

# **A Consultation on a Consumer Duty for Public Bodies**

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## **A Consultation on a Consumer Duty for Public Bodies**

### **1. Overview**

This consultation is to help focus and support the delivery of a duty on specified public authorities to consider the impact of their policies on consumers.

### **2. Why We Are Consulting**

The Consumer Scotland Bill was introduced to the Scottish Parliament in June 2019, passed in May 2020, and received Royal Assent in June 2020. The now Act requires the Scottish Government to establish a consumer body – Consumer Scotland – to represent the needs of consumers. Consumer Scotland will be a small, nimble organisation investigating the most serious areas of consumer detriment in Scotland. It will look at a small number of issues each year, and will focus on understanding the underlying cause of the detriment and proposing solutions.

Stakeholder feedback as we developed our proposals was consistent that an advocacy body alone could not improve outcomes for consumers, and that a more comprehensive change to how consumers are considered and integrated into policy and decision-making is needed. To this end, the Act also places a new duty on public bodies to consider the impact of their policies on consumers.

The Consumer Scotland Act does not specify which public bodies would be covered by this new Consumer Duty. Following this consultation secondary legislation will be drafted indicating which public authorities will be bound by the Duty.

### **3. Introduction**

In recognition of the importance of consumers, the Consumer Scotland Bill was introduced to the Scottish Parliament in June 2019. The Bill primarily seeks to establish a consumer body – Consumer Scotland – to represent the needs of consumers.

Consumers have a strong and growing influence on national economic productivity and business profitability through their purchasing decisions. In 2017 alone, consumer spending in Scotland was £104.1 billion and contributed two thirds of total GDP. The Scottish Government wants to encourage businesses to grow, and supporting and protecting consumers helps to do this. It is particularly important at this time when the Covid-19 pandemic has had a huge impact on the ways in which we as a society shop and consume. The consumer will play a critical role in shaping and supporting a green economic recovery.

Following stakeholder feedback in response to our initial [consultation on a consumer body for Scotland](#), the Act imposes a duty on relevant public authorities, when making decisions of a strategic nature, to consider the impact of, and have regard to, those decisions on consumers in Scotland and the desirability of reducing harm to consumers in Scotland.

The public authorities the duty should apply to have not been specified in the Act. This has been done deliberately to allow this considered period of consultation so that the duty is targeted where it will have the most impact.

Competition and Markets Authority (CMA) market studies have identified that consumers are often unable to access market benefits, for example energy consumers with certain meter types cannot access the same tariffs or switch providers as easily, costing them more to heat their homes. In addition, there are issues that affect Scotland more than the rest of the UK, such as parcel deliveries, where consumers living in more remote areas of Scotland find that couriers will not deliver to them, or will but only at a significantly increased cost.

Many public policies impact on the consumer or require consumer support; for example the carrier bag levy was introduced as part of the Scottish Government's Zero Waste and Climate Change policies and led to significant changes in how some consumers shopped.

Work has already been undertaken whereby specific policy areas within Scottish Government were invited to take part in pilot interviews, and asked how they currently consider consumers and how they could be supported to do this in future. Building on these interviews, and in collaboration with colleagues, a set of case studies were developed, which is hoped will support colleagues to understand the value of considering consumers in policy making. Examples of the case studies developed include:

- Introduction of the Deposit Return Scheme (DRS)
- The Big Climate Conversation
- Scottish Water – Strategic Review of Charges (SRC) 2021-2027
- The UK Government's Green Deal Scheme 2012-2015

## **Consumer Approach Case Study Strategic Review of Charges (SRC) 2021-27**

### **Background**

Scottish Water is a publically owned company and Ministers are required to set its objectives for investment and principles for charging consumers. The Scottish Government is in the process of defining objectives and principles of charging for the next regulatory period of 2021 to 2027. The objective and principles of charging are available at the following links:

<https://www.gov.scot/publications/principles-of-charging-2021-2027/>

<https://www.gov.scot/publications/scottish-water-directions-2020/>

As this process involves all consumers in Scotland, Scottish Water seeks to have as wide a view as possible from all involved and it works with partner organisations such as Water Industry Commission for Scotland (WICS), Citizens Advice Scotland (CAS) and the Customer Forum (CF) to reach consumers. An Early Community Engagement Group (ECEG) was formed to seek feedback and consider pilot projects identified by Scottish Water where community engagement methods could be tested and evaluated.

Additionally they have developed a new engagement process using the ECEG, and as a result, promoted alternative solutions for projects which may have greater benefits for consumers.

The inclusion of a wide range of views from partners and consumers when making such changes ultimately has a positive impact on consumers. If Scottish Water were to proceed without undertaking prior consultation, the outcomes may have a detrimental effect on certain groups of consumers. It is acknowledged that early engagement with consumers and communities creates opportunities to better take into account the factors that are important to them when designing projects. The main benefit of engaging at an early stage with communities is to build-in community and consumer input into both what is to be delivered and how it will be delivered.

Establishment of Consumer Scotland and the introduction of the Consumer Duty will assist policymakers to consider consumer concerns. This greater focus on how policies affect consumers could lead to a better understanding of the consequences of policies or decisions on consumers; thereby identifying unintended consequences and making the most of opportunities to deliver better policy outcomes, building both consumer support for policies and consumer confidence along the way.

#### **4. Background**

In June 2015, in anticipation of devolution of consumer powers under the 2016 Scotland Act, the Scottish Government established an independent, short-life Working Group for Consumer and Competition Policy in Scotland. Membership was drawn from a wide spectrum of expertise, including Which?, Citizens Advice

Scotland (CAS), Trading Standards Scotland, the Scottish Public Services Ombudsman (SPSO) and the Federation of Small Businesses.

This group was asked to consider the optimal arrangements for delivering consumer protection and competition policy in Scotland. It was also tasked with providing recommendations to Scottish Government on specific improvements that could be made to the consumer protection and competition landscape. Its main recommendation was that the Scottish Government establish a public body, underpinned by statute and dedicated to representing the consumer interest in Scotland.

This recommendation was generally well received. In 2016, the SNP manifesto committed to make the most of newly devolved powers and create a consumer body.

We asked for views on a new body called Consumer Scotland, and whether the Scottish Government should develop a statutory duty on Scottish public authorities to improve how consumers are considered during policy and decision-making. We held a public consultation, which was open for 12 weeks from 4 July 2018. During this period we also held a series of events so that regulators, consumer groups and enforcement agencies could share their thoughts.

The Bill to establish Consumer Scotland was introduced to Parliament by the Cabinet Secretary for Finance, Economy and Fair Work on 5 June 2019, and passed on 6 May 2020. The Bill became an Act on 9 June 2020.

## **5. Consumer Scotland Act 2020**

The Act establishes Consumer Scotland, and gives it a general function of providing consumer advocacy and advice with a view to achieving specific outcomes. These are:

- reducing consumer harm in Scotland,
- increasing the confidence of consumers in Scotland in dealing with businesses supplying goods and services,
- increasing the extent to which consumer matters are taken into account by public authorities in Scotland,
- promoting sustainable consumption of natural resources, and other environmentally sustainable practices, in relation to the acquisition, use and disposal of goods by consumers in Scotland, and
- otherwise advancing inclusion, fairness and prosperity and other aspects of wellbeing in Scotland.

For the purposes of Consumer Scotland's functions, a consumer is an individual, or a business no larger than a small business, that purchases, uses or receives goods or services in Scotland, where those goods or services are supplied in the course of a business. It should be noted that it is only where a small business is the purchaser in a transaction that they are a "consumer"; not when they are acting as the seller or provider of goods or services.

Whilst "traditional" consumer matters, such as a problem with a faulty device, are included in the definition, it also includes, for example, a disposal or recycling service. 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.

A person may be a vulnerable consumer when circumstances cause that person to have fewer options, or to be more at risk of harm, than a typical consumer – for example by virtue of age, mental or physical health, economic circumstances, geography, caring responsibilities, or because of a bereavement. The characteristics or circumstances which may result in a person being a vulnerable consumer may be short-term, long-term or permanent.

Across all its work, Consumer Scotland has to consider the interests of vulnerable consumers. You can find out more at: [Consumer Scotland Act 2020 - Explanatory Notes \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/12/section-2).

## **6. The Consumer Duty**

The Consumer Scotland Act 2020 requires that a relevant public authority must, when making decisions of a strategic nature about how to exercise its functions, have regard to the impact of those decisions on consumers in Scotland, and the desirability of reducing harm to them.

The main aims of the Consumer Duty are:

- To embed the consumer perspective into strategic decision making processes across the public sector, in order to deliver better policy outcomes for Scotland.
- To challenge relevant public authorities to be more robust and methodical in their evaluation of the impact of strategic decisions on consumer groups;
- To steer relevant public authorities towards a solution orientated approach to managing the risk of consumer detriment where identified;
- To encourage relevant public authorities to be proactive in their engagement and consideration of consumer behaviour as a driver to achieve policy objectives.

This greater focus on consumers could benefit public authorities by leading to creation of better policies that people relate to, ultimately inspiring a greater level of trust in public bodies as they bring consumers along as part of the journey. It may be the case that initial consumer detriment is not the only consideration, but what the wider outcomes of the policy could achieve.

This means identifying how consumer attitudes and behaviours will affect the success of policies and taking appropriate action. Meaningful consideration of, and engagement with, consumers and their representatives will help to spot opportunities to innovate, deliver value for public money and boost trust in public bodies.

## **7. What the Legislation Does**

1. Section 21 of the Act 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.

2. 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. However, it does require that authority to have regard to the impact on consumers in Scotland and the desirability of reducing harm to them.

3. 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”.

4. 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.

### Guidance about Section 21 duty:

5. Section 22 states that Consumer Scotland may issue guidance relating to the duty under Section 21, subject to the approval of Scottish Ministers. Relevant authorities are required to have regard to any guidance issued.

6. 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.

### Reporting on Section 21 duty:

7. Section 23 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.

8. 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. 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.

## **8. Public Authorities**

The Consumer Scotland Act Section 20, subsection 2, states that:

For the purpose of this section and sections 21 and 22, "relevant public authority" means a person with functions of a public nature who is specified (by name or description) in regulations made by the Scottish Ministers.

This means only those public authorities that have been identified as operating in a manner that is considered of value to the wider public; and who are also then named specifically or by description in legislation; will be required to comply with the Consumer Duty.

A public authority may be relevant as they collect revenue from consumers in exchange for services, set standards or generally develop policies which will affect consumers and the businesses that serve them.

A full list of public bodies in Scotland can be found here:

<http://www.gov.scot/Topics/Government/public-bodies/about/Bodies>

Scottish Ministers propose that the following Scottish public authorities be bound by the Duty:

### 1. Scottish Ministers

This will include:

- The Scottish Government; and executive agencies

### 2. Public Ombudsmen

This will include:

- Scottish Public Services Ombudsman

### 3. Local Authorities

This will include:

- All 32 Scottish local councils, including planning authority functions; and
- The Convention of Scottish Local Authorities (COSLA)

### 4. Public Corporations

This will include:

- Caledonian Maritime Assets Ltd.;
- Glasgow Prestwick Airport;
- Scottish Water; and

- Crown Estate Scotland

## 5. Executive Agencies

This will include:

- Accountant in Bankruptcy;
- Disclosure Scotland;
- Education Scotland;
- Forestry and Land Scotland;
- Scottish Forestry;
- Scottish Prison Service;
- Scottish Public Pensions Agency;
- Social Security Scotland;
- Student Awards Agency for Scotland; and
- Transport Scotland

## 6. Non Ministerial Offices (NMOs)

This will include:

- Food Standards Scotland;
- National Records of Scotland;
- Office of the Scottish Charity Regulator;
- Registers of Scotland;
- Revenue Scotland;
- Scottish Courts and Tribunals Service;
- Scottish Fiscal Commission; and
- Scottish Housing Regulator

## 7. Executive Non-Departmental Public Bodies (NDPBS)

This will include:

- Accounts Commission for Scotland;
- Architecture and Design Scotland;
- Bòrd na Gàidhlig;
- Cairngorms National Park Authority;
- Care Inspectorate;
- Children's Hearings Scotland;
- Community Justice Scotland;
- Creative Scotland;
- Crofting Commission;
- David MacBrayne Ltd;
- Ferguson Marine (Port Glasgow) Ltd;
- Highlands and Islands Airports Ltd;
- Highlands and Islands Enterprise;
- Historic Environment Scotland;
- Independent Living Fund Scotland;
- Loch Lomond and The Trossachs National Park Authority;
- National Galleries of Scotland;

- National Library of Scotland;
- National Museums of Scotland;
- Police Investigations and Review Commissioner;
- Quality Meat Scotland;
- Risk Management Authority;
- Royal Botanic Garden, Edinburgh;
- Scottish Agricultural Wages Board;
- Scottish Canals;
- Scottish Children's Reporter Administration;
- Scottish Criminal Cases Review Commission;
- Scottish Enterprise;
- Scottish Environment Protection Agency;
- Scottish Funding Council;
- Scottish Futures Trust;
- Scottish Land Commission;
- Scottish Legal Aid Board;
- Scottish Legal Complaints Commission;
- Scottish National Investment Bank;
- NatureScot (replaced Scottish Natural Heritage);
- Scottish Qualifications Authority;
- Scottish Social Services Council;
- Skills Development Scotland;
- Sportscotland;
- South of Scotland Enterprise Agency;
- VisitScotland; and
- Water Industry Commission for Scotland

#### 8. Advisory NDPBs

This will include:

- Judicial Appointments Board for Scotland;
- Boundaries Scotland;
- Mobility and Access Committee for Scotland;
- Poverty and Inequality Commission;
- Scottish Advisory Committee on Distinction Awards;
- Scottish Commission on Social Security;
- Scottish Law Commission; and
- Scottish Local Authorities Remuneration Committee

#### 9. Any other public authority not already specified, which has the ability to procure the frontline provision of public services from one or more private or third sector organisations

This will include:

- Health & Social Care Integration Boards

#### 10. Any other public authority not already specified, which has regulatory authority to set standards and issue operating licenses, permits or other types of

authorisation to private or third sector organisations to carry out a public service function

## 11. Other

This will include:

- Regional Transport Partnerships
- Regional Economic Partnerships

## **9. Consultation Questions**

### Question 1 – Public Authorities Bound by the Duty

- (a) Do you agree that the Consumer Duty should be applied to the organisations proposed in the public authorities section of this consultation?
- (b) If not, which public authorities should be excluded, and why?
- (c) Are there any public authorities you feel should be bound by the duty which have not been listed, please give reasons why?

### Question 2 – Functions in Scope

- (a) Should public bodies be subject to the duty when carrying out all of their functions or only specified functions?
- (b) If all functions, why?
- (c) If just specified functions, how should these be determined?

### Question 3 – Reporting and Governance

- (a) Do you have any comments on the reporting requirements of the duty, which will help to ensure public authorities meet the conditions?
- (b) What further key considerations or consultation do you think is required to ensure that the governance and reporting structures suit public bodies?

## **10. Responding to this Consultation**

We are inviting responses to this consultation by 26 November 2021.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/energy-and-climate-change-directorate/consumer-duty-for-public-bodies>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 26 November 2021.

If you are unable to respond online using our consultation hub, please complete the Respondent Information Form and send to:

Consumer Scotland Team  
Scottish Government  
5 Atlantic Quay  
Glasgow  
G2 8LU

### **Handling your response**

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document below.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

## **Comments and Complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or [consumerandcompetition@gov.scot](mailto:consumerandcompetition@gov.scot)

## **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



## A Consultation on a Consumer Duty for Public Bodies

### 11. Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again



in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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