



Consumer Scotland Act 2020

2020 asp 11

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 6th May 2020 and received Royal Assent on 9th June 2020

An Act of the Scottish Parliament to establish Consumer Scotland and provide for its functions as a consumer advocacy and advice body; and to require regard to be had to consumer interests.

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,

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- (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,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—

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- (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.
- (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.

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- (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.
- (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—

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- (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
 - (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).