

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Consumer Scotland Bill
Summary of aims and desired outcomes of Policy	<p>The Consumer Scotland Bill will deliver on a 2016 SNP manifesto commitment to establish a new public body called Consumer Scotland that will -</p> <p>create a consumer body capable of representing the interests of Scottish consumers;</p> <p>ensure that consumers and consumer fairness are placed definitively at the centre of public policy and decision-making in Scotland; and</p> <p>put Scotland’s consumer advocacy and advice powers [devolved under the Scotland Act 2016] to best effect.</p>
Directorate: Division: team	Directorate for Energy and Climate Change, Consumers and Low Carbon, Consumer and Competition Policy Unit

Executive summary

1. The policy intention of the Consumer Scotland Bill (the Bill) is to create a new non-Ministerial Office to represent the interests of consumers in Scotland. Discussions to inform the EQIA were held with internal Scottish Government officials and

with a range of external stakeholders, including consumer groups, regulators and third sector organisations.

2. As part of the EQIA process, the Scottish Government has considered the potential positive and negative impacts of the Bill and its practical implementation on groups with protected equality characteristics. The EQIA concluded that the Bill's provisions are neither directly nor indirectly discriminatory on the basis of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, and marriage and civil partnership.

3. The EQIA did identify potential positive impacts of the Bill for some protected groups. The aim of the body, as set out in the Bill, is to reduce harm to consumers in Scotland, and the aim of the consumer duty is for public authorities to have due regard to minimising negative consumer outcomes. The Bill provides a broad definition of consumer as a person 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 or seeking to supply them. The Bill also covers consumers and potential consumers.

4. Despite this broad definition, there is considerable evidence that consumer harm can perpetuate inequalities, and be more severe for consumers who are vulnerable. The Bill therefore tasks Consumer Scotland with taking particular account of vulnerable consumers. The Bill provides some categories of people who may be particularly vulnerable, some of which overlap with the protected characteristics of age or disability. However, in recognition that vulnerability cannot be exhaustively categorised, the Bill provides scope for vulnerability to capture additional categories, and there may be instances where this would encompass other protected characteristics.

5. The need to reduce inequality and strive for equal outcomes, both in Consumer Scotland's working culture and delivery of its statutory role, will be set out in the body's framework documents. Equality issues will also inform the guidance that will be issued to support the consumer duty.

6. Once established, Consumer Scotland will be subject to the public sector equality duty, which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out activities. The Scottish specific duties that underpin the public sector equality duty ensure equality is integrated into all the body's functions by including requirements to: report on mainstreaming the equality duty; assess and review policies and practices; publish equality outcomes and report progress; and collect and use employee data. All of these duties will help to ensure that equality is integrated into the new body. In addition, the body will need to actively consider how it could reduce inequalities of outcome caused by socio-economic disadvantage to meet the Fairer Scotland Duty. Consumer Scotland will also be an employer and will therefore commit to embedding fair work within its workplace culture.

7. An initial assessment has concluded that there is no need at this stage to conduct a Fairer Scotland Duty assessment. However, this will be conducted as the body's operational detail is progressed to ensure that the need to reduce socioeconomic inequality is a key part of strategic decisions relating to Consumer Scotland's establishment. Findings from the full EQIA will be considered as part of this assessment. Steps will also be taken as soon as Consumer Scotland is established to ensure that it is also subject to the duty.

8. The Bill does not breach any convention rights embodied within the European Convention on Human Rights, and nor does it give rise to any issues under the various UN treaties that have been ratified by the UK, which the new body will give due

regard too. A separate Child Rights and Wellbeing Impact Assessment has been undertaken to specifically consider the impact of the Bill on the UN Rights of the Child.

Next Steps

9. This EQIA will be updated as the Bill and practical implementation of the body and consumer duty progresses. The body will take account of the findings of the completed EQIA. In particular, the EQIA will inform the culture and working practices of the body, as well as its practices in regard to identifying and tackling consumer harm and supporting implementation of the consumer duty.

Background

10. The Consumer Scotland Bill establishes Consumer Scotland and introduces a duty on public authorities to have regard to consumer impacts and the desirability of reducing consumer harm while making strategic decisions in the course of delivering functions.

11. The creation of Consumer Scotland comes in response to the recommendation of the Working Group on Consumer and Competition Policy, which recommended that the Scottish Government should establish a dedicated consumer body to represent the interests of consumers in Scotland and address significant challenges in the current landscape. Policy development and stakeholder engagement around the development of the body also suggested that a body must be matched by a commitment to better consider consumer interests early in policy and decision-making processes. This has resulted in the inclusion of the consumer duty in the Bill.

12. Developing a policy environment that puts consumer interests at the heart of decision-making and seeks practical solution to issues of particular consumer harm in Scotland will contribute to the Scottish Government's ambition for a fairer and

more equal Scotland, and support the drive for inclusive economic growth.

13. Consumers make up 60% of economic spending, and are integral to our economy. We cannot achieve inclusive growth if consumers are not treated fairly, or don't feel able to use their spending power to reflect the things they care about as citizens. Consumer Scotland will support inclusive growth by better representing the consumer interest to protect the most vulnerable consumers and promote more equal outcomes. Therefore, Consumer Scotland will:

- Be a dedicated source of expertise focused on advocating for change on issues which particularly affect consumers in Scotland, taking into account our distinct circumstances, such as our rural population and our devolved sectors.
- Conduct in-depth investigations to understand the underlying causes of harm and identify solutions to tackle these.
- Send a clear signal that consumer fairness is part of the Scottish Government's fairer Scotland agenda.
- Be an independent body dedicated solely to representing consumer interests and mitigating consumer harm.

14. Specifically, the Consumer Scotland Bill will contribute to the following national outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe.
- We realise our full economic potential with more and better employment opportunities for our people.
- We have tackled the significant inequalities in Scottish society.
- We reduce the local and global environmental impact of our consumption and production.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

The Scope of the EQIA

15. The Scottish Government carried out a full consultation, along with workshops, with relevant external stakeholders. Responses were received from a number of organisations.

Key Findings

16. The EQIA process identified no areas in which the Bill will negatively impact on protected groups, and several areas in which it could have a positive impact.

Consumer duty

17. The Bill establishes the framework for the implementation of the consumer duty, but does not specify which public authorities will be bound by the duty – this will be done through regulations. The Bill sets out that the regulations, and the public guidance that will sit alongside the duty, will be developed in consultation with those likely to be affected. This consultation work will consider the duty’s potential impacts on equalities and how its application can take these into account.

18. The duty is expected to benefit all consumers in Scotland as it will apply to any public body whose functions can impact consumers, either directly or indirectly. As much of the detail of the duty will be developed through regulations, a separate EQIA process will be undertaken for the consumer duty as part of the development and introduction of regulations and any associated guidance. This EQIA therefore focuses primarily on the establishment of Consumer Scotland.

Consumer Scotland

19. The Scottish Government is establishing Consumer Scotland as a body that will improve outcomes for consumers, and in so doing, contribute to a reduction of inequality and increase economic growth. These drivers will underpin its organisational culture, working practices, and consumer advocacy activity.

20. The overarching purpose of Consumer Scotland will be to provide consumer advocacy and advice with a view to:

- tackling consumer harm in Scotland;
- increasing consumer confidence in business that supply goods and services to consumers; and
- increasing the extent to which consumer matters are taken into account by public authorities in Scotland.

21. Despite the wide definition of consumer adopted in the Bill, there is considerable evidence that consumer harm can perpetuate inequalities, and be more severe for consumers who are vulnerable. The Bill therefore tasks Consumer Scotland with taking particular account of vulnerable consumers. The Bill provides some categories of people who may be particularly vulnerable, some of which overlap with the protected characteristics of age or disability. However, in recognition that vulnerability cannot be exhaustively categorised, the Bill provides scope for vulnerability to capture other reasons, and there may be instances where this would encompass other protected characteristics. Therefore, Consumer Scotland's work has the potential to have positive impacts on groups with protected characteristics.

22. It is anticipated that there are three main ways in which Consumer Scotland can deliver positive impacts in respect of the protected characteristics and in the reduction of socio-economic inequality:

- Its culture, governance and engagement with its employees (direct).
- Its oversight of consumer advice (indirect).
- Its work to improve outcomes for consumers by recommending solutions to consumer detriment, and its particular regard to vulnerable consumers (indirect).

23. In all its work, the body will be governed by the Public Sector Equality Duty, which requires public bodies to have due

regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different groups when carrying out its activities. This includes requiring Consumer Scotland to consider equality issues by carrying out and publishing Equality Impact Assessments in relation to its strategic decisions.

Staffing and governance

24. Consumer Scotland will be subject to The Public Appointments and Public Bodies etc. (Scotland) Act 2003. 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. Additionally, appointments to the Board will take cognisance of the Gender Representation on Public Boards (Scotland) Act 2018 and the Bill provides that appointments made by the Scottish Ministers must be made in a manner which encourages equal opportunities.

25. Although the statutory duties will underpin and guide Consumer Scotland's operations, it will be practical policies and behaviour that foster a culture that is genuinely inclusive and embeds equality considerations. Consumer Scotland will therefore set out and publish the body's HR policies, practices and systems to comply with employment and equalities legislation and the standards expected of public sector employers. In particular, the body will consider the steps it can take to ensure that staff (and prospective staff) are not discriminated against as a result of disability, their sexual orientation, for reasons of pregnancy or maternity, gender reassignment, or the individual's sex or race or ethnicity.

Consumer advice and advocacy

26. Reliable, accurate consumer advice is a key way to empower consumers and help them to understand and exercise their rights. It is not expected that Consumer Scotland will provide advice directly to consumers. However, the body will

have responsibility for ensuring that consumer advice is effective and works for consumers. This will include ensuring it meets the needs of vulnerable consumers, for example, by evaluating its accessibility and reach for those with disabilities. Consumer Scotland is required to produce annual reports, as well as a three yearly review of consumer welfare. The Consumer Scotland Bill also sets out that Consumer Scotland should be reviewed every three years. In all these documents, equality considerations should be considered.

27. A key object of Consumer Scotland's advocacy work will be to identify the areas of most severe detriment to consumers in Scotland and to conduct investigations into these areas. It is conceivable that, through this work, Consumer Scotland will improve outcomes for those with protected characteristics, and so increase equality of opportunity. However, this potential depends on operational aspects of Consumer Scotland and it will be for the body to review its impact on equality issues. However, Consumer Scotland will be expected to develop transparent processes to determine how it selects areas of investigation, and equality impacts should be considered as part of this.

Recommendations and Conclusion

28. The EQIA process has helped to consider the potential positive and negative impacts of the Bill, and by extension the creation of Consumer Scotland, on those with protected equality characteristics. The EQIA concluded that the Bill's provisions are neither directly nor indirectly discriminatory on the basis of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, and marriage and civil partnership.

29. However, the EQIA process identified potential positive outcomes of the Bill for some groups with protected characteristics, albeit some of these would be indirect and cannot be guaranteed. The legal framework provided by the Bill provides Consumer Scotland with the necessary functions to

conduct consumer advocacy and advice activities but does not specify detailed operational activities for the new body. Work is being taken forward to develop this detail, including the structure, and it will in large part be for the board to determine the operational detail of its activities. All comments and suggestions in relation to equalities will be passed onto the new body to consider.

30. Overall, a new body dedicated to representing the interests of consumer harm and proposing practical solutions to consumer detriment in Scotland has potential to reduce inequality and increase inclusive economic growth. As a public body, it will be subject to the public sector equality duty, which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out activities. As such, although it would not be appropriate to specify Consumer Scotland's activities, it has been accepted that some high-level equality principles should be embedded in the new body and this will be taken forward as the policy develops.