



# Deregulation and Contracting Out Act 1994

## 1994 CHAPTER 40

### PART I

#### DEREGULATION

#### CHAPTER I

##### GENERAL

##### *Removal or reduction of burdens*

#### **1 Power to remove or reduce certain statutory burdens on businesses, individuals etc.**

[<sup>F1</sup>(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 burden affecting any person in the carrying on of any trade, business or profession or otherwise, and
- (b) that, by amending or repealing the enactment concerned and, where appropriate, by making such other provision as is referred to in subsection (4) (a) below, it would be possible, without removing any necessary protection, to remove or reduce the burden or, as the case may be, the authorisation or requirement by virtue of which the burden may be imposed,

he may, subject to the following provisions of this section and sections 2 to 4 below, by order amend or repeal that enactment.

- (2) The reference in subsection (1)(b) above to reducing the authorisation or requirement by virtue of which a burden may be imposed includes a reference to shortening any period of time within which the burden may be so imposed.

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**Changes to legislation:** There are currently no known outstanding effects for the Deregulation and Contracting Out Act 1994, Cross Heading: Removal or reduction of burdens. (See end of Document for details)

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- (3) In this section and sections 2 to 4 below, in relation to an order under this section,—
- (a) “ the existing provision ” means the provision by which the burden concerned is imposed or, as the case may be, is authorised or required to be imposed; and
  - (b) “ the relevant enactment ” means the enactment containing the existing provision.
- (4) An order under this section shall be made by statutory instrument and may do all or any of the following—
- (a) make provision (whether by amending any enactment or otherwise) creating a burden which relates to the subject matter of, but is less onerous than that imposed by, the existing provision;
  - (b) make such modifications of enactments as, in the opinion of the Minister concerned, are consequential upon, or incidental to, the amendment or repeal of the relevant enactment;
  - (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;
- but no order shall be made under this section unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) In this section and sections 2 to 4 below—
- (a) “ Minister of the Crown ” has the same meaning as in the Ministers of the Crown<sup>M1</sup> Act 1975 [F<sup>2</sup> and includes the Scottish Ministers where the functions of a Minister of the Crown under this section have transferred to them under section 53 of the Scotland Act 1998 ] and “ Minister ” shall be construed accordingly;
  - (b) “ burden ” includes a restriction, requirement or condition (including one requiring the payment of fees), together with—
    - (i) any sanction (whether criminal or otherwise) for failure to observe the restriction or to comply with the requirement or condition; and
    - (ii) any procedural provisions (including provisions for appeal) relevant to that sanction; and
  - (c) “ enactment ”, subject to subsection (6) below, means an enactment contained in this Act or in any other Act passed before or in the same Session as this Act, or any provision of an order under this section.
- (6) In paragraph (c) of subsection (5) above—
- (a) “ Act ” does not include anything contained in Northern Ireland legislation, within the meaning of section 24 of the Interpretation<sup>M2</sup> Act 1978; and
  - (b) the reference to an enactment is a reference to an enactment as for the time being amended, extended or applied by or under any Act mentioned in that paragraph.
- (7) Where a restriction, requirement or condition is subject to a criminal sanction (as mentioned in subsection (5)(b)(i) above), nothing in this section shall authorise the making of an amendment which would have the effect of leaving the restriction, requirement or condition in place but producing a different criminal sanction or altering any procedural provisions relevant to the criminal sanction.]

**Changes to legislation:** There are currently no known outstanding effects for the Deregulation and Contracting Out Act 1994, Cross Heading: Removal or reduction of burdens. (See end of Document for details)

#### 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)
- F2** Words in s. 1(5)(a) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 117\(2\)](#) (with art. 5)

#### Marginal Citations

- M1** 1975 c. 26.
- M2** 1978 c. 30.

## 2 Limitations on the power under section 1.

- [<sup>F1</sup>(1) If an order under section 1 above creates a new criminal offence, then, subject to subsections (2) and (3) below, that offence shall not be punishable—
- (a) on indictment with imprisonment for a term of more than two years; or
  - (b) on summary conviction with imprisonment for a term exceeding six months or a fine exceeding level 5 on the standard scale or both.
- (2) In the case of an offence which, if committed by an adult, is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of—
- (a) Part V of <sup>M3</sup> the Criminal Justice Act 1988, or
  - <sup>F3</sup>[(b) section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995,]
- the reference in subsection (1)(b) above to level 5 on the standard scale shall be construed as a reference to the statutory maximum.
- (3) If an order under section 1 above abolishes an offence contained in the relevant enactment and the maximum penalties for that offence are greater than those specified in subsection (1) above, the order may create a new criminal offence having maximum penalties not exceeding those applicable to the offence which is abolished.
- (4) An order under section 1 above shall not contain any provision—
- (a) providing for any forcible entry, search or seizure, or
  - (b) compelling the giving of evidence,
- unless, and then only to the extent that, a provision to that effect is contained in the relevant enactment and is abolished by the order.]

#### 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)
- F3** S. 2(2)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 96](#)

#### Marginal Citations

- M3** 1988 c.33.

## 3 Preliminary consultation.

- [<sup>F1</sup>(1) Before a Minister makes an order under section 1 above, he shall—

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- (a) consult such organisations as appear to him to be representative of interests substantially affected by his proposals; and
  - (b) consult such other persons as he considers appropriate.
- (2) If it appears to the Minister, as a result of the consultation required by subsection (1) above, that it is appropriate to vary the whole or any part of his proposals, he shall undertake such further consultation with respect to the variations as appears to him to be appropriate.
- (3) If, after the conclusion of—
  - (a) the consultation required by subsection (1) above, and
  - (b) any further consultation undertaken as mentioned in subsection (2) above,
 the Minister considers it appropriate to proceed with the making of an order under section 1 above, he shall lay before Parliament [<sup>F4</sup>or, where the Minister is a Scottish Minister, before the Scottish Parliament] a document containing his proposals in the form of a draft of the order, together with details of the matters specified in subsection (4) below.
- (4) The matters referred to in subsection (3) above are—
  - (a) the burden, authorisation or requirement which it is proposed to remove or reduce;
  - (b) whether the existing provision affords any necessary protection and, if so, how that protection is to be continued if the burden, authorisation or requirement is removed or reduced;
  - (c) whether any savings in cost are estimated to result from the proposals and, if so, either the estimated amount or the reasons why savings should be expected;
  - (d) any other benefits which are expected to flow from the removal or reduction of the burden, authorisation or requirement;
  - (e) any consultation undertaken as required by subsection (1) or subsection (2) above;
  - (f) any representations received as a result of that consultation; and
  - (g) the changes (if any) which the Minister has made to his original proposals in the light of those representations.
- (5) In giving details of the representations referred to in subsection (4)(f) above, the Minister shall not disclose any information relating to a particular person or business except—
  - (a) with the consent of that person or of the person carrying on that business; or
  - (b) in such a manner as not to identify that person or business.
- (6) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of subsection (1) above, those requirements shall to that extent be taken to have been satisfied.]

#### 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)

**F4** Words in s. 3(3) inserted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 117\(3\)](#) (with [art. 5](#))

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#### 4 Parliamentary consideration of proposals.

- [<sup>F1</sup>(1) Where a document has been laid before Parliament under section 3(3) above, no draft of an order under section 1 above to give effect (with or without variations) to proposals in that document shall be laid before Parliament until after the expiry of the period for Parliamentary consideration, as defined in subsection (2) below.
- (2) In this section “the period for Parliamentary consideration”, in relation to a document, means the period of sixty days beginning on the day on which it was laid before Parliament.
- (3) In reckoning the period of sixty days referred to in subsection (2) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days [<sup>F5</sup>and, in relation to the Scottish Parliament, no account shall be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.].
- (4) In preparing a draft of an order under section 1 above to give effect, with or without variations, to proposals in a document laid before Parliament under section 3(3) above, the Minister concerned shall have regard to any representations made during the period for Parliamentary consideration and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document.
- (5) Together with a draft of an order laid before Parliament under section 1(4) above, the Minister concerned shall lay a statement giving details of—
- (a) any representations, resolution or report falling within subsection (4) above; and
  - (b) the changes (if any) which, in the light of any such representations, resolution or report, the Minister has made to his proposals as contained in the document previously laid before Parliament under section 3(3) above.
- (6) Subsection (5) of section 3 above shall apply in relation to the representations referred to in subsection (5)(a) above as it applies in relation to the representations referred to in subsection (4)(f) of that section.]

#### 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)
- F5** Words in s. 4(3) inserted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. 1 para. 117\(4\)\(b\)](#) (with [art. 5](#))

**Changes to legislation:**

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