

# CONSUMER SCOTLAND ACT 2020

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## EXPLANATORY NOTES

### THE ACT

#### *Overview*

#### **Part 3**

#### **Interpretation and final provisions**

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

##### **Status**

71. Paragraph 1 of schedule 1 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.
72. 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, this Act does not make any provision in relation to Consumer Scotland's accounts.

##### **Membership**

73. Paragraph 2 of schedule 1 sets rules around the membership of the board of Consumer Scotland.
74. 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.
75. 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 Act).
76. In addition, when appointing members, the Scottish Ministers are required to have regard to the desirability of ensuring that the board has at least one member with either personal experience of, or knowledge of or experience dealing with, the difficulties faced by vulnerable consumers.

77. 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**

78. Paragraph 3 of schedule 1 disqualifies certain individuals from becoming members of Consumer Scotland.
79. 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**

80. 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.
81. 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**

82. 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.
83. 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**

84. Paragraph 6 of schedule 1 details that Consumer Scotland must, with the approval of the 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.
85. 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**

86. 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.
87. 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**

88. 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**

89. 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**

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

## **General powers**

91. 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**

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