



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART II

LEGAL SERVICES

Miscellaneous and supplementary

43 Functions of Director in relation to certain rules made under the 1980 Act.

After section 64 of the 1980 Act there shall be inserted the following sections—

“64A Advisory and supervisory functions of the Director General of Fair Trading.

- (1) Before considering any rule—
 - (a) made under section 25A(4)
or (5); or
 - (b) such as is mentioned in section 34(3A),the Secretary of State shall send a copy of the proposed rule in question to the Director.
- (2) The Director shall consider whether the rule in question would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Secretary of State as he thinks fit.
- (4) The Director may publish any advice given by him under subsection (3).

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 43 is up to date with all changes known to be in force on or before 31 May 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

- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) any matter—
 - (a) which relates to the affairs of a particular person; and
 - (b) the publication of which would, or might in the Director’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 or report by the Director under this section shall be absolutely privileged.

64B Duty of Secretary of State.

When he has received advice under section 64A(3) in relation to a rule made under section 25A(4) or (5) or such as is mentioned in section 34(3A), the Secretary of State may, having considered—

- (a) that advice;
 - (b) whether the interests of justice require that there should be such a rule; and
 - (c) in relation to a rule made under section 25A(5), any relevant practice obtaining in the sheriff court,
- approve or refuse to approve the rule.

64C Investigatory powers of the Director.

- (1) For the purpose of investigating any matter under section 64A, the Director may by notice in writing—
 - (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
 - (i) are in that person’s custody or under that person’s control; and
 - (ii) relate to any matter relevant to the investigation; or
 - (b) require any person carrying on any business to furnish to him (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on the grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.
- (3) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

64D Review of rules approved by the Secretary of State.

- (1) Without prejudice to the power of the Council to review any rule made by them, where the Secretary of State has approved a rule under section 64B he may, and if so requested by the Lord President shall, require the Council to review its terms.

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- (2) When they have reviewed a rule following a requirement made under subsection (1), the Council may revise the rule in the light of that review, and shall then submit the rule as revised or, if they have not revised it, as previously approved to the Lord President and the Secretary of State.
- (3) Where the Lord President and the Secretary of State are agreed that the terms of the rule as submitted to them are satisfactory, the Secretary of State shall approve the rule, and may direct the Council to bring it into force as soon as is practicable.
- (4) Where either the Secretary of State or the Lord President is of the view that any rule, as submitted to them, is not satisfactory, but they do not agree as to what the terms of the rule should be, the rule shall continue to have effect as previously approved.
- (5) Where the Secretary of State and the Lord President agree both that any rule submitted to them under subsection (2) is not satisfactory, and as to what the terms of the rule should be, the Secretary of State may direct the Council—
 - (a) to amend the rule in such manner as he and the Lord President consider appropriate; and
 - (b) to bring the rule, as so amended, into force as soon as is practicable.
- (6) The provisions of sections 64A and 64B apply to rules submitted to the Secretary of State under this section as they apply to rules submitted to him under sections 25A(9) or (10) and 34(3A).”.

Commencement Information

II S. 43 wholly in force at 3.6.1991 see s. 75(2) and [S.I. 1991/1252](#), art. 3, [Sch. 1](#)

Changes to legislation:

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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\(11\)](#)