

CONSUMER SCOTLAND BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Consumer Scotland Bill, introduced in the Scottish Parliament on 5 June 2019.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 49–FM);
 - a Policy Memorandum (SP Bill 49–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 49–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Overview

5. The Bill establishes a body to be known as Consumer Scotland with the general function of providing consumer advocacy and advice with a view to achieving certain specified objectives. It also imposes a duty on relevant public authorities, when making decisions of a strategic nature, to have regard to the impact of those decisions on consumers in Scotland and the desirability of reducing harm to consumers in Scotland.
6. The Bill contains 28 sections in 3 Parts, and contains 2 schedules.

PART 1

Consumer Scotland

Establishment

Section 1 – Establishment of Consumer Scotland

7. Section 1 establishes the body as an entity to be known as ‘Consumer Scotland’. The Gaelic name Luchd-Cleachdaidh Alba has equal legal status.

Functions

Section 2 – General function

8. Section 2 sets out Consumer Scotland’s general function. Consumer Scotland has the general function of providing consumer advocacy and advice with a view to achieving the outcomes set out in the section. These are:

- reducing consumer harm in Scotland;
- increasing the confidence of consumers in Scotland in dealing with businesses supplying goods and services; and
- increasing the extent to which consumer matters are taken into account by public authorities in Scotland.

9. “Consumer” and “Consumer matters” are defined in section 23. “Harm” is not defined in the Bill and has its ordinary meaning. Examples of harm to consumers are wide-ranging but could include consumers paying more for goods or services because of unfair marketing practices, or consumers being denied equal access to goods or services without justification on the basis of where they live or other characteristics, such as disability or age. It should be noted that reducing does not necessarily mean eliminating; lessening the level of harm may occur in cases where the harm cannot be removed altogether. Increasing consumer confidence in dealing with businesses could take the form of both Consumer Scotland working to improve business practice, and improving consumer knowledge (and therefore confidence) through the dissemination of advice.

Section 3 – Representative function

10. Section 3 provides for Consumer Scotland’s representative function, allowing it to make representations on consumer matters. These representations can be in the form of providing advice and information, making proposals or representing consumer views. Representations may be made to the particular persons specified in subsection (3)(a) to (d) or to any other person whom Consumer Scotland considers might have an interest in the matter.

11. Subsection (2) requires Consumer Scotland to advise the Scottish Ministers on consumer matters when requested to do so. Consumer Scotland is independent of the Scottish Ministers, however, and may only provide advice or information, or make proposals or representations, when doing so is consistent with Consumer Scotland’s other functions and where it is reasonably practicable for Consumer Scotland to do so.

Section 4 – Research and investigation function

12. Section 4 allows Consumer Scotland to obtain, analyse and review information relating to consumer matters etc. and to undertake investigations into business sectors or practices (or more broadly into anything relating to its functions). This provision supports the general function of Consumer Scotland of providing consumer advocacy and advice. Consumer Scotland is obliged by section 14 to publish reports on any investigations it conducts under this section.

Section 5 – Information function

13. Section 5 states that Consumer Scotland may provide information and advice to consumers. This covers information and advice about the body itself and its functions, about consumer matters (as defined by section 23), and about any other matters that the Scottish Ministers set out in regulations. It also provides that Consumer Scotland may work in conjunction with another organisation to provide this information and advice. Advice could include the publishing or issuing of guidance of general application or on a particular topic.

14. This section also gives Consumer Scotland the power to make that information and advice available in any way it thinks suitable to bring it to the attention of anyone with an interest, and also enables it to support or work with other organisations to make the information available.

Section 6 – General provision about functions

15. This section sets out general requirements that Consumer Scotland must adhere to when carrying out its functions. These include having regard to its own forward work programme (see section 13) and the desirability of working in collaboration with others where appropriate.

16. Among other things, Consumer Scotland must also consider the interests of vulnerable consumers, although it is not restricted to only considering the interests of vulnerable consumers. Some of the consumers who are to be considered vulnerable consumers for the purposes of this section are set out in subsection (6). It should be noted, however, that the list in subsection (6) is indicative only, and not exhaustive.

17. As noted in the Policy Memorandum, the intention is that Consumer Scotland is to be made part of the Scottish Administration. As such, Consumer Scotland will then be subject to the Public Finance and Accountability (Scotland) Act 2000. In particular, section 14(3)(d) of that Act imposes a duty on the accountable officer for the Scottish Administration to ensure that resources are used economically, efficiently and effectively. This duty is also one that, in line with section 15(7)(c) of that Act, can be delegated to an accountable officer for a particular part of the Scottish Administration. Consumer Scotland's resources will therefore need to be managed in line with this requirement.

Section 7 – Exercise of functions

18. This section clarifies that Consumer Scotland may use its functions to act for an individual consumer, but it is not required to do so.

Information-gathering

Section 8 – Requirement to provide information to Consumer Scotland

19. Subsection (1) enables Consumer Scotland to serve a notice on a person listed in subsection (2) requiring the person to provide it with certain information. It may only do so in relation to information which it requires for the purpose of exercising its functions. The persons listed in subsection (2) and therefore potentially subject to this requirement are a “designated regulator”, a regulated provider, any person who supplies goods or services in the course of business and any other person or description of person specified, through regulations, by Ministers.

20. The Scottish Ministers will specify who is a “designated regulator” and a “regulated provider” for the purposes of this section, and sections 9 to 11, through regulations. Where anyone else is made subject to this power using the regulation-making power under subsection (2)(d), provision can be made in accordance with subsection (5) about the sanctions that are to apply for breach.

21. Consumer Scotland can specify the manner and form in which information is to be provided. When making a request for information Consumer Scotland must consider the importance of minimising the costs, or any other detriment the request might cause, for the person on whom the notice is served.

Section 9 – Failure to comply

22. Section 9 provides that, should a designated regulator fail to give information to Consumer Scotland, that designated regulator can be required to produce a written statement explaining the reasons for the failure. Consumer Scotland has the power to publish this explanation.

23. This section can also be applied to others who are made subject to the information-gathering requirement using the power under section 8(2)(d) (see section 8(5)(a)).

Section 10 – Enforcement by a regulator of section 8 notice

24. Section 10 applies where a regulated provider (to be specified by the Scottish Ministers in regulations under section 8(6)(b) but potentially covering providers in regulated sectors such as electricity, gas, postal services or water) fails to comply with an information notice served by Consumer Scotland under section 8(1).

25. In such cases, Consumer Scotland may refer the matter to the “relevant designated regulator”, being the designated regulator for the particular regulated provider as specified in regulations under section 8(6)(b), insofar as the failure to comply with the information notice relates to something within the relevant designated regulator’s remit.

26. The relevant designated regulator must consider any representations made by Consumer Scotland or by the regulated provider and must determine whether the provider was entitled to refuse to provide the information requested by Consumer Scotland. If the relevant designated regulator determines that the provider was not entitled to refuse, then it must direct the provider to provide the information.

Section 11 – Enforcement by the court of a section 8 notice

27. This section applies where a person (other than a person to whom section 9 applies or a regulated provider covered by section 10) refuses or fails to comply with a notice under section 8(1) requiring information to be provided to Consumer Scotland. In this circumstance, Consumer Scotland may apply to the Court of Session for an order requiring the person served with the notice to comply with it. Whether such an order is granted will be at the court's discretion. Any questions of expenses arising from such an application will be for the court to determine but it is usual practice that, where an application for such an order is unsuccessfully resisted, judicial expenses are awarded against the party that resisted the application. As such, should a person resist the granting of an order under this section, they could find themselves liable for the expenses of the proceedings.

Section 12 – Exemptions from requirement to provide information

28. Section 12 provides exemptions from the requirement to provide information. Subsection (1) means that no person may be required under section 8(1) or section 11 to provide information which they could not be compelled to provide in legal proceedings before the Court of Session.

29. This section also gives Scottish Ministers the power to prescribe additional exemptions from the requirements to provide information to Consumer Scotland. They would do so by regulations and can detail the persons, type of information or circumstances to which an exemption could apply.

Accountability

Section 13 - Forward work programmes

30. Section 13 requires that Consumer Scotland must, before each programme year, prepare and publish a forward work programme. A programme year corresponds to a financial year (i.e. 1 April to 31 March). This document must include, for the following year:

- Consumer Scotland's priorities;
- a description of its main planned activities;
- details of any other priorities; and
- details of any investigations it plans to undertake over and above those necessary to fulfil its functions.

31. When the forward work programme is being prepared, Consumer Scotland must have regard to the views of those with an interest in consumer matters.

32. This published programme must also be laid before the Scottish Parliament. Under section 6, Consumer Scotland must have regard to its forward work programme when exercising its functions.

Section 14 – Reports on investigations

33. Section 14 requires Consumer Scotland to publish its findings and recommendations as soon as reasonably practicable after the conclusion of an investigation conducted under section 4(2). A copy of this report must also be sent to the Scottish Ministers.

Section 15 – Annual report

34. Section 15 places an obligation on Consumer Scotland to publish an annual report on its activities and to lay this before the Scottish Parliament as soon as reasonably practicable after the end of each financial year. A copy of the report must also be sent to the Scottish Ministers.

Section 16 – Consumer welfare report

35. Section 16 requires Consumer Scotland to produce a consumer welfare report as soon as reasonably practicable after the end of every three year reporting period (to 31 March). This report must be published, sent to the Scottish Ministers and laid before the Scottish Parliament. The report will set out how well consumer interests are being served in Scotland and, where there is consumer harm, what form that takes and how widespread it is.

36. Consumer Scotland must have regard to the views of persons, bodies and organisations having an interest in consumer matters when preparing this report. Consumer Scotland will therefore have to consult, ask for evidence from, or work collaboratively with such persons when preparing the report.

Finance

Section 17 – Grants and loans by Consumer Scotland

37. Section 17 allows Consumer Scotland to provide grants and loans to other organisations, where it appears to Consumer Scotland to be conducive to the performance of Consumer Scotland's functions.

38. As noted in the Financial Memorandum, there is no requirement for provision to be made about the provision of funding to Consumer Scotland. As part of the Scottish Administration, it will be for the Scottish Ministers to decide the overall budgetary allocation for Consumer Scotland in future, as part of the normal Scottish Government budget cycle.

Review of performance and modification of functions

Section 18 – Review of Consumer Scotland's performance

39. Section 18 requires that, within the first three years of operation and at least every five years thereafter, Consumer Scotland must appoint a suitable person to conduct an external review of its performance in carrying out its functions. The person who is appointed to carry out this review must have relevant expertise and must be independent of Consumer Scotland. Consumer Scotland must publish this review, lay a copy before the Scottish Parliament and send a copy to Scottish Ministers. Any payment for this review must be approved by Scottish Ministers.

Section 19 – Power to modify functions

40. Section 19 empowers the Scottish Ministers, following consultation with Consumer Scotland (and, where appropriate, others) and subject to parliamentary process, to confer new functions on Consumer Scotland or to modify or remove existing ones. This power will enable Consumer Scotland’s remit to be adjusted in future without the need for further primary legislation, but subject to parliamentary oversight and agreement.

41. However, Ministers may not use this regulation-making power to remove (either by variation or by outright removal) Consumer Scotland’s core functions as set out under section 2.

PART 2

Consumer interests

Section 20 – Duty to have regard to consumer interests

42. Section 20 places a duty on relevant public authorities, when making decisions of a strategic nature, to consider the impact on consumers in Scotland, and the desirability of reducing harm to consumers in Scotland.

43. This duty does not oblige any public authorities subject to it to give consumer interests more weight than any other consideration and does not preclude such a public authority from ultimately taking decisions that have an adverse impact upon consumers in Scotland, but it does require that authority to have regard to the impact on consumers in Scotland and the desirability of reducing harm to them.

44. The Scottish Ministers will, through regulations, set out which persons will be subject to the duty. It should be noted that the term “person” is defined widely in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 to include “a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland”.

45. These regulations may also specify whether a person is subject to the duty when carrying out all of its functions, or only specified functions. Before making regulations, the Scottish Ministers must consult such persons as they consider appropriate. This consultation must always include any person whom they intend to designate as a relevant public authority who is not currently so designated.

Section 21 – Guidance about section 20 duty

46. This section states that Consumer Scotland may issue guidance relating to the duty under section 20, subject to the approval of the Scottish Ministers. Relevant authorities are required to have regard to any guidance issued.

47. Guidance can be general or targeted at particular relevant public authorities only. Consumer Scotland must consult all relevant public authorities to whom the guidance is addressed prior to the publication of initial, or amended, guidance, as well as anyone else whom they consider it appropriate to consult. Consumer Scotland is also required to make any guidance publicly available.

Section 22 – Reporting on section 20 duty

48. Section 22 requires relevant public authorities to produce information about how they have complied with the consumer duty. In doing so, they may determine the timing and frequency of the report by choosing their own reporting period, but this cannot exceed 12 months.

49. It is up to an individual relevant public authority to determine how it publishes this information. It is envisaged that in most cases, publication will be in an authority's annual report and so that is mentioned in subsection (2)(a)(ii) by way of example. The information must be published within 12 months of the end of the reporting period in question. There is also the ability to exclude relevant public authorities from this obligation under the regulations in which they are specified.

PART 3

Interpretation and final provisions

Section 23 – Interpretation

50. For the purposes of this legislation, a consumer is an individual who purchases, uses or receives goods or services in Scotland, where those goods or services are supplied in the course of a business. It does not cover a business consumer, whether that business is a separate legal entity to the individual or otherwise. However, where goods or services are predominantly intended for personal use but are used occasionally for an individual's business (for example, purchasing a home telephone but occasionally using it for a work call), that does not stop the individual from being classified as a consumer.

51. Consumer is also defined to include potential consumers. This means, for example, that Consumer Scotland could investigate practices which deter would be consumers from pursuing a transaction.

52. As noted, the goods or services purchased, used or received must be supplied in the course of a business if the individual is to be a consumer for the purposes of this legislation. A business is defined widely to include a profession as well as the activities of any government department, local or public authority or other public body. The term "goods" is also defined widely to include the purchase of land, while a mail recipient is also included in the definition of a person who uses services.

53. "Consumer matters" means the interests of consumers and any matter connected with that.

Section 24 – Regulations

54. Section 24 relates to the provisions in the Bill which confer power on the Scottish Ministers to make regulations. Subsection (1) provides that these powers include the power to make different provision for different purposes. It also allows the making of incidental, supplementary, consequential, transitional, transitory or saving provision.

55. Subsections (2), (3) and (4) make provision about the parliamentary procedure which applies to different sets of regulations (for more details of which, see sections 28 and 29 of the

Interpretation and Legislative Reform (Scotland) Act 2010). This section does not apply to the commencement regulations required to bring parts of the Bill into force.

Section 25 – ancillary provision

56. This section enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with this legislation.

Section 27 – Commencement

57. This section provides that, other than this section and sections 23 (interpretation), 24 (regulations), 25 (ancillary provision) and 28 (short title), which come into force the day after Royal Assent, the Scottish Ministers will specify the day on which the provisions in this Bill come into force through regulations.

Section 28 – Short Title

58. This section provides that the short title of this Act which this Bill will become is the Consumer Scotland Act 2020.

Schedule 1 – Consumer Scotland (status, membership, procedures and powers)

Status

59. This paragraph provides that Consumer Scotland is not an emanation of the Crown. The Crown, which for this purpose broadly means the executive branch of government, enjoys certain privileges and immunities in law. Consumer Scotland is not to be regarded as a government body and therefore none of the particular legal rules that apply to government bodies apply to Consumer Scotland.

60. Consumer Scotland is expected to have the status of an office-holder in the Scottish Administration, within the meaning of section 126(7) of the Scotland Act 1998, by virtue of an order under that Act. As a result of this, sections 19, 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000 will apply to Consumer Scotland, meaning that it must prepare, lay and arrange auditing of its accounts in line with that Act. In consequence, the Bill does not make any provision in relation to Consumer Scotland's accounts.

Membership

61. This paragraph sets rules around the membership of the board of Consumer Scotland.

62. Consumer Scotland must have a member who acts as a chair and at least two, but no more than four, additional members. The number of members allowed to form the board of Consumer Scotland can be changed through regulations made by the Scottish Ministers.

63. The Scottish Ministers must act in a way that encourages equal opportunities when appointing members to the board of Consumer Scotland. This is in addition to, and broader than,

the rules which will apply under the Gender Representation on Public Boards (Scotland) Act 2018 (see the discussion below on paragraph 8 of schedule 2 of the Bill).

64. Members are to be appointed for a term of up five years and may be reappointed. The terms and conditions of appointment will be determined by the Scottish Ministers.

Persons who may not be members

65. Paragraph 3 of schedule 1 disqualifies certain individuals from becoming members of Consumer Scotland.

66. In addition to these disqualification grounds, a person can also be disqualified from being a member by virtue of section 19(1)(e) of the Ethical Standards in Public Life etc. (Scotland) Act 2000. This provides that if a member of Consumer Scotland breaches the body's code of membership, the member can be removed as member of Consumer Scotland and disqualified from being a member for a maximum period of five years.

Early termination of membership

67. Paragraph 4 of schedule 1 sets out the circumstances in which someone can cease to be a member of Consumer Scotland before the end of the person's period of appointment, namely:

- a member can resign,
- a person will automatically cease to be a member if the person becomes someone who is disqualified from being a member under paragraph 3 of schedule 1,
- the Scottish Ministers may remove a member if the member is absent, without reasonable excuse, for 3 consecutive meetings of Consumer Scotland or if Ministers consider that a member is unable or unsuitable to continue as a member.

68. As noted above in relation to disqualification from membership, a person can also be removed by the Standards Commission for Scotland under section 19(1)(e) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Members' remuneration, allowances and pensions

69. Paragraph 5 of schedule 1 makes provision for Consumer Scotland to determine the remuneration of its members, and for the reimbursement of expenses incurred by those members in carrying out their functions. Similar provision is made in relation to the payment of pensions. Any such payments by Consumer Scotland are subject to the approval of the Scottish Ministers.

70. If someone ceases to be a member before the person's period of appointment has ended, the Scottish Ministers can (but do not need to) permit Consumer Scotland to pay that person a sum of money as compensation for the premature loss of office.

Chief executive and other staff

71. Paragraph 6 of schedule 1 details that Consumer Scotland must, with the approval of Scottish Ministers, appoint a chief executive (who cannot also be a member of the board).

Consumer Scotland may also appoint other staff members but those appointments do not require Ministerial approval. Consumer Scotland is to set the terms and conditions of employment for the chief executive and other staff, subject to obtaining the Scottish Ministers' approval. Provision is also made at paragraph 7 of schedule 1 for the payment of staff pensions. However, the power to pay staff salaries is not mentioned as it is implicit in the power to appoint staff; their remuneration will form part of the terms and conditions referred to in paragraph 6(5) on which they are appointed.

Committees

72. Paragraph 8 of schedule 1 enables Consumer Scotland to create committees and sub-committees. A committee or sub-committee member may be an individual who is not a member of Consumer Scotland. Such individuals could attend and participate in committee meetings but would not be entitled to vote at those meetings.

73. This paragraph also makes provision for the remuneration of members of committees and sub-committees. There is an exception to this in paragraph 8(3)(a) and (b) where board members, and members of staff, of Consumer Scotland are also members of committees and/or sub-committees. However, this is not to prevent the remuneration of members, or members of staff, of Consumer Scotland; they can receive remuneration in their capacity as members or as staff.

Authority to perform functions

74. Paragraph 9 of schedule 1 provides that Consumer Scotland may authorise any of its members, any of its committees or sub-committees, or any member of its staff to perform its functions to whatever extent Consumer Scotland determines. This enables Consumer Scotland to delegate functions for operational purposes. However, Consumer Scotland itself remains ultimately responsible for the performance of its statutory functions. In addition, Consumer Scotland may not authorise someone else to approve a budget, financial plan, annual report or accounts.

Regulation of procedure

75. Paragraph 10 of schedule 1 provides that Consumer Scotland may regulate its own procedures, including the minimum number of members that need to be present to agree decisions and including the procedure of any committee or sub-committee.

Validity of things done

76. Paragraph 11 of schedule 1 stipulates that a vacancy in the membership of Consumer Scotland, or a flaw in an appointment or disqualification of a member after appointment, does not render invalid any work carried out by Consumer Scotland in the meantime.

General powers

77. Paragraph 12 of schedule 1 provides a wide general power for Consumer Scotland to do anything necessary to enable it to perform its duties and fulfil its remit. This could include, for example, entering into contracts, and acquiring and disposing of land.

Location of office

78. Paragraph 13 of schedule 1 confirms that whilst Consumer Scotland can choose the location of their office, the decision is subject to the requirement to obtain approval from the Scottish Ministers.

Schedule 2 - Amendment of public bodies legislation

79. Schedule 2 amends relevant public bodies legislation so as to encompass Consumer Scotland.

Ethical Standards in Public Life etc. (Scotland) Act 2000

80. Paragraph 1 of schedule 2 adds Consumer Scotland to the list of devolved public bodies in schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the 2000 Act”).

81. This means that Consumer Scotland will need to:

- have a code of conduct for its members, whose compliance with the code will be policed by the Standards Commission for Scotland (see sections 3 and 9 of the 2000 Act), and
- maintain a public register of its members’ interests (see section 7 of the 2000 Act).

Scottish Public Services Ombudsman Act 2002

82. Paragraph 2 of schedule 2 adds Consumer Scotland to the list of authorities in schedule 2 of the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”).

83. The effect of this is to:

- make the exercise of administrative functions by Consumer Scotland amenable to investigation by the ombudsman (see section 5 of the 2002 Act),
- oblige Consumer Scotland to have its own complaints handling procedure that complies with the statement of principles published by the ombudsman under section 16A of the 2002 Act,
- permit Consumer Scotland to be made subject to the requirement to have a complaints handling procedure that complies with a model complaints handling procedure prepared by the ombudsman (see sections 16B and 16C of the 2002 Act).

Freedom of Information (Scotland) Act 2002

84. Paragraph 3 of schedule 2 adds Consumer Scotland to the list of Scottish public authorities in schedule 1 of the Freedom of Information (Scotland) Act 2002 (“the FOI (S) Act”).

85. This means that Consumer Scotland will be subject to the requirements which the FOI (S) Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme under section 23 of that Act for the pro-active publication of information it holds.

86. Being a public authority within the meaning of the FOI (S) Act also makes Consumer Scotland a “Scottish public authority” to which the Environmental Information (Scotland) Regulations 2004 apply.

87. It also means that Consumer Scotland falls within the definition of a “public body” under section 44 of the Climate Change (Scotland) Act 2009. This means that it must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that it considers is most sustainable. It can also have further duties, including reporting duties, imposed upon it.

88. In addition, as a public authority within the meaning of the FOI (S) Act, Consumer Scotland is a “public authority” or “public body” for the purposes of the General Data Protection Regulation by virtue of section 7 of the Data Protection Act 2018 (subject to the power under that section to remove that status not being exercised). The General Data Protection Regulation (also commonly referred to by the acronym “GDPR”) is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. There are particular rules applied to bodies classified as “public authorities” (over and above those applied to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

89. Paragraph 4 of schedule 2 adds Consumer Scotland to the list of specified authorities in schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (“the 2003 Act”).

90. This means that the Scottish Ministers, when appointing Consumer Scotland’s members, will need (under section 2 of the 2003 Act) to comply with the code of practice on public appointments produced by the Commissioner for Ethical Standards in Public Life in Scotland.

Public Services Reform (Scotland) Act 2010

91. Paragraph 5(a) of schedule 2 adds Consumer Scotland to the list of bodies in schedule 5 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”).

92. This means that Consumer Scotland is a body in relation to which an order can be made under section 14 of the 2010 Act where it would improve the exercise of public functions, having regard to efficiency, effectiveness or economy. An order under section 14 of the 2010 Act can (subject to restrictions, and only after the Scottish Parliament has approved a draft of the order):

- modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
- amend the constitution of a public body.

93. Paragraph 5(b) of schedule 2 adds Consumer Scotland to the list of bodies in schedule 8 of the 2010 Act. This means that Consumer Scotland will be subject to the duties to report after each financial year on:

- expenditure (see section 31 of the 2010 Act), and
- the steps it has taken to promote and increase sustainable growth and improve its efficiency, effectiveness and economy (see section 32 of the 2010 Act).

Public Records (Scotland) Act 2011

94. Paragraph 6 of schedule 2 makes Consumer Scotland subject to the duties created by the Public Records (Scotland) Act 2011 to produce, implement and keep under review a records management plan.

Procurement Reform (Scotland) Act 2014

95. Paragraph 7 of schedule 2 makes Consumer Scotland subject to the procurement rules applicable to contracting authorities in the Procurement Reform (Scotland) Act 2014.

Gender Representation on Public Boards (Scotland) Act 2018

96. Paragraph 8 of schedule 2 adds Consumer Scotland to the list of bodies in schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018 (“the 2018 Act”).

97. This means that in appointing members to Consumer Scotland, the Scottish Ministers must ordinarily give preference to a woman if there are equally qualified candidates – one who is a woman and one who is not – where appointing a woman would result in, or be a step towards, 50% of the body’s membership being women (see section 4 of the 2018 Act).

98. In addition, the 2018 Act requires that steps be taken to encourage women to apply to be members of Consumer Scotland (see section 5 of the 2018 Act), and further steps to be taken to promote gender balance in the membership if the 50% target has not been reached by particular dates (see section 6 of the 2018 Act).

This document relates to the Consumer Scotland Bill (SP Bill 49) as introduced in the Scottish Parliament on 5 June 2019

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