About Consumer Focus Scotland

Consumer Focus Scotland started work on 1 October 2008. Consumer Focus Scotland was formed through the merger of three organisations – the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland. Consumer Focus Scotland works to secure a fair deal for consumers in both private markets and public services, by promoting fairer markets, greater value for money, and improved customer service. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors’ clients, public transport users, or shoppers in a supermarket.
We have a commitment to work on behalf of vulnerable consumers, particularly in the energy and post sectors, and a duty to work on issues of sustainable development.

Introduction
Consumer Focus Scotland welcomes the opportunity to provide written evidence to the Finance Committee on stage 1 of the Public Services Reform (Scotland) Bill. As a consumer organisation, we have an interest in ensuring that consumers are at the heart of the scrutiny of public services.

One of our predecessor organisations, the Scottish Consumer Council, was actively involved in the independent review of regulation, audit, inspection and complaints handling of public services in Scotland carried out by Professor Crerar. Martyn Evans, Director, represented Consumer Focus Scotland on the subsequent User Focus Action Group and Douglas Sinclair, Chair of Consumer Focus Scotland, chaired the Fit-for-purpose Complaints System Action Group.
In providing evidence we have followed the questions set out in the call for evidence, however we have not answered all questions. Our response focuses on the areas which have implications for consumers of public services.

1. **Is the Bill likely to help simplify and improve the landscape of Scottish public bodies, to deliver more effective, coordinated government that can better achieve its core functions for the benefit of the people of Scotland?**

Overall, Consumer Focus Scotland agrees that the proposals in the draft Public Services Reform (Scotland) Bill will help to simplify the landscape of Scottish public bodies. The duty to secure continuous improvement in user focus will help to focus scrutiny activity on the outcomes for users and in turn lead to service improvements.
We welcome the approach of developing proportionate and risk-based scrutiny of public services. While service providers often refer to the need to reduce the “burden of scrutiny”, reducing the burden of scrutiny should not be seen as an end in itself, rather as an opportunity to focus more clearly on the needs of consumers.

2. Whether, in the light of the current financial situation, this is the appropriate time to be pursuing both the Bill in particular and the wider public services reform programme?

Scrutiny of public services is a mechanism to provide assurance to the public and users that services are of high quality and responsive. It is the view of Consumer Focus Scotland that the proposals in the draft Bill are critical precisely because of the current financial crisis. Firstly, the Crerar Review concluded that the current landscape of scrutiny bodies duplicates effort and can mean that service providers are required to provide a range of information to different bodies diverting them away from the front-line of service delivery. The costs of scrutiny must be proportionate to the value it brings to users and the wider public. We believe that the simplification of the scrutiny landscape and the user focus duty will help to reduce inefficiencies and focus scrutiny on improving the quality of public services.

Secondly, in times of financial crisis, the public requires assurance that public money is being well spent. By simplifying the landscape and improving the accessibility of scrutiny reports, public confidence in the public services can be maintained.

4. Whether the order-making powers proposed in part two of the Bill are appropriate in seeking to deliver a ‘public sector landscape and public sector functions that are proportionate, responsive and efficient’?

Part 2 of the draft Public Services Reform Bill proposes two powers:
(a) A power by order to make provision to improve the exercise of public functions by scheduled bodies; and

(b) A power by order to remove or reduce burdens in the public, private and third sector.

In relation to the first order-making power, this would allow the transferring, modifying, conferring and abolishing of functions of public bodies without the need for primary legislation. While we appreciate that the order making power would be used infrequently, and that some safeguards have been put in place, Consumer Focus Scotland is concerned that this mechanism could impact on the openness and transparency of the decision making process.

Further, in our response to question 6 on Parts 4 and 5 of the draft Bill, we have drawn attention to the need for scrutiny bodies to be independent, and to be perceived as independent. We are concerned that an order-making power could have a detrimental effect on the perception of independence, with the threat of abolition hanging over bodies, unless there was clearer parliamentary oversight.

In relation to the second order making power, this would allow Scottish Ministers to remove or reduce burdens on the public, private or third sectors without the need for primary legislation. This proposal is modeled on the Legislative and Regulators
Reform Act 2006 which applies in England and Wales and in Scotland for reserved matters. We support this in general, however, we would welcome additional safeguards to ensure that the consumer interest is taken into account and balanced against the provider interest when considering using this order making power.

The debate on regulation, be it in the public, private or third sector, can become dominated by a provider perspective that regulation is a ‘burden’ on business. It is important in legislation to recognize that the purpose of regulation is to benefit the end users of goods and services. This lack of balance between the provider and consumer interest is replicated in the draft Public Services Reform Bill which focuses on the removal or reduction of burdens (in terms of financial and administrative costs on providers) rather than the need for regulation to be proportionate to the benefit it provides for consumers.

We consider that there are two key types of regulation. The first is lifeline regulation, which safeguards consumers. The second is market-making regulation, which enables proper competition and choice. Both types of regulation are of benefit to consumers but may result in financial or administrative costs for providers. It is worth noting that proportionate regulation is as important to consumers as it is to providers as the costs of unnecessary or disproportionate regulation ultimately fall on the consumer through increased prices. We would therefore welcome greater recognition of the consumer interest in proportionate regulation within the Public Services Reform Bill.

We would welcome the following changes
- That the precondition contained in section 13(b) is amended to read ‘the effect of the provision on consumers and users is proportionate to the policy objective’.
- That the precondition contained in section 13(d) (‘that the provision does not remove any necessary protection’) be amended to specifically refer to protection for consumers and users.

5. Whether the proposed duty on listed scrutiny authorities to secure continuous improvement in part 6 of the Bill is likely to ensure that users of public services are better involved?

Consumer Focus Scotland strongly supports the inclusion of the duty to secure continuous improvement in user focus. In April 2009, we published a short paper which outlined seven tests that we think scrutiny bodies should be able to meet in terms of User Focus. These are based on the seven features of User Focus identified by the User Focus Action Group and are:

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3 Consumer Focus Scotland (2009) User Focus in the Scrutiny of Public Services: Seven Key Tests www.consumerfocus-scotland.org.uk
1. An organisational commitment to user involvement
2. User involvement in the governance structures
3. User involvement in the design of scrutiny
4. User involvement during scrutiny
5. User involvement as members of scrutiny teams
6. Accessibility of scrutiny reports
7. User involvement in improvement action

As the policy memorandum to the draft Bill notes, securing continuous improvement in user focus will require a culture change within scrutiny bodies. Given this, the duty to seek continuous improvement in user focus is particularly welcome. Otherwise, there may be a temptation amongst scrutiny bodies to carry out a one-off review of their user focus rather than encourage it to be embedded in the culture.

However, we are concerned that the definition of user in the draft Bill will act against the overall aim to refocus scrutiny on service users. The definition includes the ‘other persons with a direct interest in, or directly affected by (i) the provision of the service, or (ii) the scrutiny of the service or the person, body or office-holder providing it’. The explanatory notes make it clear that this definition of user would include those who provide the service under scrutiny. It is our understanding, from our involvement in the Crerar Review, that the principle of public focus (of which user focus is a subset) was included to ensure that service users and the public were the prime consideration of scrutiny bodies and as a counter balance to the strong provider interest in the scrutiny of public services. From a consumer perspective it is wholly unacceptable to blur the definition of a user to mean both the consumer and the service provider. For example, it would allow peer reviewers on inspection teams to be considered as the mechanism for greater user involvement. Good inspection practice – like that operated currently by HM Inspectors of Education and the housing regulator – directly involves service users in the form of parents and tenants.

We are strongly of the view that the draft Public Services Reform Bill should be amended to specifically exclude the providers of the service under scrutiny from the definition of a user.

6. Whether the proposals in parts 4 and 5 of the Bill are consistent with the five guiding principles recommended by the Crerar Review of public focus, independence, proportionality, transparency and accountability?

The proposals in Parts 4 and 5 of the Bill would establish the Social Work and Social Care Inspectorate and Healthcare Improvement Scotland. Our responses to Q1 and Q5 have outlined our view that the proposals in the Bill are consistent with proportionality and public focus. Consumer Focus Scotland takes the view that in order to support and demonstrate independence, scrutiny bodies need:

- governance arrangements which protect the scrutiny body from undue influence from service providers, funders, government, and others with particular interests in the service;
- structural arrangements which support the independence of the scrutiny body;
reporting arrangements which allow them to publish reports and findings in
the public domain without restraint; and
the adoption of a user focus, which puts those who use services at the
centre of their work.

Different approaches have been taken in the Bill to the structural of Social Care
and Social Work Improvement Scotland (SCSWIS) and Healthcare Improvement
Scotland, with the former being set up as a non-departmental public body, and the
latter as a “health body”. This continues the current situation in which NHS Quality
Improvement Scotland is part of the NHS, and is vulnerable to criticism on the
grounds that it is not independent in its work. Consumer Focus Scotland would
prefer these bodies to be treated in the same way, with the same status as non-
departmental public bodies.