



# Consumer Scotland Act 2020

2020 asp 11

## PART 1

### CONSUMER SCOTLAND

#### *Information-gathering*

#### **9 Requirement to provide information to Consumer Scotland**

- (1) Consumer Scotland may, by notice, require a person falling within subsection (2)—
  - (a) to provide it with such information as is specified or described in the notice and which it requires for the purpose of exercising its functions, and
  - (b) to do so within such reasonable period as is specified in the notice.
- (2) The persons referred to in subsection (1) are—
  - (a) a designated regulator,
  - (b) a regulated provider,
  - (c) any other person who supplies goods or services in the course of a business carried on by that person,
  - (d) any other person specified, or of a description specified, by the Scottish Ministers by regulations for the purposes of this subsection.
- (3) A notice under subsection (1) may specify the manner and form in which the information is to be provided.
- (4) Before giving a notice under subsection (1), or specifying the manner or form in which information is to be provided, Consumer Scotland must have regard to the desirability of minimising the cost, or any other detriment, to the person to whom the notice is to be given.
- (5) Regulations under subsection (2)(d) may provide either—
  - (a) that section 10 (failure by a designated regulator) is to apply in relation to a person specified, or of a description specified, by the regulations as it applies to a designated regulator, or
  - (b) that section 12 (enforcement by the court) is to apply in relation to such a person.

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*Status: This is the original version (as it was originally enacted).*

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- (6) In this section and sections 10 to 12—
- (a) “designated regulator” means a regulator specified by the Scottish Ministers by regulations for the purpose of this subsection,
  - (b) “regulated provider” means a person—
    - (i) who is specified, or of a description specified, as such by the Scottish Ministers by regulations for the purpose of this subsection, and
    - (ii) who is subject to regulation by a designated regulator specified in relation to the person in those regulations.
- (7) Before making regulations under subsection (6), the Scottish Ministers must consult such persons as they consider appropriate.
- (8) Where the Scottish Ministers propose to specify a regulator under subsection (6)—
- (a) who is not currently a designated regulator, or
  - (b) in relation to a person—
    - (i) who is, or is to be, a regulated provider, and
    - (ii) in relation to whom the regulator is not currently the designated regulator,
- the persons consulted under subsection (7) must include the regulator whom they propose to specify.

## **10 Failure by a designated regulator to comply with a section 9 notice**

- (1) If a designated regulator fails to comply with a notice under section 9(1), the regulator must, if so required by Consumer Scotland, provide Consumer Scotland with a written statement setting out the reasons for the failure.
- (2) Consumer Scotland may publish any statement received under subsection (1).

## **11 Enforcement by a designated regulator of a section 9 notice**

- (1) Where a regulated provider fails to comply with a notice under section 9(1), Consumer Scotland may refer the failure to the relevant designated regulator.
- (2) Subsection (1) applies only to the extent that the notice relates to information which is held or may be obtained by the regulated provider in the person’s capacity as a regulated provider.
- (3) Where a failure is referred under subsection (1), the relevant designated regulator must—
  - (a) consider any representations made by Consumer Scotland or the regulated provider, and
  - (b) determine whether the regulated provider is entitled to refuse to comply with the notice by virtue of provision made under section 13 (exemptions from requirement to provide information).
- (4) If the relevant designated regulator determines that the regulated provider is not entitled to refuse to comply with the notice, the relevant designated regulator must direct the regulated provider to comply with it.
- (5) The relevant designated regulator must give Consumer Scotland and the regulated provider notice of—

- (a) a determination under subsection (3)(b) and the reasons for it, and
  - (b) any direction under subsection (4).
- (6) For the purposes of this section, “relevant designated regulator”, in relation to a regulated provider, means the designated regulator specified in relation to the regulated provider in regulations under section 9(6)(b).

## **12 Enforcement by the court of a section 9 notice**

- (1) This section applies—
- (a) where a person (“the defaulter”) refuses, or otherwise fails, to comply with a notice given to the defaulter under section 9(1),
  - (b) where the defaulter is—
    - (i) a person falling within section 9(2)(b) or (c), or
    - (ii) a person in relation to whom this section applies by virtue of provision made under section 9(5)(b), and
  - (c) in the case where the defaulter is a regulated provider, where, or to the extent that, section 11(1) does not apply in relation to the notice.
- (2) The Court of Session may, on the application of Consumer Scotland, grant an order requiring the defaulter to comply with—
- (a) the notice, or
  - (b) such directions for the like purpose as are contained in the order.

## **13 Exemptions from requirement to provide information**

- (1) No person may be required by a notice under section 9(1) or a court order under section 12 to produce a document or otherwise provide information which that person would be entitled to refuse to produce or provide in proceedings before the Court of Session.
- (2) The Scottish Ministers may by regulations specify—
- (a) persons or descriptions of persons to whom Consumer Scotland may not give a notice under section 9(1),
  - (b) information or descriptions of information which a person may refuse to supply in accordance with such a notice,
  - (c) circumstances in which a person may refuse to comply with such a notice.