

# **CONSUMER SCOTLAND BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is 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:
  - Explanatory Notes (SP Bill 49–EN);
  - a Financial Memorandum (SP Bill 49–FM); and
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 49–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **BACKGROUND**

4. Consumers are a foundational part of Scotland's economy and, just as government policy seeks to support and encourage business growth, so too must it support and protect the consumer interest. These goals are often seen as contradictory, but equitable treatment of consumers benefits legitimate businesses by providing a strong platform for continued growth and stability. The reasons for this are as follows:
  - by some estimates, consumer spending accounts for two thirds of GDP<sup>1</sup> - no economy can thrive without active, confident consumers with the ability and willingness to spend;
  - consumer outcomes are closely tied to wider areas of inequality - issues like the poverty premium, which results in consumers on the lowest incomes paying more for essential services, or the loyalty penalty, which often penalises the most disengaged customers, can increase vulnerability and hardship for those already struggling;
  - an increasing range of government policies with an overall social good depend on consumers - from ambitions to transform Scotland's buildings to be more energy efficient, to reducing our reliance on plastics, policies must not only improve outcomes for consumers, but also gain their support and drive behaviour change; and

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<sup>1</sup> <https://www2.gov.scot/gdp>

- failing markets and unfair treatment without a remedy can lead to declining trust in public institutions - consumers look to businesses to treat them fairly, and to governments and regulators to protect them when this does not happen.

5. The complexities consumers face are only increasing, while technological advances, globalisation and low wage growth has exacerbated the sense that individuals have limited power to tackle unfair treatment. Governments must take tangible steps to strengthen the consumer voice in policy and regulatory decision-making, and to demonstrate to consumers that such a voice has the potential to drive real change.

6. Following the passage of the Scotland Act 2016, the Scottish Parliament gained powers in relation to:

- the provision of consumer advocacy by, or with the agreement of, a public body; and
- the provision of consumer advice by, or with the agreement of, a public body.

7. In addition, provision was made in the Act for the Scottish Ministers to allocate levy funds from the energy and postal sectors to fund consumer advocacy and advice in Scotland in those sectors.

8. Many aspects of consumer protection are still reserved to the UK Parliament, including the regulation of the sale and supply of goods and services, guarantees, hire-purchase and trade descriptions. Nonetheless, there are compelling reasons to develop a distinctive Scottish consumer policy.

9. Firstly, advocacy powers allow the Scottish Ministers to shape how consumers are represented in the policy-making process, and how Scottish consumer issues, in particular, are viewed by regulators, policy makers and industry. Advice powers allow for the provision of publicly funded assistance so that individuals can understand and exercise their consumer rights, and that the evidence from these individual cases is used to identify and tackle systemic issues.

10. Secondly, devolution already presents a distinctive policy and political context in which consumers in Scotland operate. Key areas, such as legal services, water, education and health, are devolved, and as a result, consumers and businesses are governed by a different regulatory and policy regime. In these markets in particular, the costs of consumer harm – whether caused by regulatory decisions or unscrupulous trading practices – can be significant and even life-changing. Consumer welfare must therefore be actively considered and safeguarded by Scottish institutions and policy makers.

11. Thirdly, Scotland's distinct economic, social and geographic circumstances provide challenges in ensuring that markets work well for Scottish consumers. Even where harm can occur generally across the United Kingdom, the detriment in Scotland can be of a greater scale or impact because of these factors. Scotland has a substantial rural population that often faces different issues from urban consumers, including accessing key services and choosing providers in essential services. Scotland is also characterised by an increasing ageing population and considerable areas of deprivation, which means there are an increasing number of potentially vulnerable consumers

who need more interventionist or tailored support to ensure they are protected when purchasing goods and services.

12. There must be a coherent approach to ensuring that these different consumer needs are adequately represented to and considered by policy makers, regulators and industry, and while the Scottish Government recognise the valuable work UK-focused organisations do to address consumer detriment, it must acknowledge the reality that a UK focus does not always allow the nuances of regional variations to be accounted for or addressed.

13. In recognition of these factors, in 2015, the Scottish Government established an Independent Working Group on Consumer and Competition Policy to make recommendations<sup>2</sup> on how the newly devolved consumer powers should be used. Membership was drawn from a wide spectrum of expertise, including Which?, Citizens Advice Scotland, Trading Standards Scotland, the Scottish Public Services Ombudsman and the Federation of Small Businesses. Its work was also supported by a series of expert panels, each of which considered key aspects of consumer policy – redress, enforcement, advocacy, advice and competition.

14. Broadly summarised, its main findings were that the current landscape does not have a central, galvanising point to develop a clear, objective picture of the harm consumers experience in Scotland and, consequently, to target resources where help is most needed. For the same reason, while there is much good practice, there is not yet a mechanism to analyse the wide array of data on consumer harm to fully understand its causes. Finally, the Working Group noted that there is not a dedicated organisation whose sole focus is to spearhead the actions needed to address consumer issues even where their impact and causes are understood.

15. The Working Group’s primary recommendation in light of this analysis was that the Scottish Government should establish a dedicated consumer protection body – Consumer Scotland – with consumer and competition expertise and responsibility for:

- ensuring that Scottish consumers have access to, and make increased use of, effective and coordinated consumer advice, enforcement and redress services;
- providing advocacy in all sectors of the economy, particularly the regulated sectors such as energy, telecoms, transport and financial services, ensuring that the needs of Scottish consumers are effectively represented to policy makers, business, public services, regulators and governments, at local, national (Scotland and UK) and European levels;
- working with the business community to foster a customer-focused culture, deliver improved protection for consumers and increase the use of redress to resolve consumer issues; and
- promoting competitive markets in Scotland and encouraging better access, quality and prices for consumers.

– These proposals were generally well received by stakeholders. However, mindful of the need to avoid further disruption to an already fragmented landscape, the Scottish Government has

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<sup>2</sup> <https://www.gov.scot/publications/report-working-group-consumer-competition-policy-scotland/>

spent significant time exploring the form and functions of a new consumer body, and the policy environment that must support it. This has been a collaborative process with key consumer groups and regulators, and has resulted in the proposals that underpin the Consumer Scotland Bill.

17. The proposal for a dedicated public body to represent consumers was well-received by stakeholders, although some noted that the functions set out potentially strayed into reserved areas, or overlapped with the roles of other organisations, such as Trading Standards Services. Mindful of the need to avoid further disruption to an already fragmented landscape, the Scottish Government has spent significant time exploring the form and functions of a new consumer body, and the policy environment that must support it. This has been a collaborative process with key consumer groups and regulators, and has resulted in the proposals that underpin the Consumer Scotland Bill.

18. Consumer advocacy has traditionally focused on identifying consumer issues and campaigning for governments, regulators or industries to tackle these. This approach has achieved some success, but in complex regulatory industries, or where consumer harm results from multiple causes, its impact has been limited. The harm consumers suffer is therefore compounded by a sense that there is a lack of will to remedy the situation.

19. The Bill will therefore establish Consumer Scotland as a body that will identify consumer harm as a starting point only. Its primary goal will be to develop and advocate for practical solutions. To do this, it will have four key functions:

- to provide strategic oversight of the consumer landscape to develop a full understanding of how markets work for consumers in Scotland and ensure resources are targeted to tackle harm;
- to conduct in-depth investigations into areas where harm in Scotland is most acute and recommend solutions;
- to facilitate access to a consumer advice system that meets individual consumer needs and aggregates collective data to support prevention work; and
- to comment on Scottish Government policy with significant impact on consumers, and support public authorities in Scotland to comply with a statutory consumer duty.

20. These roles are closely linked, and the strength of its success in driving change will require that the body is driven by evidence and applies technical rigour in all aspects of its work. This data-led approach will ensure that it identifies harm correctly, and can accurately prioritise those areas that require substantive investigation.

21. This will begin with Consumer Scotland's advice role. The body will take responsibility for ensuring that consumer advice is well understood and responsive to individual consumer needs, adapts to technological shifts and can drive wider policy or regulatory change where needed. The intelligence ingathered will be accessible to regulatory and enforcement agencies to support their consumer protection work, and it will be a key part of Consumer Scotland's evidence for prioritising its advocacy and investigatory activities.

22. Data from consumer advice activity will be supplemented by extensive evidence-gathering as part of Consumer Scotland's role as consumer advocate, and its priorities will be developed in consultation with other consumer protection organisations. While the body will advocate for consumers across a wide range of areas, it will conduct only a small number of in-depth enquiries at any given time. As a result, each will receive thorough and expert consideration.

23. Following investigation, the body will, where appropriate, make recommendations for action on behalf of consumers. Because the reasons for consumer harm are often multifaceted, the recommendations will cover government, regulators, enforcement agencies, and industry.

24. It is important that harm that does not result in investigation is also identified and tackled. Consumer Scotland's strategic understanding of the landscape will be vital to ensure this. In particular, it will work to ensure that local as well as national needs are considered, and that campaigns are targeted and led by the organisations that know the issues best. To achieve this, Consumer Scotland will work to build partnerships with and between community-based organisations, local authorities and national consumer organisations.

25. In developing Consumer Scotland in this way, the Scottish Government will ensure that consumers are better protected and represented. The benefits will be a body that will be:

- dedicated to understanding and mitigating consumer harm in Scotland;
- an unashamed champion for consumer interests and rights;
- enshrined in statute, thus ensuring its independence and credibility;
- capable of providing enhanced accountability for public funds;
- able to attract the regulatory and analytical expertise needed to understand and address harm in complex markets; and
- an unequivocal message to consumers that they are valued and protected.

## **POLICY OBJECTIVES OF THE BILL**

### **Consumer Scotland**

26. The Bill enables a key part of the Scottish Government's ambition for a distinctive Scottish consumer policy. It will establish a public body called Consumer Scotland with the primary objective of providing consumer advocacy and advice. The Bill will enable Consumer Scotland to take a strategic and evidence-led approach to identifying how and why consumers experience harm in Scotland and proposing solutions to mitigate it. In so doing, the body should increase consumer fairness across Scotland.

27. To ensure that Consumer Scotland's remit is not unduly limited, section 23 of the Bill provides for a broad definition of "consumer" as an individual who purchases, uses or receives, in Scotland, goods or services which are supplied in the course of a business carried on by the person supplying them (provided that the consumer is not acting wholly or mainly in the course of a business). The Bill covers both consumers and potential consumers.

28. The Bill provides for the arrangements that will enable Consumer Scotland's effective operation as a public body, and gives it the functions, powers and duties necessary for it to fulfil its advocacy and advice role. This creates the enabling framework for the body. However, this framework will be supplemented by significant further work to develop detail on its overall structure, operational model and activities. In keeping with our commitment to ensuring that Consumer Scotland adds value to the existing landscape, this will continue to be done in close collaboration with consumer organisations, regulators, enforcement agencies and business representatives.

### **Operational arrangements**

29. The Bill, if passed, will create Consumer Scotland as a body corporate. The intention is that it will be designated as a non-ministerial office of the Scottish Administration, although this will need to be done by an Order in Council under section 126(8) of the Scotland Act 1998 as the civil service is a reserved matter. As a non-ministerial office, the body will be primarily accountable to the Scottish Parliament for policy delivery, compliance with statutory duties and performance against agreed strategic objectives. Consumer Scotland will lay reports such as its annual report in the Scottish Parliament covering how it has performed. The Parliament and its committees will be able to invite the Chair or Chief Executive to explain any matter should they have any concerns.

30. In establishing the body in this way, its independence will be secured as well as robust arrangements to ensure accountability for its activity, impact and finances.

31. At this stage, it is envisaged that the body will have a light footprint, and the Bill therefore reflects this, by providing in paragraph 2 of schedule 1 that the body will have a Chair and no more than four other members. Should the scale or scope of Consumer Scotland's activities change, the Bill provides the flexibility for its membership to be adapted accordingly.

32. The Scottish Government seeks a body that can deliver tangible benefits for consumers. The Bill therefore provides in section 18 that Consumer Scotland will be reviewed by an external person or organisation every three years to evaluate its impact.

### **Functions, powers and duties**

33. The overarching purpose of Consumer Scotland will, under section 2 of the Bill, be to provide consumer advocacy and advice with a view to:

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

34. The Scottish Government recognises that establishing Consumer Scotland means introducing another organisation into an already well-established and complex landscape. Section 6(3) of the Bill therefore imposes a duty on Consumer Scotland to work in cooperation with other

consumer organisations. This will increase intelligence sharing and joint working, rather than adding confusion or duplication.

35. To further aid collaboration and ensure that Consumer Scotland's work is transparent, the body must also, under section 13 of the Bill, publish details of its work programme prior to the beginning of each financial year. This must be prepared in consultation with those with an interest in consumer matters. In keeping with the Scottish Government's determination that Consumer Scotland should be able to demonstrate its impact, Consumer Scotland will also publish a report into consumer welfare in Scotland every three years (see section 16).

36. Consumer Scotland's advocacy work, and in particular its investigatory role, must be in-depth and underpinned by robust evidence and technical rigour. The Bill therefore gives Consumer Scotland research and information-gathering functions under section 4(1) as well as the ability to undertake investigations under section 4(2). This will enable Consumer Scotland to gather evidence on a voluntary basis from governments, regulators and any other interested persons to develop comprehensive and robust evidence. It is expected that this work will occur as a result of cooperative and collaborative working arrangements. However, the Bill provides Consumer Scotland with power to compel information from relevant bodies where necessary (see sections 8 to 12).

37. Consumer Scotland will also have the power to establish committees of experts and consumers to assist with its investigatory and advocacy functions (see paragraph 8 of schedule 1). This will confer multiple benefits, including an increase in the credibility of findings; a reduction of duplication of effort by harnessing available expertise; and the ability to better integrate the consumer voice in the process.

38. After each investigation, section 14 of the Bill requires Consumer Scotland to produce and publish a report of its findings, which may include recommendations for action by government, regulatory agencies, industry or enforcement bodies. As the power to regulate the sale of goods and services is reserved, these recommendations will not be binding but it is hoped that the body's independence and the credibility of its evidence base will give its recommendations weight.

39. Consumer Scotland will provide advice to consumers in Scotland. Sections 5 and 7 of the Bill ensure that Consumer Scotland may do this directly; however, it may be more practical for Consumer Scotland to facilitate provision by another organisation, and this is also provided for in section 5 of the Bill. Advice may take many forms (online, phone and in person, for example), and the Bill does not specify how consumer advice should be provided in order to ensure that Consumer Scotland can adapt to future developments in the advice sector.

### **Consumer duty**

40. Consumers impact policies as well as being impacted by them. As noted earlier, their behaviour can both contribute to and help overcome some of the intractable challenges facing public authorities. Understanding consumer buying habits and behaviour choices, and gaining their support for new initiatives, is therefore necessary to tackle these challenges - for example, to reduce carbon emissions to tackle climate change, or to tackle unhealthy patterns of eating

and drinking. Consumers can also drive the behaviour of others - for example, encouraging businesses to pay the living wage or reduce their own environmental footprint.

41. It is vital that this is recognised in the policy-making process. Where policies or decisions affect consumers - either directly or indirectly - policy and decision-makers must safeguard consumers with a view to either improving consumer outcomes or minimising harm where other considerations legitimately overrule the consumer interest. This means ensuring that the views of consumers are sought and taken into account during the policy-making process, and giving weight to the consumer interest in the final formulation of policies or decisions. This should happen both in the early stages of policy or decision-making and as their real world consequences unfold. Failure to do so can have unintended consequences that are detrimental to individual consumers and limit the effectiveness of the overall policy interventions.

42. Section 20 of the Consumer Scotland Bill will establish a statutory duty on relevant public authorities in Scotland to ensure that they safeguard the consumer interest in policy making. In doing so, the Government recognises that consumers will not have undue primacy - public health outcomes or environmental concerns may still take precedence, for example - but efforts should still be made to minimise negative impacts on consumers where they may occur.

43. By imposing the duty, the Government anticipates that:

- considering and safeguarding the consumer interest will form part of the policy-making process from an early stage;
- there will be an increase in meaningful consultation with consumers and consumer groups during policy development; and
- reviews of consumer impacts of policies will be carried out after implementation to ensure that consumers are not being unreasonably or unintentionally impacted by the real-world consequences of the policy.

44. The Government recognises that there are already a number of duties imposed on public authorities, and that a consumer duty must be carefully developed so that it has a meaningful impact without becoming a burden on public authorities. The Bill therefore only establishes the core duty. Its application (i.e. the public authorities to which it applies) and its coming into force date will be set out in regulations, which will be developed in consultation with public authorities and consumer groups. Consumer Scotland will be responsible for supporting the duty, including maintaining guidance under section 21 and monitoring the duty's impact. Development of the guidance which will supplement the duty will also be consultative to ensure it meets the needs of those to whom the duty will apply.

## **CONSULTATION**

45. As noted, a recommendation for a dedicated public body to represent the interests of consumers was made by the independent Working Group on Consumer and Competition Policy in Scotland. Its report was published in October 2015, and was positively received by stakeholders. Refinement of the idea was conducted following another programme of extensive engagement with consumer and regulatory stakeholders. A public consultation on the current proposals was published on 28 June 2018 and ran for 12 weeks. A total of 58 responses were received, from



consumer groups, businesses, third sector organisations and individuals. Copies of the responses (other than those where respondents asked for their comments to be kept confidential) can be accessed through the Scottish Government consultation hub.<sup>3</sup> A summary of responses can also be found on the Scottish Government website.<sup>4</sup>

46. Respondents were asked to comment on the proposed powers and duties of the body, in particular having regard to the need to future-proof the body and overcome challenges within the current system.

47. The written consultation was supported by a series of four workshops for regulators, consumer organisations, business and third sector agencies. In addition, the Scottish Government's Taskforce on Consumers and Markets was tasked with analysing and challenging the proposals set out in the consultation. The minutes of the Taskforce meetings are available for review on the Scottish Government website.<sup>5</sup>

48. There was broad support for the investigatory role proposed for Consumer Scotland in both written responses and workshops. Many respondents commented that the consumer landscape in Scotland is fragmented, complex, disjointed and/or confusing to navigate. Comments also focused on inconsistency of levels of service due to the number of differing bodies with different roles. With a few exceptions, there was support for a national body which could provide a more consistent approach. Respondents identified a range of roles or areas of focus for Consumer Scotland, including the need for it to:

- include consideration of services and goods from the private and public sectors;
- address gaps in the current landscape and identify emerging markets where advice and advocacy is needed;
- build on and enhance the structures and relationships which already exist within the landscape;
- ensure there is a focus on understanding how consumers may suffer detriment or unfairness to ensure that consumers who are unaware of harm are protected; and
- provide better information for consumers so they can make informed choices.

49. Respondents also suggested a wider range of duties and powers for Consumer Scotland. The full list is extensive, but these included that the body should:

- assess that advocacy and redress is working effectively, including a better resourced court advocacy service;
- have an overview of Trading Standards Services or a duty to assess the quality and performance of these services;

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<sup>3</sup>[https://consult.gov.scot/energy-and-climate-change-directorate/establish-a-consumer-body/consultation/published\\_select\\_respondent](https://consult.gov.scot/energy-and-climate-change-directorate/establish-a-consumer-body/consultation/published_select_respondent)

<sup>4</sup><https://www.gov.scot/publications/analysis-responses-consultation-consumer-body-scotland/>

<sup>5</sup><https://www.gov.scot/groups/consumers-and-competition-policy-unit/>

- be an enforcement body or to be able to recommend what enforcement should be undertaken by sector regulators and have the power to refer issues to regulators for further investigation;
- require consumer advice providers to be part of a quality assurance scheme;
- support vulnerable consumers;
- accredit and supervise Alternative Dispute Resolution providers; and
- be empowered with consultation rights vis-à-vis Scottish authorities' decisions and policies which have an impact on consumer interests, as well as coordination with other relevant regulatory or consumer bodies.

50. Functions that would fall within reserved powers have not been included in the Bill. However, the functions of Consumer Scotland have been amended to take account of the consultation feedback. In particular, the Bill makes provision for Consumer Scotland to oversee consumer advice, and expands its advocacy role so that it will undertake horizon scanning and wider consumer research. The Bill also places particular importance on Consumer Scotland acting for vulnerable consumers.

51. No provision has been made to require that Consumer Scotland takes a role in prioritising enforcement activity or developing quality assurance schemes for advice providers. Consumer Scotland will not be a regulator and so would not be taking enforcement action itself, although it could work with regulators. It may wish to develop a code of practice for advice providers, but this would be an operational decision.

52. Finally, a consensus in the 2015 Working Group report as well as in the consultation responses is the need for the body to be both independent and seen to be independent, and to operate free from Ministerial interference in the work it pursues.

53. The Consumer Scotland consultation also proposed a statutory consumer duty which would apply to public authorities in Scotland whose decisions can materially impact consumers. The majority of those who responded to the idea or attended consultation events were supportive.

54. However, a key theme in both written responses and event discussions was that although a duty could increase the weight given to consumer issues in policy and decision-making, there was also a risk that it would become a box-ticking exercise, and that considerable thought would be needed to understand its practical impact. Similar issues were raised by members of the Consumer and Markets Taskforce in its September meeting.

55. The Scottish Government is grateful to all those who responded to the consultation, attended workshops and took part in earlier reviews. Their time and efforts have been instrumental in developing the content of the Bill. The Scottish Government will continue this collaborative and productive partnership as it develops the body and the consumer duty.

## **ALTERNATIVE APPROACHES**

56. The decision to establish Consumer Scotland as a body corporate and as a Non-Ministerial Office of the Scottish Administration (NMO) was taken after consideration of all the alternatives. The NMO status was chosen over Non Departmental Public Body or Executive Agency status as it delivered on the desire to have the body established and operate independently of Scottish Ministers. This will ensure impartiality and credibility.

57. As an executive agency, the body would be too closely linked to the priorities and activities of the Scottish Government and could be perceived to lack independence. A Non-Departmental Public Body would have provided more distance between the Scottish Government and the body, but it would have remained accountable directly to Scottish Ministers and could have been perceived as acting at their direction. As Consumer Scotland must be free to offer challenge to Scottish Government policy, and as its recommendations must be seen to be impartial, an arrangement that removed the perception of Ministerial control over the body's activities was chosen. To supplement this, Consumer Scotland must lay its forward work programme, its annual report and its consumer welfare report before the Parliament to ensure accountability.

58. The Scottish Government has considered alternative functions suggested in both consultation responses and by the 2015 Working Group. Although there is merit in all of them, it is not possible to include in the Bill any duties, functions or powers that would stray outwith devolved competence. This has ruled out many of the proposed functions, such as enforcement or regulatory powers.

59. The remit has also been guided by the desire to ensure clarity in the roles and responsibilities of organisations across the consumer landscape, and suggested functions that could have undermined this have been excluded – for example, requests that Consumer Scotland should take an active role in coordinating or assessing priorities of trading standards activity.

60. Future events may make it desirable to expand or adapt Consumer Scotland's role, and the Bill provides the flexibility to do so. Moreover, Consumer Scotland's investigatory role and general duty to monitor the welfare of consumers give it wide scope to comment on and recommend improvements across the landscape.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

61. The Scottish Government has assessed the potential impact of the Bill on equal opportunities. The Bill does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

62. Although the Bill does not prescribe in detail the activities Consumer Scotland will undertake, it requires the body to have regard to impacts on consumers who are vulnerable (see section 6(4)). This has been provided for in recognition of the considerable evidence that consumer

harm can perpetuate inequalities, especially among those consumers who may already be vulnerable because of their circumstances. Section 6(6) of the Bill specifies some categories of people who may be particularly vulnerable. These include those on low incomes, and this increases the likelihood that Consumer Scotland will take particular interest in issues such as the poverty premium or the impacts of decarbonisation on low income households.

63. Vulnerability has not been defined as automatically encompassing all those with protected characteristics, although age and disability are included as circumstances which are likely to lead to vulnerability. The Bill does recognise that vulnerability cannot be exhaustively categorised, and therefore provides scope for vulnerability to capture additional categories of consumers. There may be instances where this would encompass other protected characteristics as a result.

64. Appointments to Consumer Scotland will be public appointments and therefore subject to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (by virtue of the provision made in schedule 2). This will result in all appointments being made after fair and open competition. The process will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland. Consumer Scotland will also be subject to the Gender Representation on Public Boards (Scotland) Act 2018, and the Bill provides at paragraph 2(4) of schedule 1 that appointments made by the Scottish Ministers must be made in a manner which encourages equal opportunities more broadly.

### **Human rights**

65. The Bill is compatible with the terms of the European Convention on Human Rights. The Bill does provide Consumer Scotland with the power under section 8 to require persons by notice to produce information, which power is to be enforceable by the courts if necessary (on an application by Consumer Scotland). This power will apply to regulators, as well as to any person who supplies goods or services to consumers in the course of a business carried on by that person, or any other person specified by the Scottish Ministers by regulations. This power has the potential to interfere with Article 8 ECHR which states that everyone has the right to respect for their private and family life, their home and their correspondence. However, the article does permit interference by a public authority with the exercise of the right that is in accordance with the law and is necessary in a democratic society in the interests of the economic wellbeing of the country. Given that the power in the Bill may only be used by Consumer Scotland to ingather information that it reasonably requires for the purpose of exercising its functions, and its functions are concerned with consumer protection, which is vital to economic wellbeing, the interference with Article 8 rights can be justified.

### **Island communities**

66. The Bill does not have any direct impact on highland or island communities. However, it does require that Consumer Scotland take particular account of the needs of consumers who live in remote rural areas or island communities.

### **Local government**

67. There are no additional responsibilities or costs for local authorities as a result of establishing Consumer Scotland.

68. As noted, the practical application of the consumer duty is yet to be determined and this will be a collaborative process with local authorities and all other organisations potentially subject to the duty.

### **Sustainable development**

69. The potential environmental impact of the Bill has been considered within the terms of the Environmental Assessment (Scotland) Act 2005. The view taken is that the Bill is likely to have no direct or indirect environmental effects and can therefore be considered exempt, as per section 7 of the 2005 Act. A pre-screening exemption notification has been submitted to the Consultation Authorities as per the requirements of the 2005 Act. Consequently there is no need for a full Strategic Environmental Assessment to be undertaken.

70. As noted in paragraphs 4 and 40 of this memorandum, consumers must play a vital role in achieving outcomes that will lead to improved sustainability. By establishing both Consumer Scotland and a consumer duty, the Bill offers an opportunity for a change to how consumers are considered in both the making and implementation of policy. This will be important as efforts to tackle climate change and protect the environment shape policy making. Under the Bill, Consumer Scotland will also be subject to the climate change duty as discussed further below. This will impact its working practices, and may also influence the solutions and interventions it proposes.

71. Including Consumer Scotland in schedule 1 of the Freedom of Information Scotland Act (which is achieved by paragraph 3 of schedule 2 of the Bill) has the consequence that Part 4 of the Climate Change (Scotland) Act 2009 will apply to the body. In particular, the body will have a duty to exercise its functions in a way best calculated to contribute to delivery of emissions reduction targets (section 44 of that Act). This means that the body must have regard to this in its day-to-day functions, and may also consider it when developing its recommendations for tackling consumer harm.

*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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