

EXPLANATORY MEMORANDUM TO

THE CONSUMER SCOTLAND ACT 2020 (CONSEQUENTIAL PROVISIONS AND MODIFICATIONS) ORDER 2022

2022 No. 34

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order makes provisions in consequence of the Consumer Scotland Act 2020 (“the 2020 Act”), which established Consumer Scotland as the body responsible for the devolved areas of consumer advocacy and advice in Scotland.
- 2.2 The Order is required to confirm Consumer Scotland as a non-ministerial body of the Scottish Administration, and ensure its role in dealing with consumer advocacy is reflected in relevant UK legislation. This is required to establish Consumer Scotland as a non-ministerial office of the Scottish Administration, and to amend legislation outside the legislative competence of the Scottish Parliament that will allow Consumer Scotland to fulfil its new role in dealing with consumer advocacy and advice. This will largely change references made to Citizens Advice Scotland to Consumer Scotland, or add reference to Consumer Scotland in addition to Citizens Advice Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland, except where otherwise stated.
- 4.2 The territorial application of this instrument is England and Wales, Scotland, and Northern Ireland, except where otherwise stated.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

“In my view the provisions of the Consumer Scotland Act 2020 (Consequential Provisions and Modifications) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1), 113 (2), (4), (5), and (7), and 114 (1) of the Scotland Act 1998 (“the 1998 Act”). Section 104 of the 1998 Act allows consequential modifications to be made where necessary

or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

- 6.2 Consumer Scotland is taking on responsibilities from Citizens Advice Scotland in the devolved areas of consumer advocacy and advice in Scotland in relation to energy, postal services and water. As such, amendments are required to the following legislation: the Gas Act 1986, the Electricity Act 1989, the Postal Services Act 2000, the Utilities Act 2000, the Communications Act 2003, the Consumers, Estate Agents and Redress Act 2007, the Postal Services Act 2011, the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015, the Smart Meters Act 2018, and the Domestic Gas and Electricity (Tariff Cap) Act 2018. The only changes are to the name of the body referenced in the relevant provisions in the legislation. Where dual responsibility for carrying out functions is to be put in place, reference to Consumer Scotland will be added.
- 6.3 This Order will make Consumer Scotland part of the Scottish Administration, and it will become a non-ministerial office accountable to the Scottish Parliament. The Order also provides that the Crown Suits (Scotland) Act 1857 does not apply to Consumer Scotland with the effect that the Lord Advocate cannot sue or be sued in place of Consumer Scotland. It will also add the body to the list of bodies whose members are disqualified from being members of the House of Commons under the House of Commons Disqualification Act 1975 (“the 1975 Act”).

7. Policy background

What is being done and why?

- 7.1 Section 104 of the 1998 Act¹ enables provisions to be made that are necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament. This Order makes provisions that are necessary and expedient in consequence of the 2020 Act, which allowed for the establishment of Consumer Scotland as the body responsible for the devolved matters of consumer advocacy and advice. The 2020 Act also created a consumer duty that requires public authorities in Scotland to consider consumers in policy and decision making.
- 7.2 The Order amends legislation to give Consumer Scotland full authority in its role of dealing with consumer advocacy and advice. Certain areas of oversight, currently held by Citizens Advice Scotland, will be transferred to this new body where required; areas including energy, postal services and water.
- 7.3 Consumer Scotland is required to be operationally independent of Scottish Ministers, so its establishment as a non-ministerial office through this Order is necessary. The Order will also make consequential provisions and modifications to reserved legislation, predominately to change reference to Citizens Advice Scotland to Consumer Scotland, where required. This is required to support Consumer Scotland’s new role in dealing with consumer advocacy and advice.
- 7.4 The Order also amends the 1975 Act, adding Consumer Scotland to the list of bodies whose members are excluded from the House of Commons. This will help ensure the independent basis of Consumer Scotland’s work in line with the 2020 Act.

¹ 1998 c. 46. <https://www.legislation.gov.uk/ukpga/1998/46/contents>

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Though the Order amends primary legislation, the modifications are minor and no consolidation is required.

10. Consultation outcome

10.1 As this Order is purely consequential on the 2020 Act, there has been no consultation exercise specific to this Order. However, consultation was carried out prior to the 2020 Act itself, and the outcome was that there was widespread support for the proposal of the establishment of an independent consumer advocacy and advice body operating at a national, strategic level. The responses to the consultation highlighted that a well-defined and focused remit for Consumer Scotland – complemented by a meaningful and measurable consumer duty for public authorities – could add value to the consumer landscape in Scotland.

11. Guidance

11.1 This Order stands alone and guidance is not necessary. Appropriate stakeholders across the United Kingdom have been engaged and are fully aware of the provisions of the Order and their practical inferences.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it is being implemented to allow Scotland's new consumer body to be designated as a non-ministerial office and to fit into existing delivery structures. Relevant impact assessments on this new body have already been carried out by the Scottish Government.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Order is consequential upon the 2020 Act. No formal monitoring or review is considered necessary.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement: "There is no need for review or monitoring as the Order does not regulate businesses."

15. Contact

- 15.1 Arthur Halfhide at the Office of the Secretary of State for Scotland (Telephone: 07557896644 or email: arthur.halfhide@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.