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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Consumer Scotland Bill as amended at Stage 2



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



[http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/
delegated-powers-committee.aspx](http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx)



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Introduction

1. At its meeting on 10 March 2020, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Consumer Scotland Bill ("the Bill") as amended at Stage 2.ⁱ
2. The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
3. The Delegated Powers and Law Reform Committee published its Stage 1 Report on the Bill on 31 October 2019.ⁱⁱ The Committee reported that it was content with all but one of the delegated powers in the Bill. The report recommended further consideration by the lead committee in relation to the power in Section 20(2). This is discussed further below.
4. The Bill completed Stage 2 on 25 February 2020. The Scottish Government has since lodged a Supplementary Delegated Powers Memorandum covering the powers in the Bill as amended at Stage 2.ⁱⁱⁱ

ⁱ Consumer Scotland Bill as amended at Stage 2

ⁱⁱ Delegated Powers and Law Reform Committee, 53rd Report 2020: Consumer Scotland Bill: Stage 1

ⁱⁱⁱ Consumer Scotland Bill, Supplementary Delegated Powers Memorandum

Overview of the Bill

5. This Government Bill was introduced by the Cabinet Secretary for Finance, Economy & Fair Work, Derek Mackay MSP, on 5 June 2019. The lead Committee is the Economy, Energy and Fair Work Committee.
6. The Bill has two main policy aims: 1) to establish Consumer Scotland, a consumer advocacy and advice body; and 2) to create a duty on public authorities to have regard to consumer interests when taking decisions of a strategic nature.
7. In relation to the first policy aim, the Bill establishes Consumer Scotland as a body corporate and provides it functions, powers and reporting duties. Its core functions are the provision of consumer advocacy and advice to reduce harm to consumers in Scotland, increase consumer confidence and increase the extent to which consumer matters are taken into account by public authorities. Consumer Scotland will have a number of ancillary functions and a power to obtain information. The Policy Memorandum notes that the advocacy function will allow consumers to have representation when policy decisions are being made by the Scottish Ministers and the advice function will allow publicly funded assistance to be provided to Scottish consumers to help them to understand their rights.^{iv}
8. In relation to the second policy aim, the public authorities subject to the duty to have regard to consumer interests will be in subordinate legislation. The Policy Memorandum explains that the duty does not mean that consumer interests will take precedence over other considerations but is simply to ensure they are had regard to. Consumer Scotland will be able to issue guidance on the duty and the guidance will be subject to the approval of the Scottish Ministers. The public authorities subject to the duty will be required to report on the steps they have taken to comply with the duty.

^{iv} [Consumer Scotland Bill, Policy Memorandum](#)

Delegated Powers

9. At its meeting on 10 March 2020 the Delegated Powers and Law Reform Committee agreed that it was content with the following power in the Consumer Scotland Bill which was the only new power added at Stage 2:
 - Section 6(3) – specified persons whose activities Consumer Scotland must have regard to
10. The Committee also reconsidered the power below, in relation to which it had made recommendations in its Stage 1 report.

Section 20(2) – Duty to have regard to consumer interests

Power conferred on: the Scottish Ministers

Power exercisable by: regulations

Parliamentary procedure: affirmative

Provision

11. Section 20 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. Subsection (2) provides for the Scottish Ministers, through regulations, to set out which persons are “relevant public authorities” and therefore to determine which persons are subject to the duty. The Scottish Ministers must consult such persons as they consider appropriate before designating a relevant public authority. This consultation must always include any person whom they intend to designate as a relevant public authority who is not already designated.

Committee Consideration

12. The Committee noted at Stage 1 that the Bill did not specify any bodies as relevant public authorities. It therefore wrote to the Scottish Government asking whether there were any public authorities that it considered could be specified on the face of the Bill. It also asked for examples of which persons might be determined as a relevant public authorities under this power.
13. In its response, the Scottish Government explained that Scottish Ministers plan to work collaboratively with public authorities to ascertain the bodies to which the duty should apply. That work is yet to be done and therefore the Scottish Ministers are not in a position to specify any particular public authorities on the face of the Bill at this stage.
14. The Scottish Government also provided some examples of potential relevant public authorities in its response. It noted that it is anticipated that local authorities, the Law Society of Scotland, and the Scottish Legal Complaints Commission will be designated. However, it explained that this thinking is provisional and subject to detailed consultation with the persons concerned. It also explained that this list was not exhaustive. The response explained that the Scottish Government wants the

authorities concerned to be fully on board with the idea of putting consumer interests at the heart of their strategic decision-making.

15. The Committee recommended that the lead committee consider whether any public bodies, such as those noted in the Scottish Government's response, could be named on the face of the Bill.
 16. The lead Committee's Stage 1 report noted this and invited the Minister to reflect further on whether some public bodies should be included.^v However, no changes have been made to the Bill in this regard.
17. The Committee accepts that the Scottish Government has chosen not to specify "relevant public authorities" on the face of the Bill. It is reassured that the affirmative procedure will apply regulations made under this power, giving the Scottish Parliament a high degree of scrutiny over which bodies are specified. It is therefore content with this power in principle and that it is subject to the affirmative procedure.
 18. The Committee therefore reports that it is content with all of the delegated powers in this Bill.

^v [Economy, Energy and Fair Work Committee, 13th Report 2019: Stage 1 Report on the Consumer Scotland Bill](#)

