

POLICY NOTE

THE CONSUMER SCOTLAND ACT 2020 (RELEVANT PUBLIC AUTHORITIES) REGULATIONS 2024

SSI 2024/78

Summary Box

This Scottish Statutory Instrument (SSI) is to be made in exercise of the power in section 21 (2) of the Consumer Scotland Act 2020 which states that :

“For the purposes of this section and sections 22 and 23, "relevant public authority" means a person with functions of a public nature who is specified (by name or description) in regulations specified by the Scottish ministers.”

Policy Objectives

Part 2 of the Consumer Scotland Act 2020 established a Consumer Duty (the Duty) on public authorities to improve the extent to which consumers are considered in strategic policy and decision-making.

The purpose of the SSI is to set out a list of Scottish public authorities to be made subject to the Duty. This is required to ensure that public authorities are aware of this Duty and that it is being placed upon them.

The Duty will come into force on 1 April 2024 followed by an implementation period of one year ending on 31 March 2025.

Consultation and Engagement

A Consultation on a Consumer Duty for Public Bodies ran from 3 September 2021 until 26 November 2021 seeking views on the public authorities to which the Duty should apply. Overall, there was broad support for the Duty to apply to all public authorities.

The consultation document can be found here: A Consultation on a Consumer Duty for Public Bodies – Scottish Government – Citizen Space¹

An analysis of responses to the consultation can be found here: Consumer duty for public bodies: consultation analysis – gov.scot (www.gov.scot)²

¹ <https://consult.gov.scot/energy-and-climate-change-directorate/consumer-duty-for-public-bodies/>

² <https://www.gov.scot/publications/consultation-consumer-duty-public-bodies-analysis-consultation-responses/>

Public Authorities

The Consumer Duty for Public Bodies consultation listed Scottish public authorities to be bound by the Duty. Feedback received from this consultation, and additional stakeholder engagement, has meant that the final list differs from the one which was consulted upon. All public authorities to which the Duty will apply have been consulted over the Summer and Autumn of 2023.

Additionally, since the introduction of the Consumer Scotland Act in 2020, six new Scottish public authorities have been established. Detailed engagement has been held on an individual basis with representatives from each of these to discuss the importance and application of the Consumer Duty.

The full list of Scottish public authorities which have to adhere to this Duty are listed at **Annex A**.

Definition of Integration Authority

The Public Bodies (Joint Working) (Scotland) Act 2014³ put in place a legislative framework to integrate health and social care services in Scotland. As such, an integration authority is defined as:

a body that is responsible for developing and implementing a strategic plan for integrated functions and budgets under their control, which are delegated by the health board and local authority and covers all of the 32 authorities in Scotland.

Clackmannanshire and Stirling decided to operate with a single integration authority covering both areas, meaning that there are 31 integration authorities in Scotland, 30 of which operate as integration joint boards. Highland is not listed as an integration authority because it operates a lead agency model. This places the Consumer Duty on NHS Highland and Highland Council, both of which are named in this SSI.

Definition of Consumer

The definition of consumer which will be used for the purposes of the SSI is that which is provided in the Consumer Scotland Act 2020⁴

Meaning of “consumer”⁵

(1) In this Act, “consumer” means—

(a) an individual—

(i) who purchases, uses or receives, in Scotland, goods or services which are supplied in the course of a business⁶ carried on by the person supplying them, and

³ <https://www.legislation.gov.uk/asp/2014/9/contents/enacted>

⁴ <https://www.legislation.gov.uk/asp/2020/11/contents>

⁵ <https://www.legislation.gov.uk/asp/2020/11/part/3>

⁶ The Consumer Scotland Act's (<https://www.legislation.gov.uk/asp/2020/11/section/25>) definition of a business includes a profession, a not for profit enterprise (within the meaning of section 252(1F) of the Town and Country Planning (Scotland) Act 1997 [<https://www.legislation.gov.uk/ukpga/1997/8/section/252>]) and the activities of any government department, local or public authority or other public body. The effect of this definition is that individuals or small businesses who purchase, use or receive goods or services supplied by a government department, local or public authority or other public body are consumers for the purposes of the Act and the consumer duty.

- (ii) who is not purchasing, using or receiving the goods or services wholly or mainly in the course of a business carried on by the individual, or
- (b) a business (including a business carried on by an individual)—
 - (i) which is no larger than a small business⁷, and
 - (ii) which purchases, uses or receives, in Scotland, goods or services which are supplied in the course of a business carried on by the person supplying them.

Strategic Decision Making

When implementing the Duty, all relevant public authorities must have regard to the impact of strategic decisions on consumers in Scotland and the desirability of reducing harm to them. This should be done in a proportionate manner aligned to the impact that the decision has upon consumers.

It will be for each individual Scottish public authority to determine if a decision is of a strategic nature. However, it is expected that this type of decision will be made at an executive or board level rather than operational day-to-day decision making.

Future Public Bodies

This SSI will be reviewed every two years to ensure that any new relevant Scottish public authorities are consulted with, and then potentially listed, as an authority which is expected to adhere to the Consumer Duty.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Impact Assessments

The full range of impact assessments were considered and completed where necessary for the Consumer Scotland Act 2020. There will be no changes required to any of these impact assessments in relation to the implementation of the Consumer Duty.

Information Commissioner

As there will be no processing of personal data, it is not necessary to inform the Information Commissioner.

Financial Effects

A financial memorandum⁸ was carried out as part of the introduction of the Consumer Scotland Act in relation to the establishment of Consumer Scotland. A Business and Regulatory Impact Assessment⁹ was also carried out at the same time. As this Consumer

⁷ The Scottish Government works to the definition of a small business being a business which has less than 50 staff and a turnover or balance sheet total less than, or equal to, the small business threshold-

<https://www.legislation.gov.uk/ukpga/2015/26/part/2/crossheading/definitions-of-small-and-micro-business>

⁸ <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/consumer-scotland-bill/introduced/financial-memorandum-consumer-scotland-bill.pdf>

⁹ <https://www.gov.scot/publications/business-regulatory-impact-assessment-consumer-scotland-bill/>

Duty has no significant financial effects on the Scottish Government, or public authorities in Scotland who have to adhere to the Duty, it is not necessary to update the BRIA.

Consumer Policy Team
January 2024

List of Public Authorities covered by Consumer Duty

Ministers

The Scottish Ministers

Executive Agencies

Accountant in Bankruptcy

Disclosure Scotland

Education Scotland

Forestry and Land Scotland

Scottish Forestry

Scottish Prison Service

Scottish Public Pensions Agency

Social Security Scotland

Student Awards Agency Scotland

Transport Scotland

Local Authorities

Aberdeen City Council

Aberdeenshire Council

Angus Council

Argyll and Bute Council

City of Edinburgh Council

Clackmannanshire Council

Comhairle nan Eilean Siar

Dumfries and Galloway Council

Dundee City Council

East Ayrshire Council

East Dunbartonshire Council

East Lothian Council

East Renfrewshire Council

Falkirk Council

Fife Council

Glasgow City Council

Highland Council

Inverclyde Council

Midlothian Council

Moray Council

North Ayrshire Council

North Lanarkshire Council

Orkney Islands Council

Perth and Kinross Council

Renfrewshire Council

Scottish Borders Council

Shetland Islands Council

South Ayrshire Council

South Lanarkshire Council

Stirling Council

West Dunbartonshire Council
West Lothian Council

Executive Non-Departmental Public Bodies

Accounts Commission for Scotland
Architecture and Design Scotland
Bòrd na Gàidhlig
Cairngorms National Park Authority
Care Inspectorate
Children's Hearings Scotland
Community Justice Scotland
Creative Scotland
Crofting Commission
David MacBrayne Limited
Ferguson Marine (Port Glasgow) Holdings Limited
Highlands and Islands Airports Limited
Highlands and Islands Enterprise
Historic Environment Scotland
Independent Living Fund Scotland
Loch Lomond and The Trossachs National Park Authority
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
Quality Meat Scotland
Risk Management Authority
Royal Botanic Garden, Edinburgh
Scottish Agricultural Wages Board
Scottish Canals
Scottish Children's Reporter Administration
Scottish Criminal Cases Review Commission
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Funding Council
Scottish Futures Trust Limited
Scottish Land Commission
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish National Heritage (NatureScot)
Scottish National Investment Bank p.l.c.
Scottish Qualifications Authority
Scottish Rail Holdings Limited
Scottish Social Services Council
Scottish Sports Council (sportscotland)
South of Scotland Enterprise Agency
The Skills Development Scotland Co. Limited
VisitScotland
Water Industry Commission for Scotland
Zero Waste Scotland

Advisory Non-departmental Public Bodies

Boundaries Scotland
Judicial Appointments Board for Scotland
Mobility and Access Committee for Scotland
Poverty and Inequality Commission
Scottish Advisory Committee on Distinction Awards
Scottish Commission on Social Security
Scottish Fuel Poverty Advisory Panel
Scottish Law Commission

Tribunals

Parole Board for Scotland

Public Corporations

Caledonian Maritime Assets Limited
Crown Estate Scotland
Glasgow Prestwick Airport Limited
Scottish Water

Health Bodies

NHS Ayrshire and Arran
NHS Borders
NHS Dumfries and Galloway
NHS Fife
NHS Forth Valley
NHS Grampian
NHS Greater Glasgow and Clyde
NHS Highland
NHS Lanarkshire
NHS Lothian
NHS Orkney
NHS Shetland
NHS Tayside
NHS Western Isles
Healthcare Improvement Scotland
Mental Welfare Commission for Scotland
National Waiting Times Centre Board
NHS Education for Scotland
NHS National Services Scotland
NHS24
Public Health Scotland
Scottish Ambulance Service Board
State Hospitals Board for Scotland

Integration Authorities

Aberdeen City Integration Joint Board
Aberdeenshire Integration Joint Board
Angus Integration Joint Board
Argyll and Bute Integration Joint Board
Clackmannanshire and Stirling Integration Joint Board
Dumfries and Galloway Integration Joint Board
Dundee City Integration Joint Board
East Ayrshire Integration Joint Board
East Dunbartonshire Integration Joint Board
East Lothian Integration Joint Board
East Renfrewshire Integration Joint Board
Edinburgh City Integration Joint Board
Falkirk Integration Joint Board
Fife Integration Joint Board
Glasgow City Integration Joint Board
Inverclyde Integration Joint Board
Midlothian Integration Joint Board
Moray Integration Joint Board
North Ayrshire Integration Joint Board
North Lanarkshire Integration Joint Board
Orkney Islands Integration Joint Board
Perth and Kinross Integration Joint Board
Renfrewshire Integration Joint Board
Scottish Borders Integration Joint Board
Shetland Islands Integration Joint Board
South Ayrshire Integration Joint Board
South Lanarkshire Integration Joint Board
West Dunbartonshire Integration Joint Board
West Lothian Integration Joint Board
Western Isles Integration Joint Board

Non-Ministerial Offices

Consumer Scotland
Environmental Standards Scotland
Food Standards Scotland
National Records of Scotland
Office of the Scottish Charity Regulator
Registers of Scotland
Revenue Scotland
Scottish Courts and Tribunal Service
Scottish Fiscal Commission
Scottish Housing Regulator