ireland) Order 1981.	In Article 79A(3)(b)(ii), from “passes” to “required and” and “Other”.
1981 NI 10.	The Weights and Measures (Northern Ireland) Order 1981.	In Article 1(3), “Articles 20(5) and 22(10)”. Article 20(5). Article 22(10).
1985 NI 11.	The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.	In Schedule 8, in paragraph 3, from “not exceeding 171 per cent.” to “by order”.

EXPLANATORY NOTE*(This note is not part of the Order)*

This Order contains miscellaneous provisions relating to deregulation and the contracting out of functions of Northern Ireland departments and certain office-holders. It also confers power to

improve enforcement procedures and requires model provisions to be made about appeals against enforcement action, with a view to their being incorporated in legislation.