

# Economy and Fair Work Committee

## SSI cover note

### 5th Meeting 2024, (Session 6), 7 February 2024

**Title of Instrument:** Consumer Scotland Act 2020 (Relevant Public Authorities) Regulations 2024

**Laid Date:** 9 January 2024

**Reporting deadline:** 26 February 2024

**Parliamentary procedure:** Affirmative

The affirmative procedure means an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee.

It is usual practice for the lead committee to take evidence from the relevant Scottish Minister and officials in advance of formally considering the motion to approve the instrument. During the evidence session, the committee can ask the minister and any officials about the instrument.

Following this, the Minister proposes, by motion, that the lead committee recommend the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion. Officials are not allowed to speak in any debate.

The lead committee must report its decision on the motion to Parliament within 40 days of the instrument being laid. If the Committee agrees the motion and recommends that the instrument be approved, that recommendation is put to a vote in the Chamber. If the lead committee does not approve the motion to approve an instrument, it reports that fact to the Parliament and it is then for the Parliamentary Bureau to decide whether MSPs should vote on it in the Chamber.

#### **Purpose**

The purpose of this SSI is to set out a list of Scottish public authorities to be made subject to the Consumer Duty (“the Duty”). The Duty was created under the Consumer Scotland Act 2020 and requires certain public bodies to consider the impact of their strategic decisions on consumers. The Duty will come into force on 1 April 2024, followed by an implementation period of one year, ending on 31 March 2025.

The Regulations are attached at **Annexe A** and the Policy Note is attached at **Annexe B**.

### **The Regulations**

Regulation 2 (1) notes the persons specified in the schedule who are relevant public authorities for the purposes of section 21(2) of the [Consumer Scotland Act 2020](#).

Regulation 2 (2) specifies the persons in the schedule are specified in relation to the exercise of all their functions.

### **Economy and Fair Work Committee consideration**

The Economy and Fair Work Committee considered its approach to the scrutiny at its [meeting on 17 January 2024](#), and agreed to write to the Minister for Community Wealth and Public Finance seeking clarification of the extent of the support for the public duty and why some bodies no longer appear in the draft regulations. The Committee letter and Scottish Government response are at **Annexes C** and **D**.

### **Delegated Powers and Law Reform Committee consideration**

The Delegated Powers and Law Reform Committee [considered the instrument at its meeting on 23 January 2024](#) and made no recommendations.

### **For decision**

**The Committee must decide whether to agree the motion to approve the regulations and report its decision to Parliament by 26 February 2024.**

**Economy and Fair Work Committee Clerks  
February 2024**

*These draft Regulations supersede the draft of the same title which was laid before the Scottish Parliament on 9 January 2024 and published on 9 January 2024 (ISBN-978-0-11-105885-5). It is being issued free of charge to all known recipients of those draft Regulations.*

*Draft Regulations laid before the Scottish Parliament under section 26(2)(b) of the Consumer Scotland Act 2020 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2024 No.**

**CONSUMER PROTECTION**

**The Consumer Scotland Act 2020 (Relevant Public Authorities)  
Regulations 2024**

*Made* - - - - 2024

*Coming into force* - - 1st April 2024

The Scottish Ministers make the following Regulations in exercise of the power conferred by section 21(2) of the Consumer Scotland Act 2020<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 21(4) and (5) of the Consumer Scotland Act 2020 they have consulted such persons as they consider appropriate, including the persons specified in the schedule of these Regulations.

In accordance with section 26(2)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Consumer Scotland Act 2020 (Relevant Public Authorities) Regulations 2024 and come into force on 1 April 2024.

**Specification of public authorities who have a duty to have regard to consumer interests**

2.—(1) The persons specified in the schedule are relevant public authorities for the purposes of section 21(2) of the Consumer Scotland Act 2020.

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(a) 2020 asp 11.

(2) The persons specified in the schedule are specified in relation to the exercise of all of their functions.

St Andrew's House  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

Regulation 2

### *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  
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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

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations specify the public authorities that are relevant public authorities for the purposes of section 21 of the Consumer Scotland Act 2020 and therefore subject to the duty to have regard to consumer interests when making decisions of a strategic nature about how to exercise their functions. The public authorities specified are listed in the schedule of the Regulations.

Section 21(3) of the Consumer Scotland Act 2020 allows the Scottish Ministers to specify a public authority in relation to the exercise of all of its functions, or certain functions only. By virtue of regulation 2(2) of the Regulations the public authorities listed in the schedule are specified in relation to all of their functions.

## POLICY NOTE

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

SSI 2024/xxx

#### 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 Space<sup>1</sup>

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

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

<sup>2</sup> <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 2014<sup>3</sup> 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 2020<sup>4</sup>

### Meaning of “consumer”<sup>5</sup>

(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 business<sup>6</sup> carried on by the person supplying them, and

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

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

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

<sup>6</sup> 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 business<sup>7</sup>, 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.

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<sup>7</sup> 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>

## **Financial Effects**

A financial memorandum<sup>8</sup> 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 Assessment<sup>9</sup> was also carried out at the same time. As this Consumer 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**

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

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

**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  
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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  
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East Lothian Integration Joint Board  
East Renfrewshire Integration Joint Board  
Edinburgh City Integration Joint Board  
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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



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Economy and Fair Work Committee**

Tom Arthur  
Minister for Community  
Wealth and Public Finance

The Scottish Parliament  
Edinburgh  
EH99 1SP

Sent by email only

[Economyandfairwork.committee@parliament.scot](mailto:Economyandfairwork.committee@parliament.scot)

17 January 2024

Dear Tom

### **The Consumer Scotland Act 2020 (Specification of Relevant Public Authorities) (Scotland) Regulations 2023**

These Regulations were laid last week, withdrawn and re-laid today. I invite you to attend the Committee's meeting on 7 February to move and debate the motion to approve. In advance of your attendance, the Committee today agreed it would be helpful to receive a written response covering the following issues.

#### **The purpose of the consumer duty**

A consultation was carried out between September and November 2021. The Policy Note states that there was broad support for the public duty to apply to all public authorities. Individual responses have not been published but the consultation analysis states that only 49% of respondents supported the duty being applied to the bodies outlined. The Committee is concerned that this could suggest a lack of support from some public bodies to which the duty will apply. As you will be aware, during Stage 1 scrutiny of the Consumer Scotland Bill, concerns were raised that there was a lack of clarity about the purpose of the duty and that it could become a tick box exercise, or a source of bureaucracy. The then Minister for Fair Work, Business and Skills stated that the design and implementation of the duty would be carried out collaboratively. The Committee would be grateful if you would set out what the consumer duty is expected to achieve and how that will be achieved. The Committee would also be grateful for more detailed information on the views of the bodies affected by the duty including publication of the responses.

#### **The extent of the consumer duty**

The consultation analysis suggested a lack of support for the duty to apply across all an organisation's functions with a preference for it to apply only to certain functions, for example those charged for or relating to providing a service. There was a recommendation that further consideration should be given to this issue. The draft

Regulations, now laid, apply the duty to all functions of the organisations. The Committee would be grateful if you would set out what consideration was given to making the duty more targeted and explain why that approach was not taken forward.

**The bodies covered by the consumer duty**

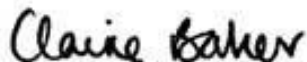
Several bodies that appeared on the list of public bodies to be covered by the duty in the consultation, are not now included in the draft Regulations. Some not now included would appear to have remits of clear relevance to the duty. The Committee would be grateful to know why regional transport partnerships and the Scottish Public Services Ombudsman will not be subject to the duty.

**Guidance**

In terms of the Act, Consumer Scotland must provide guidance on the consumer duty. The Committee asks when this will be available.

I look forward to hearing from you by 1 February.

Kind regards

A handwritten signature in black ink that reads "Claire Baker". The signature is written in a cursive, slightly slanted style.

**Claire Baker MSP**  
**Convener**

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Claire Baker MSP  
Convener  
Economy and Fair Work Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

1 February 2024

Dear Claire

### **The Consumer Scotland Act 2020 (Specification of Relevant Public Authorities) (Scotland) Regulations 2024**

Thank you for your letter of 17 January 2024. I am happy to accept the invitation to appear before the Economy and Fair Work Committee on 7 February 2024 to move and debate the motion to approve the above regulations.

You raised a number of questions in your letter, my responses to which are below.

#### **The Purpose of the Consumer Duty**

The [Consumer Scotland Act 2020](#) established a Consumer Duty (the Duty) on relevant public authorities, and places a requirement on them to publish information about the steps they have taken to comply with it. A key principle of the Duty will be to ensure that these bodies are working towards improving outcomes and reducing harm for consumers as part of their strategic decision making process. We wish to ensure that public authorities are thinking about the right thing for consumers as part of their everyday work, and the Duty is a way of delivering this.

Our re-prioritisation of resource to focus on the Scottish Government's response to the cost of living crisis has meant that the responses to the consultation, which have all been considered carefully, have still to be published. This will be done soon.

There was broad overall support for the Duty, with the most common concerns raised relating to:

- the impact that this would have on workloads relating to the administrative requirement of the Duty; and
- the need for clear guidance on how the Duty should be implemented.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

## The Extent of the Consumer Duty

The Duty will apply to the relevant public authorities where a consumer in Scotland purchases, uses or receives goods or services. This means that the scope is very broad.

Officials' engagement with public authorities has made clear that the majority of public authorities make strategic decisions that can have an impact on consumers. There is such a difference in the size and work of all public authorities that it would be almost impossible to list all specific functions to which the Duty should apply. The decision was therefore made that public authorities, when making decisions of a strategic nature, should adhere to the Duty to ensure its consistent application by those authorities, and – importantly – that it should not apply to everyday, operational decisions.

The SSI Policy Note clarifies that we have left it up to each public authority to define what a strategic decision would look like for its own organisation. I am well aware of the pressures that public authorities are under, and I believe that our proportionate and targeted approach will ensure that this Duty becomes neither onerous nor a tick box exercise. My officials have been stressing this as part of their engagement with public authorities.

## The Bodies Covered by the Consumer Duty

Our continuing engagement has also led us to exclude some public authorities which had been listed in the consultation from having to adhere to the Duty. For example, binding the Scottish Public Services Ombudsman to the Duty risked impinging on its statutory independence and impartiality under certain circumstances. Regional Transport Partnerships have also been excluded as they are made up of local authorities which are already covered by the Duty, as is Transport Scotland.

## Guidance

Consumer Scotland will publish a draft guidance document on or before 31 March 2024 to immediately support the authorities covered by the Duty. Following that, and in accordance with the Consumer Scotland Act, a public consultation will run to gather feedback to help inform the final draft of the guidance. The final guidance will be published on the Consumer Scotland website ahead of the implementation period ending on 31 March 2025.

This implementation period from 1 April 2024 to 31 March 2025 is to allow public authorities and Consumer Scotland to work together to ensure that the guidance meets the needs of the authorities. However, public authorities will still be required to adhere to the Duty during this time. It is also anticipated that the guidance will be finalised well within this grace period.

I hope that this response is helpful and I look forward to discussing these issues in more detail at the evidence session.



**TOM ARTHUR**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

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