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Committee  
Room T1.01  
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Dear Andrew

### **Consumer (Scotland) Bill at Stage 1**

Thank you for your letter to James Hynd of 18 September 2019 requesting an explanation on the rationale behind the proposed use of delegated powers in the Consumer Scotland Bill. As the Bill manager, I am responding to your request and I trust that the undernoted answers your questions.

#### **Section 8(2)(d) – Requirement to provide information to Consumer Scotland**

You asked why the Scottish Government considers it necessary for the Scottish Parliament to delegate the power in section 8(2)(d) to Scottish Ministers when section 8(2)(c) is so broad in scope, and whether the Scottish Government could provide detail on what categories of persons Scottish Ministers might want to cover in future using this power.

Whilst it is unlikely that the Scottish Ministers might want to make a person other than those already specified in section 8(2)(a) to (c) (designated regulators, regulated providers and any other person who supplies goods or services in the course of a business carried on by that person) subject to the requirement to provide information to Consumer Scotland, it is not inconceivable. It may be the case that experience acquired from the operation of Consumer Scotland will result in the identification of a need to make other persons subject to the information-producing requirement. To future-proof the Bill, it is considered desirable to have flexibility in this regard. It is accepted, however, that there may be sensitivities around extending such a requirement to persons outwith section 8(2)(a) to (c), and for that reason the affirmative procedure is considered appropriate and has been provided for, to afford Parliament the opportunity to carefully scrutinise any such proposed extension.

Categories of person that the Scottish Ministers might want to cover in future using this power could conceivably include those who were, until very recently, supplying goods or services as part of a business but have ceased to do so – important information could be held by such a category of person, particularly if they have had a significant market



presence. This is an example for illustrative purposes, and other categories may only come to light once Consumer Scotland is operational.

You also asked what consideration the Scottish Government has given to providing criteria on the face of the Bill to be applied by Scottish Ministers when determining whether a person or description of persons should be specified for the purposes of section 8(2)(d).

The Scottish Government does not consider it appropriate to provide criteria on the face of the Bill to be applied by the Scottish Ministers when determining whether a person or description of persons should be specified for the purposes of section 8(2) (d), as the nature of the provision is that it is a catch-all provision to cover currently unforeseen categories of person. The affirmative procedure will allow the Scottish Parliament to scrutinise any regulations and to take appropriate action if it feels that it is inappropriate to extend the information-gathering power to any particular new category of person.

### **Section 8(6)(a) and (b) – Requirement to provide information to Consumer Scotland**

You asked if the Scottish Government Could explain why no regulatory bodies have been specified as designated regulators on the face of the Bill.

No regulatory bodies were included on the face of the Bill because the Scottish Ministers intend to engage with regulators and regulated providers to ascertain those which should be subject to the requirement to provide information to Consumer Scotland. In addition, the names and structure of regulators tend to change relatively frequently, making this information more appropriate for subordinate legislation.

The final decision as to which regulators are to be specified as designated regulators in regulations under section 8(6)(a) and (b) will be taken in due course, but potential candidates include The Water Industry Commission for Scotland and Food Standards Scotland. Where it is desirable to bring UK regulators, for example Ofgem and Ofcom, within the scope of the powers, a separate Scotland Act Order will be sought.

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

You asked if there are any public authorities that could be specified on the face of the Bill, and if not, for the Scottish Government to provide examples of which persons might be determined as a “relevant public authority”.

As indicated in the Delegated Powers Memorandum, the Scottish Ministers wish to work collaboratively with public authorities in ascertaining the bodies to which the duty should apply. That work is yet to be done. As such, Ministers are not in a position to specify any particular public authorities on the face of the Bill at this stage. Further, specifying certain public authorities on the face of the Bill and others in regulations could lead to a misplaced perception that the duty applies in some lesser way to the bodies not specified on the face of the Bill.

As examples, it is anticipated that local authorities, The Law Society of Scotland, and the Scottish Legal Complaints Commission will be designated. That thinking is provisional and subject to detailed consultation with the persons concerned – those named here are also illustrative and do not represent an exhaustive list. 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, and although the duty will be there to compel recalcitrant authorities, Ministers ideally want authorities to be willing partners in the process.

I have answered your questions as fully as possible and I hope you find this helpful.

Yours sincerely

LAURA MCGLYNN  
Consumer Scotland Bill Manager

