
STATUTORY INSTRUMENTS

1996 No. 1632

The Deregulation and Contracting
Out (Northern Ireland) Order 1996

PART II

DEREGULATION

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.