

CONSUMER SCOTLAND ACT 2020

EXPLANATORY NOTES

THE ACT

Overview

Part 3

Interpretation and final provisions

Schedule 2 - Application of public bodies' legislation

93. Schedule 2 amends relevant public bodies' legislation so as to encompass Consumer Scotland.

Ethical Standards in Public Life etc. (Scotland) Act 2000

94. Paragraph 1 of schedule 2 adds Consumer Scotland to the list of devolved public bodies in schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act").
95. This means that Consumer Scotland will need to:
- have a code of conduct for its members, whose compliance with the code will be policed by the Standards Commission for Scotland (see sections 3 and 9 of the 2000 Act), and
 - maintain a public register of its members' interests (see section 7 of the 2000 Act).

Scottish Public Services Ombudsman Act 2002

96. Paragraph 2 of schedule 2 adds Consumer Scotland to the list of authorities in schedule 2 of the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act").
97. The effect of this is to:
- make the exercise of administrative functions by Consumer Scotland amenable to investigation by the ombudsman (see section 5 of the 2002 Act),
 - oblige Consumer Scotland to have its own complaints handling procedure that complies with the statement of principles published by the ombudsman under section 16A of the 2002 Act,
 - permit Consumer Scotland to be made subject to the requirement to have a complaints handling procedure that complies with a model complaints handling procedure prepared by the ombudsman (see sections 16B and 16C of the 2002 Act).

Freedom of Information (Scotland) Act 2002

98. Paragraph 3 of schedule 2 adds Consumer Scotland to the list of Scottish public authorities in schedule 1 of the Freedom of Information (Scotland) Act 2002 (“the FOI (S) Act”).
99. This means that Consumer Scotland will be subject to the requirements which the FOI (S) Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme under section 23 of that Act for the pro-active publication of information it holds.
100. Being a public authority within the meaning of the FOI (S) Act also makes Consumer Scotland a “Scottish public authority” to which the Environmental Information (Scotland) Regulations 2004 apply.
101. It also means that Consumer Scotland falls within the definition of a “public body” under section 44 of the Climate Change (Scotland) Act 2009. This means that it must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that it considers is most sustainable. It can also have further duties, including reporting duties, imposed upon it.
102. In addition, as a public authority within the meaning of the FOI (S) Act, Consumer Scotland is a “public authority” or “public body” for the purposes of the General Data Protection Regulation by virtue of section 7 of the Data Protection Act 2018 (subject to the power under that section to remove that status not being exercised). The General Data Protection Regulation (also commonly referred to by the acronym “GDPR”) is [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. There are particular rules applied to bodies classified as “public authorities” (over and above those applied to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

103. Paragraph 4 of schedule 2 adds Consumer Scotland to the list of specified authorities in schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (“the 2003 Act”).
104. This means that the Scottish Ministers, when appointing Consumer Scotland’s members, will need (under section 2 of the 2003 Act) to comply with the code of practice on public appointments produced by the Commissioner for Ethical Standards in Public Life in Scotland.

Public Services Reform (Scotland) Act 2010

105. Paragraph 5(a) of schedule 2 adds Consumer Scotland to the list of bodies in schedule 5 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”).
106. This means that Consumer Scotland is a body in relation to which an order can be made under section 14 of the 2010 Act where it would improve the exercise of public functions, having regard to efficiency, effectiveness or economy. An order under section 14 of the 2010 Act can (subject to restrictions, and only after the Scottish Parliament has approved a draft of the order):
 - modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
 - amend the constitution of a public body.

*These notes relate to the Consumer Scotland Act 2020
(asp 11) which received Royal Assent on 9 June 2020*

107. Paragraph 5(b) of schedule 2 adds Consumer Scotland to the list of bodies in schedule 8 of the 2010 Act. This means that Consumer Scotland will be subject to the duties to report after each financial year on:
- expenditure (see section 31 of the 2010 Act), and
 - the steps it has taken to promote and increase sustainable growth and improve its efficiency, effectiveness and economy (see section 32 of the 2010 Act).

Public Records (Scotland) Act 2011

108. Paragraph 6 of schedule 2 makes Consumer Scotland subject to the duties created by the Public Records (Scotland) Act 2011 to produce, implement and keep under review a records management plan.

Procurement Reform (Scotland) Act 2014

109. Paragraph 7 of schedule 2 makes Consumer Scotland subject to the procurement rules applicable to contracting authorities in the Procurement Reform (Scotland) Act 2014.

Gender Representation on Public Boards (Scotland) Act 2018

110. Paragraph 8 of schedule 2 adds Consumer Scotland to the list of bodies in schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018 (“the 2018 Act”).
111. This means that in appointing members to Consumer Scotland, the Scottish Ministers must ordinarily give preference to a woman if there are equally qualified candidates – one who is a woman and one who is not – where appointing a woman would result in, or be a step towards, 50% of the body’s membership being women (see section 4 of the 2018 Act).
112. In addition, the 2018 Act requires that steps be taken to encourage women to apply to be members of Consumer Scotland (see section 5 of the 2018 Act), and further steps to be taken to promote gender balance in the membership if the 50% target has not been reached by particular dates (see section 6 of the 2018 Act).

Islands (Scotland) Act 2018

113. Paragraph 9 of schedule 2 adds Consumer Scotland to the list of relevant authorities in the schedule of the Islands (Scotland) Act 2018.
114. This means that Consumer Scotland must have regard to island communities in carrying out its functions (see section 7(1) of the Islands (Scotland) Act 2018).