



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Miscellaneous and supplementary*

#### **40 Advisory and supervisory functions of the [F<sup>1</sup>CMA]**

- (1) Before—
- (a) [F<sup>2</sup>approving any rules made] under section 17(11) or 18(10) of this Act; or
  - (b) approving any rules—
    - F<sup>3</sup>(i) .....
    - (ii) such as are mentioned in section 31(1) or (2),  
of this Act; or
  - (c) considering any provisions of a draft scheme under section 26(1) or (3) of this Act,
- the Secretary of State shall first send a copy of the proposed regulations, rules or provisions to the [F<sup>4</sup>CMA]
- (2) The [F<sup>4</sup>CMA] shall consider whether any such F<sup>5</sup>... rules or provisions as are mentioned in subsection (1) above would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the [F<sup>6</sup>CMA has completed its consideration it] shall give such advice to the Secretary of State [F<sup>7</sup>as it] thinks fit.
- (4) [F<sup>8</sup>The CMA may publish any advice given] under subsection (3) above.
- (5) The [F<sup>9</sup>CMA] shall, so far as practicable, exclude from anything published under subsection (4) above any matter—

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*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 40 is up to date with all changes known to be in force on or before 15 September 2023. 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*

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- (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the [F10CMA's] opinion, seriously and prejudicially affect the interests of that person.
- (6) For the purposes of the law of defamation, the publication of any advice by the Director under this section shall be absolutely privileged.

#### Textual Amendments

- F1** Word in s. 40 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 40(1)(a) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(14)(a)(i)**; S.S.I. 2003/384, art. 2(d)
- F3** S. 40(1)(b)(i) and the word immediately following it repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(14)(a)(ii)**; S.S.I. 2003/384, art. 2(d)
- F4** Word in s. 40(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Word in s. 40(2) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(14)(b)**; S.S.I. 2003/384, art. 2(d)
- F6** Words in s. 40(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 40(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Words in s. 40(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Word in s. 40(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Word in s. 40(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 48(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### Commencement Information

- I1** S. 40 wholly in force at 30.9.1991 see s. 75(2) and S.I. 1991/2151, art. 3, **Sch.**

**Changes to legislation:**

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 40 is up to date with all changes known to be in force on or before 15 September 2023. 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.

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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. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)