

CONSUMER SCOTLAND ACT 2020

EXPLANATORY NOTES

THE ACT

Overview

Part 1

Consumer Scotland Functions

Section 2 – General function

6. Section 2 sets out Consumer Scotland’s general function. As subsection (2) clarifies, the functions set out in section 3 to 6 all fall within the overarching general function which is provided for in subsection (1).
7. 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,
 - 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.
8. “Consumer” and “consumer matters” are defined in sections 24 and 25 respectively.
9. “Harm” is not defined in the Act and therefore has its ordinary meaning. Examples of harm to consumers are wide-ranging and include, but are not limited to, harm that is financial, emotional, environmental or physical. Harm could include consumers paying more for goods or services because of unfair marketing practices, or the impact of plastic consumption in consumer packaging on the environment. It could also include 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.
10. Increasing consumer confidence in dealing with businesses could take the form of both Consumer Scotland working to improve business practices, and improving consumer knowledge (and therefore confidence) through the dissemination of advice.

11. The term “natural resources” is not defined in the Act and therefore also takes its ordinary meaning, namely: materials or substances occurring in nature which can be exploited for economic gain. An example of promoting sustainable consumption of natural resources, or other environmentally sustainable practices, could include providing advice and information to consumers on the reuse or recycling of goods.

Section 3 – Representative function

12. 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.
13. 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

14. Section 4 allows Consumer Scotland to obtain, analyse and review information relating to consumer matters etc. and to undertake investigations into 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 15 to publish reports on any investigations it conducts under this section.

Section 5 – Information function

15. 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 25), 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.
16. 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 – Recall of goods function

17. Section 6 requires Consumer Scotland to develop and operate, or secure the development and operation of, a publicly available database of major recalls of goods in Scotland. For the purpose of this section, a recall of goods also covers cases where manufacturers or others take action short of a full recall, for example by offering repair of a product which would otherwise need to be taken back.
18. Section 6 also gives details of what Consumer Scotland may do in relation to the recall of goods. For example, Consumer Scotland may take such further steps it considers appropriate to provide or secure the provision of advice and information to consumers about the recall of goods.

Section 7 – General provision about functions

19. 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 14) and the desirability of working in collaboration with others where appropriate.
20. Among other things, Consumer Scotland must have regard to the activities carried on by specified persons and also by persons with the same functions as, or similar functions to, Consumer Scotland. Specified persons are persons specified by the Scottish Ministers by regulations. As noted below, “person” takes the meaning given in the Interpretation and Legislative Reform (Scotland) Act 2010 (see paragraph 52).
21. In exercising its functions under the Act, Consumer Scotland must have regard to the interests of vulnerable consumers. Consumer Scotland must also have regard to the importance of communicating in an inclusive way, recognising that some individuals may need to be provided with information in a particular format (for example, large print or braille). The term “communicating in an inclusive way” is defined as communicating in a way that ensures that individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet their individual needs.
22. There is also a requirement that, in exercising its functions, Consumer Scotland must have regard to the environmental impact of the actions of consumers. This complements the existing environmental duties Consumer Scotland will have by virtue of being made subject to the Freedom of Information (Scotland) Act 2002. For more information on this, see paragraph 101 of these Notes.
23. 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 8 – Exercise of functions

24. This section clarifies that Consumer Scotland may use its functions to act for a specific consumer, but it is not required to do so.