

# CONSUMER SCOTLAND ACT 2020

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## EXPLANATORY NOTES

### THE ACT

#### *Overview*

3. The Act establishes a body to be known as Consumer Scotland with the general function of providing consumer advocacy and advice with a view to achieving certain specified objectives. It also imposes a duty on relevant public authorities, when making decisions of a strategic nature, to have regard to the impact of those decisions on consumers in Scotland and the desirability of reducing harm to consumers in Scotland.
4. The Act contains 30 sections in 3 Parts, and contains 2 schedules.

#### **Part 1**

#### **Consumer Scotland Establishment**

##### *Section 1 – Establishment of Consumer Scotland*

5. Section 1 establishes the body as an entity to be known as ‘Consumer Scotland’. The Gaelic name Luchd-Cleachdaidh Alba has equal legal status.

#### 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.  
Information-gathering

### ***Section 9 – Requirement to provide information to Consumer Scotland***

25. Subsection (1) enables Consumer Scotland to serve a notice on a person listed in subsection (2) requiring the person to provide it with certain information. It may only

do so in relation to information which it requires for the purpose of exercising its functions. The persons listed in subsection (2) and therefore potentially subject to this requirement are a “designated regulator”, a regulated provider, any person who supplies goods or services in the course of business and any other person or description of person specified, through regulations, by Ministers.

26. The Scottish Ministers will specify who is a “designated regulator” and a “regulated provider” for the purposes of this section, and sections 10 to 12, through regulations. Where anyone else is made subject to this power using the regulation-making power under subsection (2)(d), provision can be made in accordance with subsection (5) about the sanctions that are to apply for breach.
27. Consumer Scotland can specify the manner and form in which information is to be provided. When making a request for information Consumer Scotland must consider the importance of minimising the costs, or any other detriment the request might cause, for the person on whom the notice is served.
28. Before specifying a “designated regulator” or “regulated provider”, the Scottish Ministers must consult with such persons as they consider appropriate. Where the Scottish Ministers propose to designate a regulator (including where they propose to extend the regulator’s remit to cover another regulated provider), the appropriate persons consulted must include the proposed regulator.

#### ***Section 10 – Failure by a designated regulator to comply with a section 9 notice***

29. Section 10 provides that, should a designated regulator fail to give information to Consumer Scotland, that designated regulator can be required to produce a written statement explaining the reasons for the failure. Consumer Scotland has the power to publish this explanation.
30. This section can also be applied to others who are made subject to the information-gathering requirement using the power under section 9(2)(d) (see section 9(5)(a)).

#### ***Section 11 – Enforcement by a designated regulator of section 9 notice***

31. Section 11 applies where a regulated provider (to be specified by the Scottish Ministers in regulations under section 9(6)(b) but potentially covering providers in regulated sectors such as electricity, gas, postal services or water) fails to comply with an information notice served by Consumer Scotland under section 9(1).
32. In such cases, Consumer Scotland may refer the matter to the “relevant designated regulator”, being the designated regulator for the particular regulated provider as specified in regulations under section 9(6)(b), insofar as the failure to comply with the information notice relates to something within the relevant designated regulator’s remit.
33. The relevant designated regulator must consider any representations made by Consumer Scotland or by the regulated provider and must determine whether the provider was entitled to refuse to provide the information requested by Consumer Scotland. If the relevant designated regulator determines that the provider was not entitled to refuse, then it must direct the provider to provide the information.

#### ***Section 12 – Enforcement by the court of a section 9 notice***

34. This section applies where a person (other than a person to whom section 10 applies or a regulated provider covered by section 11) refuses or fails to comply with a notice under section 9(1) requiring information to be provided to Consumer Scotland. In this circumstance, Consumer Scotland may apply to the Court of Session for an order requiring the person served with the notice to comply with it. Whether such an order is granted will be at the court’s discretion. Any questions of expenses arising from such an application will be for the court to determine but it is usual practice that, where an application for such an order is unsuccessfully resisted, judicial expenses are

awarded against the party that resisted the application. As such, should a person resist the granting of an order under this section, they could find themselves liable for the expenses of the proceedings.

### ***Section 13 – Exemptions from requirement to provide information***

35. Section 13 provides exemptions from the requirement to provide information. Subsection (1) means that no person may be required under section 9(1) or section 12 to provide information which they could not be compelled to provide in legal proceedings before the Court of Session.
36. This section also gives the Scottish Ministers the power to prescribe additional exemptions from the requirement to provide information to Consumer Scotland. They would do so by regulations and can detail the persons, type of information or circumstances to which an exemption could apply.

### **Accountability**

### ***Section 14 - Forward work programmes***

37. Section 14 requires that Consumer Scotland must, before each programme year, prepare and publish a forward work programme. A programme year corresponds to a financial year (i.e. 1 April to 31 March). This document must include, for the following year:
  - Consumer Scotland’s priorities (in relation to consumers generally and in relation to vulnerable consumers);
  - a description of its main planned activities (in relation to consumers generally and in relation to vulnerable consumers);
  - details of any other priorities, and
  - details of any investigations it plans to undertake over and above those which are routine activities necessary to fulfil its functions.
38. When the forward work programme is being prepared, Consumer Scotland must have regard to the views of consumers and other persons, bodies and organisations having an interest in consumer matters.
39. This published programme must also be laid before the Scottish Parliament. Under section 7, Consumer Scotland must have regard to its forward work programme when exercising its functions.

### ***Section 15 – Reports on investigations***

40. Section 15 requires Consumer Scotland to publish its findings and recommendations as soon as reasonably practicable after the conclusion of an investigation conducted under section 4(2). The report must also set out how, in conducting the investigation, Consumer Scotland has had regard to the activities carried on by specified persons and also by any persons with the same functions as, or similar functions to, Consumer Scotland. Specified persons are persons specified by the Scottish Ministers by regulations under section 7(8). A copy of this report must be sent to the Scottish Ministers.

### ***Section 16 – Annual report***

41. Section 16 places an obligation on Consumer Scotland to publish an annual report on its activities and to lay this before the Scottish Parliament as soon as reasonably practicable after the end of each financial year. A copy of the report must also be sent to the Scottish Ministers. The report must set out how Consumer Scotland has had regard to the activities carried on by specified persons and also by any persons with the same

functions as, or similar functions to, Consumer Scotland. Specified persons are persons specified by the Scottish Ministers by regulations under section 7(8).

### ***Section 17 – Consumer welfare report***

42. Section 17 requires Consumer Scotland to produce a consumer welfare report as soon as reasonably practicable after the end of every three year reporting period (to 31 March). This report must be published, sent to the Scottish Ministers and laid before the Scottish Parliament. The report must set out how well consumer interests are being served in Scotland and, where there is consumer harm, what form that takes and how widespread it is.
43. Consumer Scotland must have regard to the views of consumers and other persons, bodies and organisations having an interest in consumer matters when preparing this report. Consumer Scotland will therefore have to consult, ask for evidence from, or work collaboratively with such persons when preparing the report.
44. Consumer Scotland must also, when preparing the consumer welfare report, set out how it has had regard to the interests of vulnerable consumers.

Finance

### ***Section 18 – Grants and loans by Consumer Scotland***

45. Section 18 allows Consumer Scotland to provide grants and loans to other organisations, where it appears to Consumer Scotland to be conducive to the performance of Consumer Scotland's functions.
46. As noted in the Financial Memorandum, there is no requirement for provision to be made about the provision of funding to Consumer Scotland. As part of the Scottish Administration, it will be for the Scottish Ministers to decide the overall budgetary allocation for Consumer Scotland in future, as part of the normal Scottish Government budget cycle.

Review of performance and modification of functions

### ***Section 19 – Review of Consumer Scotland's performance***

47. Section 19 requires that, within the first three years of operation and at least every five years thereafter, Consumer Scotland must appoint a suitable person to conduct an external review of its performance in carrying out its functions. The person who is appointed to carry out this review must have relevant expertise and must be independent of Consumer Scotland (which is achieved where the condition in subsection (3)(b) is met). Consumer Scotland must publish this review, lay a copy before the Scottish Parliament and send a copy to the Scottish Ministers. Any payment for this review may only be made where it has been approved by the Scottish Ministers.

### ***Section 20 – Power to modify Consumer Scotland's functions***

48. Section 20 empowers the Scottish Ministers, following consultation with Consumer Scotland (and, where appropriate, others) and subject to parliamentary process, to confer new functions on Consumer Scotland or to modify or remove existing ones. This power will enable Consumer Scotland's remit to be adjusted in future without the need for further primary legislation, but subject to parliamentary oversight and agreement.
49. However, Ministers may not use this regulation-making power to remove (either by variation or by outright removal) Consumer Scotland's core functions as set out under section 2.

## **Part 2**

### **Consumer interests**

#### ***Section 21 – Duty to have regard to consumer interests***

50. Section 21 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.
51. 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, but it does require that authority to have regard to the impact on consumers in Scotland and the desirability of reducing harm to them.
52. The 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”.
53. 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.

#### ***Section 22 – Guidance about section 21 duty***

54. This section states that Consumer Scotland may issue guidance relating to the duty under section 21, subject to the approval of the Scottish Ministers. Relevant authorities are required to have regard to any guidance issued.
55. 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.

#### ***Section 23 – Reporting on section 21 duty***

56. 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.
57. 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 and so that is mentioned in subsection (2)(a)(ii) by way of example. 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 under the regulations in which they are specified.

## **Part 3**

### **Interpretation and final provisions**

#### ***Section 24 – Meaning of “consumer”***

58. For the purposes of this legislation, 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.
59. Individuals are covered by this definition only where they are not purchasing, using or receiving the goods or services wholly or mainly in the course of a business carried on by the individual. This means that where an individual runs or works for a large business, the act of that person purchasing something for that large business is not swept into the definition of a consumer. However, subsection (1)(b) clarifies that individuals who are operating as sole traders can fall within the concept of small businesses.
60. In every case, a “consumer” is defined by reference to purchasing, using or receiving goods or services. It is therefore only where a small business is in essence the purchaser in a transaction that they are a “consumer”; not when they are acting as the seller or provider of goods or services. However, consumers are covered by the definition where they receive or are using goods or services in Scotland from a business regardless of whether or not those goods or services are paid for. The provision of services would include, for example, a disposal or recycling service.
61. 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 mail recipient is also included in the definition of a person who uses services.

#### ***Section 25 – Interpretation***

62. As noted in relation to section 24, the goods or services purchased, used or received must be supplied in the course of a business if the individual or business is to be a consumer for the purposes of this legislation. A business is defined widely to include a not-for-profit enterprise which exists wholly or mainly to benefit society or a profession as well as the activities of any government department, local or public authority or other public body. The term “goods” is defined widely to include the purchase of land.
63. The term “consumer matters” is defined as meaning the interests of consumers and any matter connected with that.
64. The term “vulnerable consumers” is defined to mean consumers who, by reason of their circumstances or characteristics may have significantly fewer or less favourable options as consumers than a typical consumer, or are otherwise at a significantly greater risk of harm to their interests as consumers, or to the harm that is caused being more substantial, than would be the case for a typical consumer. 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. The definition makes it clear that this is a matter which is likely to fluctuate and the question of whether someone is vulnerable will depend on the particular circumstances and context they find themselves in at a particular time.

#### ***Section 26 – Regulations***

65. Section 26 relates to the provisions in the Act which confer power on the Scottish Ministers to make regulations. Subsection (1) provides that these powers include the



power to make different provision for different purposes. It also allows the making of incidental, supplementary, consequential, transitional, transitory or saving provision.

66. Subsections (2), (3) and (4) make provision about the parliamentary procedure which applies to different sets of regulations (for more details of which, see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010). This section does not apply to the commencement regulations required to bring parts of the Act into force.

### ***Section 27 – Ancillary provision***

67. This section enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with this legislation.

### ***Section 28 – Amendment of public bodies legislation***

68. This section introduces schedule 2. For commentary on schedule 2, see paragraphs 93 to 114 of these Notes.

### ***Section 29 – Commencement***

69. This section provides that, other than this section and sections 25 (interpretation), 26 (regulations), 27 (ancillary provision) and 30 (short title), which come into force the day after Royal Assent, the Scottish Ministers will specify the day on which the provisions in this Act come into force through regulations.

### ***Section 30 – Short Title***

70. This section provides that the short title of this Act is the Consumer Scotland Act 2020.

## ***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.

### ***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.
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).

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

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).