



# Consumer Scotland Act 2020

## 2020 asp 11

PROSPECTIVE

### PART 1

#### CONSUMER SCOTLAND

##### *Establishment*

#### **1 Consumer Scotland**

- (1) A body corporate to be known as Consumer Scotland (in Gaelic, Luchd-Cleachdaidh Alba) is established.
- (2) Consumer Scotland has the functions conferred on it by or under this Act and any other enactment.
- (3) Schedule 1 makes further provision about the status, membership, procedures and powers of Consumer Scotland.

##### *Functions*

#### **2 The general function of providing consumer advocacy and advice**

- (1) Consumer Scotland has the general function of providing consumer advocacy and advice with a view to—
  - (a) reducing harm to consumers in Scotland,
  - (b) increasing confidence among consumers in Scotland in dealing with businesses that supply goods and services to consumers,
  - (c) increasing the extent to which consumer matters are taken into account by public authorities in Scotland,
  - (d) promoting—
    - (i) sustainable consumption of natural resources, and
    - (ii) other environmentally sustainable practices,

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in relation to the acquisition, use and disposal of goods by consumers in Scotland,

- (e) otherwise advancing inclusion, fairness, prosperity and other aspects of wellbeing in Scotland.
- (2) In exercising its general function, Consumer Scotland has the particular functions set out in sections 3 to 6.

### **3 The representative function**

- (1) Consumer Scotland may—
- (a) provide advice and information to persons mentioned in subsection (3) about consumer matters,
  - (b) make proposals to such persons about consumer matters, and
  - (c) represent the views of consumers on consumer matters to such persons.
- (2) Where the Scottish Ministers ask Consumer Scotland to provide them with such advice, information, proposals or representations, Consumer Scotland must, so far as is reasonably practicable and consistent with its other functions, do so.
- (3) The persons referred to in subsection (1) are—
- (a) the Scottish Ministers,
  - (b) any Minister of the Crown or government department,
  - (c) any local authority,
  - (d) any regulatory body established by or under an enactment,
  - (e) any other person whom Consumer Scotland considers might have an interest in the matter in question.

### **4 The research and investigation function**

- (1) Consumer Scotland may obtain, analyse, and keep under review—
- (a) information about consumer matters,
  - (b) information about the views of consumers on consumer matters, and
  - (c) information of such other description as may be prescribed by the Scottish Ministers by regulations.
- (2) Consumer Scotland may also undertake investigations—
- (a) into sectors or practices which it considers cause, or may cause, harm to consumers, or
  - (b) otherwise for the purpose of fulfilling its general function.

### **5 The information function**

- (1) Consumer Scotland may provide or secure the provision of advice and information to consumers—
- (a) about Consumer Scotland and its functions,
  - (b) about consumer matters (as they relate to consumers generally or individually), and
  - (c) about such other matters as may be prescribed by the Scottish Ministers by regulations.

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- (2) In exercising the power conferred by subsection (1), Consumer Scotland may (among other things)—
  - (a) publish or otherwise make available information in any manner Consumer Scotland considers appropriate for the purpose of bringing it to the attention of those likely to have an interest in it,
  - (b) support (financially or otherwise), facilitate or co-ordinate the activities of other persons.

## **6 The recall of goods function**

- (1) Consumer Scotland must establish and operate, or secure the establishment and operation of, a publicly available database of recalls of goods in Scotland which Consumer Scotland considers to be major (either in terms of the significance of the potential risk to individuals from the goods or the scale of the recall).
- (2) Consumer Scotland may take such further steps as it considers appropriate to provide or secure the provision of advice and information to consumers about such recalls.
- (3) In exercising its functions under this section, Consumer Scotland may (among other things)—
  - (a) publish or otherwise make available information in any manner Consumer Scotland considers appropriate for the purpose of bringing it to the attention of those likely to have an interest in it,
  - (b) support (financially or otherwise), facilitate or co-ordinate the activities of other persons.
- (4) For the purpose of subsection (1), a recall of goods includes a case where, instead of goods being taken back from consumers, corrective measures are being taken in relation to them.

## **7 General provision about functions**

- (1) In exercising its functions, Consumer Scotland must comply with the requirements of this section.
- (2) Consumer Scotland must have regard to the forward work programme published under section 14.
- (3) Consumer Scotland must have regard to—
  - (a) the activities carried on by specified persons and any other persons with the same functions as, or similar functions to, Consumer Scotland, and
  - (b) the desirability of working in collaboration with others where appropriate.
- (4) Consumer Scotland must have regard to the interests of vulnerable consumers.
- (5) But nothing in subsection (4) is to be taken as implying that regard may not be had to the interests of other descriptions of consumers.
- (6) Consumer Scotland must have regard to the environmental impact of the actions of consumers.
- (7) Consumer Scotland must have regard to the importance of communicating in an inclusive way.

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- (8) In subsection (3)(a), “specified” means specified in regulations made by the Scottish Ministers.
- (9) In subsection (7), “communicating in an inclusive way” means 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 each individual's needs.

## **8 Exercise of functions**

Nothing in this Act imposes on Consumer Scotland a duty to exercise any of its functions on behalf of or at the request of a particular consumer.

### *Information-gathering*

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

- (1) Consumer Scotland may, by notice, require a person falling within subsection (2)—
- (a) to provide it with such information as is specified or described in the notice and which it requires for the purpose of exercising its functions, and
  - (b) to do so within such reasonable period as is specified in the notice.
- (2) The persons referred to in subsection (1) are—
- (a) a designated regulator,
  - (b) a regulated provider,
  - (c) any other person who supplies goods or services in the course of a business carried on by that person,
  - (d) any other person specified, or of a description specified, by the Scottish Ministers by regulations for the purposes of this subsection.
- (3) A notice under subsection (1) may specify the manner and form in which the information is to be provided.
- (4) Before giving a notice under subsection (1), or specifying the manner or form in which information is to be provided, Consumer Scotland must have regard to the desirability of minimising the cost, or any other detriment, to the person to whom the notice is to be given.
- (5) Regulations under subsection (2)(d) may provide either—
- (a) that section 10 (failure by a designated regulator) is to apply in relation to a person specified, or of a description specified, by the regulations as it applies to a designated regulator, or
  - (b) that section 12 (enforcement by the court) is to apply in relation to such a person.
- (6) In this section and sections 10 to 12—
- (a) “designated regulator” means a regulator specified by the Scottish Ministers by regulations for the purpose of this subsection,
  - (b) “regulated provider” means a person—
    - (i) who is specified, or of a description specified, as such by the Scottish Ministers by regulations for the purpose of this subsection, and

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- (ii) who is subject to regulation by a designated regulator specified in relation to the person in those regulations.
- (7) Before making regulations under subsection (6), the Scottish Ministers must consult such persons as they consider appropriate.
- (8) Where the Scottish Ministers propose to specify a regulator under subsection (6)—
- (a) who is not currently a designated regulator, or
  - (b) in relation to a person—
    - (i) who is, or is to be, a regulated provider, and
    - (ii) in relation to whom the regulator is not currently the designated regulator,
- the persons consulted under subsection (7) must include the regulator whom they propose to specify.

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

- (1) If a designated regulator fails to comply with a notice under section 9(1), the regulator must, if so required by Consumer Scotland, provide Consumer Scotland with a written statement setting out the reasons for the failure.
- (2) Consumer Scotland may publish any statement received under subsection (1).

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

- (1) Where a regulated provider fails to comply with a notice under section 9(1), Consumer Scotland may refer the failure to the relevant designated regulator.
- (2) Subsection (1) applies only to the extent that the notice relates to information which is held or may be obtained by the regulated provider in the person's capacity as a regulated provider.
- (3) Where a failure is referred under subsection (1), the relevant designated regulator must—
- (a) consider any representations made by Consumer Scotland or the regulated provider, and
  - (b) determine whether the regulated provider is entitled to refuse to comply with the notice by virtue of provision made under section 13 (exemptions from requirement to provide information).
- (4) If the relevant designated regulator determines that the regulated provider is not entitled to refuse to comply with the notice, the relevant designated regulator must direct the regulated provider to comply with it.
- (5) The relevant designated regulator must give Consumer Scotland and the regulated provider notice of—
- (a) a determination under subsection (3)(b) and the reasons for it, and
  - (b) any direction under subsection (4).
- (6) For the purposes of this section, “relevant designated regulator”, in relation to a regulated provider, means the designated regulator specified in relation to the regulated provider in regulations under section 9(6)(b).

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

- (1) This section applies—
- (a) where a person (“the defaulter”) refuses, or otherwise fails, to comply with a notice given to the defaulter under section 9(1),
  - (b) where the defaulter is—
    - (i) a person falling within section 9(2)(b) or (c), or
    - (ii) a person in relation to whom this section applies by virtue of provision made under section 9(5)(b), and
  - (c) in the case where the defaulter is a regulated provider, where, or to the extent that, section 11(1) does not apply in relation to the notice.
- (2) The Court of Session may, on the application of Consumer Scotland, grant an order requiring the defaulter to comply with—
- (a) the notice, or
  - (b) such directions for the like purpose as are contained in the order.

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

- (1) No person may be required by a notice under section 9(1) or a court order under section 12 to produce a document or otherwise provide information which that person would be entitled to refuse to produce or provide in proceedings before the Court of Session.
- (2) The Scottish Ministers may by regulations specify—
- (a) persons or descriptions of persons to whom Consumer Scotland may not give a notice under section 9(1),
  - (b) information or descriptions of information which a person may refuse to supply in accordance with such a notice,
  - (c) circumstances in which a person may refuse to comply with such a notice.

### *Accountability*

## **14 Forward work programmes**

- (1) Consumer Scotland must before each programme year prepare and publish a document (the “forward work programme”) containing—
- (a) a statement of any priorities of Consumer Scotland for the year in relation to consumers generally and in relation to vulnerable consumers,
  - (b) a general description of the main activities (including any investigations) which it plans to undertake during the year in relation to consumers generally and in relation to vulnerable consumers,
  - (c) a statement of any other priorities of Consumer Scotland for the year,
  - (d) a general description of any other investigations which it plans to undertake during the year (other than those comprising routine activities in the exercise of its functions).
- (2) The description of an investigation under subsection (1)(b) or (d) must include the objectives of the investigation.

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- (3) In preparing the forward work programme for any year, Consumer Scotland must have regard to the views of consumers and other persons, bodies and organisations having an interest in consumer matters.
- (4) Consumer Scotland must lay a copy of any forward work programme published under subsection (1) before the Scottish Parliament.
- (5) In this section, “programme year” means—
  - (a) the first period of 12 months beginning on 1 April following the day this section comes into force, and
  - (b) each successive period of 12 months.

## **15 Reports on investigations**

- (1) Consumer Scotland must, as soon as reasonably practicable after the conclusion of any investigation conducted under section 4(2), prepare and publish a report setting out—
  - (a) its findings,
  - (b) any recommendations arising out of the investigation,
  - (c) how, in conducting the investigation, Consumer Scotland has had regard to any activities carried on by specified persons and any other persons with the same functions as, or similar functions to, Consumer Scotland.
- (2) Consumer Scotland must send a copy of each report prepared under subsection (1) to the Scottish Ministers.
- (3) In subsection (1)(c), “specified” means specified in regulations made by the Scottish Ministers under section 7(8).

## **16 Annual report**

- (1) Consumer Scotland must, as soon as reasonably practicable after the end of each financial year—
  - (a) prepare and publish a report on its activities during the year,
  - (b) lay a copy of the report before the Scottish Parliament, and
  - (c) send a copy of the report to the Scottish Ministers.
- (2) It is for Consumer Scotland to determine the form and content of each report.
- (3) Without prejudice to the generality of subsection (2), a report under subsection (1) must set out how Consumer Scotland has had regard to any activities carried on by specified persons and any other persons with the same functions as, or similar functions to, Consumer Scotland.
- (4) In subsection (3), “specified” means specified in regulations made by the Scottish Ministers under section 7(8).

## **17 Consumer welfare report**

- (1) Consumer Scotland must, as soon as reasonably practicable after the end of each reporting period, prepare and publish a report on—
  - (a) how well the interests of consumers are being served in Scotland, and

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- (b) where harm is being caused to the interests of consumers in Scotland, the nature and extent of that harm.
- (2) A report under subsection (1) must set out how Consumer Scotland has had regard to the interests of vulnerable consumers.
- (3) In preparing a report under subsection (1), Consumer Scotland must have regard to the views of consumers and other persons, bodies and organisations having an interest in consumer matters.
- (4) Consumer Scotland must—
  - (a) lay a copy of each report prepared under subsection (1) before the Scottish Parliament, and
  - (b) send a copy of it to the Scottish Ministers.
- (5) In this section, “reporting period” means—
  - (a) the period of 3 years beginning with 1 April next following the coming into force of this section, and
  - (b) each subsequent period of 3 years.

### *Finance*

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

- (1) Consumer Scotland may make grants and loans to such persons as it considers appropriate for the purposes of, or in connection with, or where it appears to it to be otherwise conducive to, the performance of its functions.
- (2) A grant or loan under subsection (1) is subject to such conditions (including conditions as to repayment) as Consumer Scotland may determine.

### *Review of performance and modification of functions*

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

- (1) Consumer Scotland must, at least once in every review period, appoint a suitable individual or body to review and prepare a report on the performance of its functions during the period.
- (2) The report under subsection (1) must be prepared as soon as reasonably practicable after the end of the review period to which it relates.
- (3) For the purposes of subsection (1), an individual or body is suitable only if—
  - (a) the individual or body has expertise likely to be relevant to the assessment of the performance of Consumer Scotland's functions, and
  - (b) the individual or body is not—
    - (i) a member of Consumer Scotland,
    - (ii) disqualified from appointment as such a member by virtue of paragraph 3 of schedule 1, or
    - (iii) a member of staff of Consumer Scotland.



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- (4) Consumer Scotland may make such payment to an individual or body appointed under subsection (1) in respect of a review as it, with the approval of the Scottish Ministers, determines.
- (5) Consumer Scotland must—
  - (a) publish each report prepared under subsection (1),
  - (b) lay a copy of it before the Scottish Parliament, and
  - (c) send a copy of it to the Scottish Ministers.
- (6) In this section, “review period” means—
  - (a) the period of 3 years beginning with the date on which section 1 comes into force, and
  - (b) each subsequent period of 5 years.

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

- (1) Subject to subsection (3), the Scottish Ministers may by regulations—
  - (a) confer functions on Consumer Scotland,
  - (b) vary the functions of Consumer Scotland,
  - (c) remove functions from Consumer Scotland.
- (2) In subsection (1)—
  - (a) the reference to conferring functions on Consumer Scotland includes reference to transferring functions from another person to Consumer Scotland, and
  - (b) the reference to removing functions from Consumer Scotland includes reference to transferring functions from Consumer Scotland to another person.
- (3) Regulations under subsection (1) may not remove Consumer Scotland's functions under section 2.
- (4) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
  - (a) Consumer Scotland,
  - (b) any person to whom, or from whom, functions are being transferred, and
  - (c) such other persons as they consider appropriate.
- (5) Regulations under subsection (1) may modify this Act or any other enactment.

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