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FUNCTIONS OF CONSUMER SCOTLAND

I am writing in response to the request for more information on Consumer Scotland's form and functions made by the Economy, Energy and Fair Work Committee in its Stage 1 report on the Consumer Scotland Bill. In particular, the committee sought further information on how Consumer Scotland will interact with other organisations in the consumer protection system so as to avoid duplication of work.

As I set out in my response to the Stage 1 report, the Scottish Government's position remains that Consumer Scotland's board and senior staff should be given the flexibility to determine its priorities, in collaboration with other consumer groups and regulators in the landscape. This is in keeping with the independence that is crucial to Consumer Scotland's operation, and will also cement its foundations as a collaborative body.

Nonetheless, I am keen to re-iterate to organisations that currently work to safeguard the interests of consumers that Consumer Scotland will work alongside them in partnership. My response will therefore cover the statutory boundaries that will both enable and constrain Consumer Scotland. It will also cover practical aspects of the body's operation that will minimise the likelihood of duplication and enhance the current system.

Consumer Scotland's statutory position

As noted in the Stage 1 debate, the Consumer Scotland Bill does not seek to be overly prescriptive in setting out the activities Consumer Scotland should carry out. I believe it provides both the necessary powers and checks to enable Consumer Scotland to respond to future challenges and also remain firmly fixed as an advocacy body.

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First and foremost, as it is established as a consumer advocacy and advice body, it cannot pursue activities that would fall outwith these purposes. Within these limitations, it currently has three key, overarching objectives that will also guide its work. These are:

- to reduce consumer harm in Scotland;
- to increase consumer confidence when dealing with businesses; and
- to increase the extent to which consumer matters are considered by public authorities.

These three aspects of Consumer Scotland's functions are supplemented by additional powers – the body may advocate for consumers, conduct research, carry out investigations, or provide information. These are broadly similar to the functions given to The Consumer Council before its abolition, and while they provide sufficient scope to deliver the functions set out above, they are narrowly focused and will ensure Consumer Scotland does not stray into other areas of consumer protection work.

In developing its work within these parameters, the Bill also requires Consumer Scotland to have regard to other organisations with similar functions. Indeed, the government has lodged significant amendments to enhance this aspect of the Bill.

Firstly, we have lodged an amendment to extend this collaborative requirement beyond public bodies, in response to the Committee's recommendation that a wider range of organisations must be considered. Secondly, we have lodged an amendment that will allow Ministers to specify particular organisations whose activities Consumer Scotland must have regard to. Any such regulations will be laid after appropriate consultation, but we anticipate that Citizens Advice Scotland and Trading Standards Scotland are good examples of the types of bodies that could be included, given their significance in the consumer protection system.

Appropriately, the Bill does not set out how collaboration will work in practice, but the Scottish Government expects it to be meaningful, and I have set out below some practical demonstrations of how it might be achieved.

Beyond this general collaborative requirement, Consumer Scotland must develop a forward work programme. This must be done having regard to the views of those with an interest in consumer matters, which has been stipulated expressly to ensure that Consumer Scotland's work will not duplicate that of other organisations. As above, while Consumer Scotland can determine how it gathers these views, it will have to do so in a robust and meaningful way. The forward work programme requires to be laid before Parliament, as well as being published, so it will be subject to public scrutiny.

This collaboration and transparency, in my view, will act as a strong deterrent to duplication. To add to all of this, the Bill provides that Consumer Scotland will be independently reviewed three years after its establishment and every five years thereafter. It will be within the scope of this review to consider Consumer Scotland's overall impact to benefit consumers and the wider landscape.

Consumer Scotland's practical operation

The powers and duties set out above are only the means by which Consumer Scotland will undertake its practical activities. Although specific detail on this has been left to the discretion of the body itself (as is normal), the policy memorandum that accompanied the Bill set out some concrete roles that these functions will enable Consumer Scotland to perform.

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These arose from the Working Group, the consultation, and on-going stakeholder engagement. Broadly summarised, they are that the body will:

- provide strategic oversight of the consumer landscape to develop a full understanding of how markets work for consumers in Scotland and ensure resources are targeted to tackle harm;
- conduct in-depth investigations into areas where harm in Scotland is most acute and recommend solutions;
- facilitate access to a consumer advice system that meets individual consumer needs and aggregates collective data to support prevention work; and
- comment on Scottish Government policy with significant impact on consumers, and support public authorities in Scotland to comply with the statutory consumer duty.

I will set out briefly how each of these activities will operate practically.

Through its strategic role, Consumer Scotland will seek to gather as full a picture as possible of consumer harm across Scotland. I envisage that to enable this it will:

- Lead a Scottish Consumer Protection Partnership, which will bring organisations with an interest in consumer protection together. How this operates will be developed in the coming months, together with its likely membership, but feedback indicates it will be an opportunity to identify areas for collective action, to coordinate activity, and to prioritise resources. It will therefore be a key means by which duplication across the landscape is avoided and resources maximised.
- Oversee the analysis and coordination of data across the consumer landscape – the Scottish Government established the Data Working Group to support this, and a key aim of its work, as set out in its remit, will be to help create a resource or mechanism that will be of value to the whole consumer system. As above, this understanding will allow all organisations with an interest to prioritise resources where they are most needed and can have the most value.

Consumer Scotland's investigatory role will be directly supported by these initiatives. The Scottish Government has been clear that investigations will focus on the issues of the most serious harm, and will be undertaken where Consumer Scotland can add genuine value. This means, for example, it will investigate only where there is a clear evidentiary base for doing so, and where its expertise makes it ideally suited to the task. This does not mean it will never investigate an area where another body, such as the Competition and Markets Authority, is operating, but it does mean it will only do so where there is agreement, and where it can lend a Scottish perspective that would otherwise be lacking.

This will be reflected in the development of Consumer Scotland's work programme. Over and above the consultative requirements created in the Bill, Consumer Scotland will require to develop robust criteria to identify its priorities, such as number of consumers affected, scale of harm, and likelihood of adding value. Consumer Scotland will develop this criteria, but it will do so in consultation with the consumer network in Scotland – this is another area where the Consumer Protection Partnership could be invaluable.

On the topic of advice, Consumer Scotland is not expected to act as a frontline advice body, nor have an impact on frontline consumer advice services provided by individual Citizens Advice Bureaux, which are predominately funded by local authorities. I also recognise that along with Bureaux, there are already a number of providers, including Advice Direct Scotland, as well as some trading standards services and a number of other third sector bodies, that already provide consumer advice. Adding another advice body would increase

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confusion and duplication. However, consultation feedback was clear that stakeholders believe there is a fragmented advice system, and that Consumer Scotland should work to address this where possible.

Given the complexities of the landscape, and the need for collaborative action, the Scottish Government does not propose to set out how Consumer Scotland should respond to this feedback. However, the Scottish Consumer Protection Partnership will be a key platform for exploring the issue and developing solutions. Consumer Scotland's statutory functions will also enable it to take a range of actions, for example to fund specific advice provision if necessary, investigate the system and provide recommendations for improvements, and support quality standards if the majority of the sector seeks them.

Finally, a key role of Consumer Scotland will be to practically implement its role to increase the extent to which consumer matters are taken into account by public authorities. This will mean commenting on government policy where necessary, and supporting the consumer duty, through developing and maintaining guidance. In doing so, it will aim to ensure that consumers are fully integrated into the policy and decision-making process. This will become an increasingly important role as we work collectively to address issues like the global climate emergency, and one that Consumer Scotland will be uniquely placed to fill given its statutory remit and dedicated focus on consumers.

Consumer Scotland and Citizens Advice Scotland

I note that committee members have raised specific questions about Citizens Advice Scotland's ("CAS") and Consumer Scotland's roles. I believe that much that is set out above will ensure both organisations work well together, as CAS and the Consumer Council did prior to 2012.

The devolution of consumer advocacy to the Scottish Parliament gives Scotland an opportunity to strengthen the consumer voice and increase its engagement in the policy process, and the Scottish Government recognises that the work of both CAS and the Bureaux Network will be instrumental in achieving this. CAS will continue to have a vital role to represent the views of vulnerable consumers, and indeed to challenge Consumer Scotland on its own activities to protect the interests of vulnerable consumers.

The support offered by the Bureaux network to people across Scotland gives them an unparalleled insight into the lived experiences of those who are often most vulnerable. This combined with CAS's singular experience in collating, analysing and drawing insights from data, puts CAS in an unequalled position to continue to identify and highlight harm to consumers in Scotland.

The establishment of Consumer Scotland will not change this, nor the value that the Scottish Government puts on CAS's contribution to securing better consumer outcomes.

As a new consumer system takes shape, the Scottish Government will expect a close partnership between CAS and Consumer Scotland, one which allows Consumer Scotland to take an evidence-led approach to tackling and identifying consumer harm, while allowing CAS to focus on community-centred, people focused advocacy.

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I hope the above is helpful, and provides reassurance that collaboration has been built into Consumer Scotland from the outset and will be key to its success. As a result of this and the focused range of both its legislative scope and expected functions, there is minimal risk of duplication, and much added value that can be brought to the landscape as a whole.

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