



Deregulation and Contracting Out Act 1994

1994 CHAPTER 40

PART I

DEREGULATION

CHAPTER I

GENERAL

Enforcement procedures and appeals

5 Powers to improve enforcement procedures.

[^{F1}(1) If, with respect to any provision made by an enactment, a Minister of the Crown is of the opinion—

- (a) that the effect of the provision is such as to impose, or authorise or require the imposition of, a restriction, requirement or condition affecting any person in the carrying on of any trade, business or profession or otherwise, and
- (b) that, by exercising any one or more of the powers conferred by Schedule 1 to this Act, it would be possible, without jeopardising any necessary protection, to improve (so far as fairness, transparency and consistency are concerned) the procedures for enforcing the restriction, requirement or condition,

he may, subject to the following provisions of this section, by order exercise the power or powers accordingly.

- (2) No order shall be made under this section in any case where the sole or main effect which the restriction, requirement or condition may be expected to have on each person on whom it is imposed is an effect on him in his personal capacity, and not as a person carrying on a trade, business or profession.

Changes to legislation: Deregulation and Contracting Out Act 1994, Section 5 is up to date with all changes known to be in force on or before 31 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) Where the relevant enactment—
- (a) contains a power for the Minister to make regulations or orders; and
 - (b) provides for that power to be exercisable so as to give effect, with or without modifications, to proposals submitted by some other person,
- the Minister shall consult with that person before he makes an order under this section.
- (4) An order under this section shall be made by statutory instrument and may do all or any of the following—
- (a) make provision as to the consequences of any failure to comply with a provision made by the order;
 - (b) contain provisions (including provisions modifying enactments relating to the periods within which proceedings must be brought) which are consequential upon, or supplemental or incidental to, the provisions made by the order;
 - (c) contain such transitional provisions and savings as appear to the Minister to be appropriate;
 - (d) make different provision for different cases or different areas;
- and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in any order made under this section shall—
- (a) preclude an enforcement officer from taking immediate enforcement action against any person, or from requiring any person to take immediate remedial action, in any case where it appears to the officer to be necessary to take such action or impose such a requirement; or
 - (b) require such an officer to disclose any information the disclosure of which would be contrary to the public interest.
- (6) In this section and Schedule 1 to this Act—
- “enactment” means an enactment within the meaning of section 1 above, and any subordinate legislation made under such an enactment;
- “enforcement action”—
- (a) in relation to any restriction, requirement or condition, means any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it; and
 - (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;
- “enforcement officer” does not include—
- (a) the Director of Public Prosecutions;
 - (b) the Lord Advocate or a procurator fiscal; or
 - (c) the Director of Public Prosecutions for Northern Ireland,
- but, subject to that, means any person who is authorised, whether by or under the relevant enactment or otherwise, to take enforcement action;
- “licence” includes any authorisation (by whatever name called) to do anything which would otherwise be unlawful;
- “Minister of the Crown” and “Minister” have the same meanings as in section 1 above;

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

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

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

Textual Amendments

F1 Ss. 1-5 repealed (S.) (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(3)(7)(7), [Sch. 7 para. 1\(2\)](#) (with [Sch. 7 para. 1\(4\)](#)); S.S.I. 2010/221, art. 3(2)

Marginal Citations

M1 1978 c. 30.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 71(3)(ha) inserted by [2023 c. 55 Sch. 12 para. 4](#)