

Delivering better outcomes for consumers and businesses in Scotland

December 2016

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Ministerial Foreword



Having the correct information and advice empowers all of us as consumers, helping us to find the most competitive deals for goods and services, such as energy and broadband. It also reassures us that help is there if things go wrong, and that something will be done to tackle wider consumer harm and market failings.

Empowered consumers, acting within a system of fair competition, support inclusive, sustainable growth in our economy, enabling businesses to innovate and grow in response to consumer need. This also creates an environment where businesses can have confidence that unlawful or poor business practices will be tackled.

Consumer harm, particularly in those services which are essential to everyday life, can have a devastating effect on individuals, particularly the most vulnerable in our communities.

It is, therefore, vital that we create a system of consumer protection, competition and regulation in Scotland which is fully aligned with the needs of our citizens and businesses and which improves people's lives. We have newly devolved, although limited, consumer and competition powers and will use these to maximum effect. We will strengthen this by working closely with our stakeholders in the consumer protection landscape, both in Scotland and across the UK, to influence strongly on behalf of Scotland's consumers, in those areas which are reserved to Westminster, such as consumer protection law.

That is not to say that the current system is broken. There are a number of organisations doing an invaluable job in educating and advising consumers and business and protecting them from harm. However, the feedback from stakeholders has been that more can be done to improve co-ordination, in particular to create an environment where those with a duty to protect the interests of consumers in Scotland can speak with a single voice on the issues that matter.

Over the coming months, the Scottish Government will examine in detail the best way to deliver our Manifesto commitment on a unified consumer body. During this process, we will continue to seek advice and guidance from stakeholders and there will be a full public consultation in the autumn of next year.

This provides a once in a generation opportunity to lay stronger foundations for the protection of consumers in Scotland and it is right to take time to examine, analyse and consult, to ensure we take the correct approach. We are also in a time of uncertainty, with the full impact of Brexit on consumer protection and competition as yet unclear. However, we cannot accept a position where consumers or businesses in Scotland have inferior rights and protections compared to those in other European countries.

While this work is on-going, it is important to make early use of our new powers, and this statement outlines a number of current and planned actions along with a set of principles which will guide our work.

Government can't achieve positive change for consumers and business in Scotland on its own. By working closely with consumer bodies, business, ombudsmen, regulators, advice providers, local authorities and other stakeholders, we can bring about the improvements to maximise the benefits that strong consumer protection, fair competition and effective regulation can bring to Scotland's people, businesses and economy.

KEITH BROWN

Cabinet Secretary for the Economy, Jobs and Fair Work

New powers, new opportunities

Active consumers can drive growth in the economy, rewarding businesses which are innovative, efficient and fair. Whilst poor business practice is in the minority amongst Scottish businesses, if unchecked, it can undermine consumer confidence, impact the reputation of business as a whole and restrict growth. Sustainable growth, therefore, requires an environment that enables consumer trust and supports business to constantly improve and stay competitive.

Consumers in Scotland face many of the same challenges as communities across the UK and, in a global market, further afield. But Scotland does have distinctive characteristics, such as the proportion of our consumers living in rural or island communities. It is, therefore, important that the Scottish Government is able to bring together the efforts of all stakeholders, with a duty to protect consumers in Scotland, behind a set of shared outcomes.

In May 2016, some consumer and competition powers were devolved to the Scottish Parliament¹. We now hold powers over:

- consumer advice, education and information, which enable consumers in Scotland to access publicly-funded help to understand and exercise their rights;
- consumer advocacy, which ensures that the consumer voice is heard by government, business, policy makers and regulators² across all areas of the Scottish economy;
- the power to act with the Secretary of State to request the Competition and Markets Authority to carry out a second stage market investigation³; and
- decisions relating to the delivery of the Competition Appeals Tribunal.

This does not represent the full suite of consumer protection and competition powers originally sought by the Scottish Government – the UK Government retains responsibility for important aspects, such as consumer and competition law and its enforcement. However, while limited powers in some areas present a challenge, we are using those that we do have to the full, alongside our strong relationships with stakeholders, to find solutions to the key challenges faced by consumers across Scotland. In particular, we need to ensure consumers most at risk from poverty and harm are adequately protected.

¹ Scotland Act 2016, 2016 c.11

² There are some reservations to the Scotland Act 2016 powers, specifically telecommunications and wireless telegraphy, and transport.

³ A market investigation is a detailed look into whether there may be potential adverse effects on competition in the market for goods or services referred.

Delivering better outcomes for consumers and businesses in Scotland – our principles

In taking forward our work on delivering better outcomes for consumers and businesses in Scotland, we will embed the following principles.

Growth	<p>1. Consumer protection and competition policy will support economic growth while upholding our values of a fairer, more equal Scotland.</p> <ul style="list-style-type: none"> • Consumer trust is vital for businesses to thrive. A flexible, responsive system of consumer protection will ensure consumers can be confident they will be treated fairly when buying goods and services. • Open markets and empowered consumers will help businesses thrive when they are innovative, efficient and treat customers fairly, which will in turn support them to remain competitive in Scotland, the UK and internationally. • At a UK level, Scotland will have a stronger voice in consumer matters and competition policy. We will build relationships with regulators, enforcement agencies and industry to raise the profile of Scottish concerns and develop solutions that will benefit both consumers and businesses in Scotland.
Collaboration	<p>2. Collaboration and flexibility will be at the heart of our approach.</p> <ul style="list-style-type: none"> • Finding the best solutions means identifying the root of the problem. We will build on our relationships with industry, regulators and consumer protection agencies to develop more effective ways to identify patterns of harm and their causes. • Problems affecting consumers and markets vary and so do the solutions. Regulatory, competition and market-driven remedies all have a role to play in achieving better outcomes for consumers and businesses. We will use the right tools in the right circumstances. • Solutions to consumer and competition issues affecting Scotland should be driven by those who know the markets best. We will bring organisations, including regulators, consumer groups and businesses, together to deliver concrete actions that will make a real difference to the people of Scotland.
Empower	<p>3. Consumers will be protected from harm, and empowered to challenge organisations to take their needs into account.</p> <ul style="list-style-type: none"> • Scotland’s consumers, particularly those whose circumstances make them more vulnerable, need to know that their interests are being protected. Consumers will have a strong voice to speak up when things go wrong, and to campaign against practices that could be harmful in the future. At the same time, consumers and businesses should be made aware when things are going well; good practice will be highlighted and shared. • Consumers will be supported to understand their rights and resolve issues. Advice and information will be available to all consumers when and how they require it, no matter their circumstances. • Consumers need to know that their voices will be listened to. We will put the consumer interest at the heart of our own work, and, in collaboration with regulators, consumer bodies and industry, develop more effective ways for consumers to actively engage in regulatory and policy making decisions.

Protect	<p>4. Protecting consumers will also protect and support businesses, and encourage fair competition.</p> <ul style="list-style-type: none"> • Businesses that work to treat consumers fairly should be protected from those that act unscrupulously. Ensuring that consumers know their rights, and enabling regulators and enforcement agencies to support good behaviour and more quickly detect wrong-doing, will help prevent any unfair advantages that may be derived by businesses that break the rules. • Businesses will benefit from a system of consumer protection that seeks to put things right, rather than simply punish wrong-doing. We will work to detect harm more quickly, and where possible, work with businesses that have made mistakes to help them improve. • Businesses will have more opportunities for growth. We will ensure markets are open and accessible to all businesses, creating an environment where businesses have the confidence to invest and innovate.
Competition	<p>5. Scotland's competition policy should reflect its specific needs and circumstances.</p> <ul style="list-style-type: none"> • We recognise the challenges and opportunities presented by the Scottish economy. By monitoring the competitiveness of markets and businesses in Scotland we can support businesses to innovate and adapt to make the most of the market. • Actions taken by government can have effects on markets. Best practice in competition starts with us; we will put in place procedures to ensure the market effects of our policies are considered. • Taking a collaborative approach to competition, within the Scottish Government, will ensure we keep pace with changing markets, technologies and business models.

Delivering better outcomes for consumers and businesses in Scotland – taking action

We will deliver better outcomes for consumers and businesses in Scotland through the following actions.

Action – delivering our commitment on a unified consumer body

Following on from the recommendation of the independent Working Group on Consumer and Competition Policy for Scotland⁴, over the coming months, the Scottish Government will examine in detail the best way to deliver the Manifesto commitment on a unified consumer body (Consumer Scotland).

It is too early to outline in detail the scope and structure of a body. This will be subject to full public consultation in autumn of next year. However, key characteristics are likely to include:

- provide a strong voice for consumers in Scotland, with the authority to work with other stakeholders to influence policy and the approach of government, business, public services and regulators in Scotland and across the UK in a cohesive way;
- ensure independence, but with clear accountability to the Scottish Parliament on its ability to deliver better outcomes for Scotland's economy and its communities;
- ensure that consumer advice, education and information are delivered in a coordinated way;
- deliver high quality outcomes for individual consumers, support wider economic growth and represent value for money for public funds; and
- work with stakeholders, using information and research, to identify and tackle issues of consumer harm and competition concern, particularly for the most vulnerable in society.

A full public consultation on proposals to deliver the manifesto commitment for a unified consumer body will be launched in the autumn of 2017.

Action – tackling nuisance calls

Nuisance calls are by definition an unwanted interruption, and can cause real harm to those whose circumstances make them vulnerable. Research from Which?⁵ has shown that this is a greater problem for Scotland's citizens. That was why we took early action to address the issue through a Nuisance Calls Summit and subsequent Commission, chaired by the Cabinet Secretary for Economy, Jobs and Fair Work.

⁴ The Working Group on Consumer and Competition Policy for Scotland was established in June 2015, producing its final report in October 2015. The Working Group was chaired by Rick Hill, MBE.

⁵ [Which research – Scots receive more nuisance calls than the rest of the UK, 29 June 2016](#)

The Commission will focus on how we can empower consumers to protect themselves, how we can support businesses that want to do the right thing and tackle persistent offenders, and how we can improve the regulatory framework.

Following the conclusion of the Commission, we will publish a progress and delivery plan before summer recess in 2017, which will outline how the Scottish Government, in partnership with stakeholders, will address the problem of nuisance calls.

Action – coordinating publicly funded advice services

There is a wide range of publicly-funded advice services in Scotland which are free at point of access. These vital services provide invaluable support in a variety of areas, such as welfare and benefits, money and debt and consumer rights, often to the most vulnerable.

We want to ensure that these advice services are coordinated in a way which delivers the most effective and most flexible response to the needs of Scotland's communities. We are, therefore, working with advice providers and other stakeholders to develop a coherent overarching strategy for how the Scottish Government supports advice services.

The outcome of this work is to ensure advice services funded by the Scottish Government are:

- fully coordinated, and, where appropriate, aligned with the approach taken by other funders of public advice services, such as Local Authorities, Health Boards and the UK Government;
- focused on the needs of people, clearly supporting our commitment to building a fairer Scotland through tackling poverty and inequality;
- underpinned by a continuous improvement approach taken to ensure a consistent, high level of quality and standards for advice provision;
- providing demonstrable value for money for the use of public funding; and
- able to support the sector to respond to key strategic developments such as the recent devolution of consumer advice powers and the future devolution of social security powers.

The project will be completed in summer 2017 with the outcomes and actions published.

Action – Consumer Scotland Taskforce

We want to make early progress on identifying and tackling consumer harm and market failings. However, the Scottish Government cannot do this alone.

Therefore, in the spring of 2017 we will bring together consumer and competition experts with business, academics and regulators to identify:

- the top issues affecting consumers, businesses and markets in Scotland; and
- the practical steps required to tackle these issues.

The focus of this work will be how to make the most effective use of the newly devolved consumer and competition powers, and how to put strong partnership working across the consumer landscape to best effect.

Action – Understanding how markets work in Scotland

The Strategic Assessment of Markets in Scotland (the Assessment⁶), published in June 2016, was the Scottish Government’s first formal look at competition in markets in Scotland. It set out the areas where we think Scottish markets could be improved or could produce better outcomes for Scottish consumers.

The key issues identified included:

- why Scottish consumers don’t switch supplier more often in regulated markets, such as gas and electricity;
- consideration of how consumers could be more empowered to make informed choices in complex markets, such as health, social care and the legal sector; and
- how to ensure that on-going competition and regulatory investigations take sufficient account of Scottish issues.

The Assessment was an important first step in gaining an understanding of potential competition issues in Scotland and we will look to address the areas of concern identified through a two year programme of activity.

Action – Collaborative economy

Another emerging theme from the Assessment was the growing importance of the collaborative economy, which connects individuals or communities via online platforms, thereby enabling the sharing or provision of goods and services, assets and resources without the need for ownership⁷. We are keen to explore where there are opportunities for and barriers to growth in this area. Our work to date has identified that the Scottish Government should consider how to:

- ensure that regulation is fit for purpose and that an appropriate balance is struck to allow competition to flourish;

⁶ ‘Ensuring that Markets Work Well for Businesses and Consumers – A Strategic Assessment of Markets in Scotland’, Scottish Government, June 2016.

⁷ Examples include Uber, Airbnb and Netflix.

- protect and empower consumers and identify clear routes to redress;
- support Scotland’s business base to digitally transform and compete in the evolving market place; and
- ensure that the wider economic, social and community impacts, including taxation, social inclusion and employment conditions, are understood.

Scottish Ministers will outline their next steps on how Scotland can position itself to take advantage of the opportunities of the collaborative economy as well as the challenges that it will present in early 2017.

Action – ethical based regulation

We will work to use our new powers in innovative ways, and build on the successes we have already achieved through our Better Regulation approach. This underpins many policy areas in Scotland, including housing, food standards and environmental protection. Our approach to Better Regulation is well-established and well-regarded, often being considered an example of best practice in Europe.

We remain committed to this approach and to the principles that regulation should be proportionate, consistent, accountable, transparent and targeted. We want regulation in Scotland to be business friendly, to create a level playing field and to encourage business investment and growth.

We have already achieved much, but there is still room for improvement. The strengths of Better Regulation – in particular its emphasis on collaboration – should be extended to cover all parts of the regulatory puzzle, as well as made more effective at encouraging innovative or tailored approaches that might better suit both businesses and consumers.

Some businesses and regulators have already gone beyond what is required. For example, the Scottish Environmental Protection Agency (SEPA) is helping Scottish businesses find profitable ways to do more than the law requires in reducing their energy use and waste produced. SEPA’s latest strategy⁸, published in August 2016, outlines its approach to delivering environmental protection and improvement in ways that will also create health benefits and sustainable economic growth.

The Scottish Government wants to create the policy environment to allow this exemplary practice to become the norm. We will, therefore, enhance our Better Regulation strategy with an ethical based approach, which emphasises securing compliance by changing organisational culture through collaboration and developing ethical values.

The Scottish Government will outline how it will embed ethical based regulation into the regulatory toolkit during the course of 2017.

⁸ [“One Planet Prosperity - Our Regulatory Strategy”](#), SEPA, Aug 2016

Action – measuring impact

It is vitally important to measure and report upon the progress that our actions are making in terms of improving the lives of consumers across Scotland. We will do so by using the following critical success factors:

- Scotland's consumers can access the right advice at the right time in a way that works for them;
- ensuring that the advice given to consumers has a positive impact on their lives. In particular, that it helps people in our communities deal with the worst effects of poverty;
- ensuring that consumer advocacy is influencing the decision making processes of policy makers and regulators;
- Scotland has effective and open markets that provide consumer choice and allow businesses to operate on a level playing field; and
- Scottish businesses are innovative, efficient and fair, boosting consumer trust and supporting inclusive economic growth.

The first assessment will be published in spring 2018.



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