

How to meet the consumer duty: carrying out an impact assessment

1. Introduction

- 1.1 This document is a standalone version of the consumer duty impact assessment found in the Consumer Scotland consumer duty guidance document ‘How to meet the consumer duty: guidance for public authorities’¹.
- 1.2 It is made up of four sections:
- This introduction
 - The impact assessment process
 - Annex A: A template to complete the impact assessment in Annex A
 - Annex B: An assessment not required template

Consumer duty

- 1.3 The Consumer Scotland Act 2020 (‘the 2020 Act’) introduced a duty (“the consumer duty”) on ‘relevant public authorities’ in Scotland, when making decisions of a strategic nature through exercise of their functions, to have regard to:
- The impact of those decisions on consumers in Scotland
 - The desirability of reducing harm to consumers in Scotland
- 1.4 The duty is designed to improve outcomes for consumers by putting them at the centre of public sector decision-making. This person-centred approach to decision-making should result in better quality services and outcomes for consumers as users of public services.
- 1.5 In addition to the two requirements above, the 2020 Act added two further statutory requirements relating to publication of steps taken to meet the duty and having regard to this guidance. The four requirements of the Act are:
- When making decisions of a strategic nature, have regard to the impact those decisions have on consumers
 - When making decisions of a strategic nature, have regard to the desirability of reducing harm to consumers

- Publication of information about the steps taken to meet the duty
- Having regard to this guidance

1.6 An impact assessment approach has been developed to help public authorities meet the consumer duty requirements. For more detailed information on meeting the duty, please refer to the core Consumer Scotland guidance document².

2. Impact assessment

- 2.1 Public authorities should adopt a **flexible, proportionate** and **targeted** approach to meeting the duty. A proposed impact assessment approach is included in the guidance document as an advised method to improve outcomes for consumers. This approach is intended to provide a consistent method to meeting the duty, including the requirement on public authorities to report on how they have met it.
- 2.2 There are a number of existing impact assessments that public authorities are subject to in Scotland. By adopting a proportionate approach to meeting the consumer duty, consideration should also be given to how to adopt an integrated approach to meeting the requirements of any other applicable impact assessments.
- 2.3 The most appropriate approach to meeting the duty will be for individual organisations to decide, while also ensuring the legal requirements of the duty are still met. This document however focusses on how to perform the impact assessment approach recommended in the core guidance document.

What if you're already meeting the duty?

- 2.4 You may feel that your organisation is already meeting the requirements of the consumer duty for some strategic decisions, and that you are already giving sufficient regard to the impact those decisions have on consumers and to the desirability of reducing harm to them. In this circumstance, undertaking the full impact assessment process might not be necessary and it may be sufficient to ensure a record is kept of how you have met the duty for this strategic decision.
- 2.5 An impact assessment not required template is included in Annex B to help organisations record how the consumer duty has been met in alternative ways to an impact assessment.
- 2.6 When deciding whether or not to complete the full impact assessment, consideration should be given to whether you have met the aim of the duty by putting consumers at the centre of your decision making and improving outcomes for them.

2.7 Regardless of how you have met the consumer duty, the two remaining requirements of the 2020 Act still apply:

- Publication of information about the steps taken to meet the duty
- Having regard to this guidance

The impact assessment

2.8 The proposed impact assessment approach has five stages:



Stage 1 - Planning

2.9 Public authorities should decide whether the duty applies, and plan how to meet it if it does, at the planning stage. Key tasks at this stage include:

- Decide if this is a strategic decision or not. If not, then no action is required
- Decide if the strategic decision will impact on consumers. If not, then proceed to **stage 5**
- Decide if you have already met the consumer duty for this strategic decision, if you have then proceed to **stage 5**
- If this is a strategic decision, that will have an impact on consumers, then develop a plan for how to complete **stages 2-5**, including required consumer engagement
- Understand the aims and outcomes of the proposal and identify alternative options

- 2.10 The key questions at the planning stage are whether the proposal is a strategic decision and if it will have an impact on consumers as defined by the 2020 Act. If it is not a strategic decision, or it will not have an impact on consumers, then there is no requirement to meet the duty. However, organisations are still encouraged to consider how to achieve the best outcome for consumers when making any decisions, as per the reasons set out in this guidance.
- 2.11 If there is no strategic decision then you can proceed to **stage 5**, publication. Annex B provides a pro forma ‘assessment not required’ template to document the decision that the consumer duty does not apply. Documenting these decisions will help with **stage 5** of the process (publication) and demonstrating how you have taken steps to meet the duty.
- 2.12 If there is a strategic decision then authorities should develop a plan for completing **stages 2-5**, including identifying what consumer engagement is required. Part of this process will involve understanding the aims and outcomes of the proposal and identifying alternative options.
- 2.13 Achieving the best outcome for consumers and reducing harm to them should form an integral part of the whole strategic decision-making process. How to meet the duty should be considered from the planning stage of a proposal, it should not be treated as a tick box exercise at the end of the process.
- 2.14 Officials should refer to the consumer principles when designing aims and outcomes for a proposal to maximise the positive impact on consumers. Taking this approach will help organisations develop policies that better meet consumers’ needs, inspire greater trust and confidence in public authorities and lower levels of consumer dissatisfaction and complaints.

Stage 2 – Evidence gathering

- 2.15 Following the planning stage authorities should undertake evidence gathering. This stage is used to gather data that will help a public body meet the requirements of the duty.
- 2.16 Authorities should make full use of data they hold or that is available to them. Evidence should be gathered that can at a minimum answer the questions below:
- What is the proposal trying to achieve?
 - What are the impacts on consumers?
 - Is it likely that harm will be experienced by consumers as a result of this proposal?

- What alternative proposals are there than can improve outcomes for consumers and/or reduce harm to consumers?
- How do these alternative proposals compare to the original proposal?

2.17 When considering how to improve outcomes or reduce harm to consumers, public authorities should consider how to apply the consumer principles detailed in the guidance document.

2.18 If there is a gap in the required evidence consideration should be given to the appropriate level of consumer engagement to obtain this evidence per above.

Stage 3 - Assessment and improvement of proposal

2.19 At the assessment and improvement of proposal stage officials will use the evidence gathered to answer the questions above to show that the public body has met the duty and had regard to:

- The impact of a strategic decision on consumers in Scotland
- The desirability of reducing harm to consumers in Scotland

2.20 The answers to the questions set out at **stage 2** above should be used to assess the impact of the strategic decision on consumers and consideration given to improving the proposal to achieve a better outcome for consumers.

2.21 Whether there is a need for any additional consumer engagement should also be considered at this stage, especially if changes have been made to original proposals.

Stage 4 - Decision

2.22 The decision stage should be used to consider the findings of the previous stages, agree any changes to the proposal and set out clearly how the public authority has met the consumer duty for this particular strategic decision.

2.23 It may be necessary to have to weigh up competing interests and potential harm to different groups of consumers. Consideration of the impact on consumers in vulnerable circumstances may also carry significant weight. In these circumstances the impact on the majority of consumers may be a persuasive factor in the decision making but the final decision is for individual organisations to make, and to demonstrate why they have done so.

2.24 Meeting the duty should mean that:

- The impact of the strategic decision on consumers and the desirability of reducing harm to consumers have been considered throughout the process
- That an outcomes-based approach has been taken to achieve the best outcomes for consumers

2.25 Documenting how the authority has met the duty will help with completing **stage 5**; Publication.

Stage 5 - Publication

2.26 The 2020 Act requires public authorities to publish information about the steps which they have taken to meet the duty. Documentation from the decision-making stage will help them to meet this requirement.

2.27 It is up to individual authorities to decide on the most appropriate way to meet this requirement. This guidance does provide some examples however on possible approaches to this, including:

- A statement in an annual report
- Publishing the consumer duty impact assessment alongside the relevant proposal

2.28 A pro forma template for an annual report statement is included in **Annex E** of the guidance document³.

2.29 Once the impact assessment process has been completed, organisations are encouraged to review how effective their approach to meeting the duty was. This will help organisations to reflect on what went well and what might be improved in the future. It will also help you to monitor whether you are meeting the duty effectively and will assist you in reporting on this. An evaluation tool to help you do this is included in **Annex C** in this document and **Annex G** of the guidance document.

3. Annex A – Preparing to complete an Impact assessment template

Stage	How to Prepare
<p>1. Planning</p>	<p>You will need to determine if your policy or decision is of a strategic nature. The guidance suggests a strategic decision is one taken at board level or equivalent. The SG equivalent is likely to be legislation, a ministerial or executive team decision. Prior to starting any evidence gathering, you should seek agreement from the party taking the decision on whether it is strategic.</p> <p>If all relevant parties agree this is a strategic decision, then you should develop a plan for how to complete stages 2-5, including required consumer engagement. When drafting your plan, you should apply the proportionality and targeted principles and ensure the amount of evidence gathering you carry out is proportionate to the scale of the decision being taken and is achievable within your available timescale.</p> <p>If your decision is not considered strategic, then proceed to stage 5 which is publication of the no impact assessment required template.</p>
<p>2. Evidence gathering</p>	<p>Here is where you outline the key evidence you have gathered to inform your impact assessment. You should refer to the full guidance but evidence could include, but shouldn't be exclusive to:</p> <ul style="list-style-type: none"> • any relevant data and statistics • key findings from engagement with working groups, representatives of consumer groups or public/third sector delivery partners • wider research and policies already in place

	<p>As per the guidance, your evidence gathering should be targeted at the relevant consumer groups and where there is the opportunity to use evidence collated from other impact assessment through an integrated approach, this should be considered.</p>
<p>3. Assessment and improvement of proposal</p>	<p>Here you should analyse your findings (with the support of analytical colleagues if appropriate) and assess the impact your strategic decision may have on consumers or particular consumer groups. You should especially consider any evidence that highlights where harm could be caused to consumers because of your strategic decision.</p> <p>Once you have completed your analysis, you should consider any improvements that need to be made to your proposal to illustrate your desirability to avoid bringing harm consumers.</p> <p>It is recommended that you continue to apply a targeted, proportionate and outcomes-based approach when considering any revisions/improvements to your proposal and carrying out any further engagement.</p>
<p>4. Decision</p>	<p>Here you should present a summary of your analysis of evidence and clearly set out your final decision. You should outline the nature of the impact of your decision on consumers and illustrate how you have worked with the desirability of reducing harm to them by applying an outcomes-based approach.</p>
<p>5. Publication</p>	<p>The Consumer Scotland 2020 Act requires public authorities to publish information about the steps which they have taken to meet the duty.</p> <p>You should agree with the final decision-maker and relevant senior management on how you will ensure you have met this requirement.</p>

4.1 A proposed template for completing the impact assessment is included below along with examples of completed assessments.

Table 1 – Impact assessment template

Stage	Tasks	Outcome
Planning	Decide if this is a strategic decision or not. If not, then proceed to stage 5	
	Decide if the strategic decision will impact on consumers. If not then proceed to stage 5	
	If this is a strategic decision, that will have an impact on consumers, then develop a plan for how to complete stages 2-5, including required consumer engagement	
	Understand the aims and outcomes of the proposal and identify alternative options	
Evidence gathering	Sufficient evidence gathered to answer: <ul style="list-style-type: none"> • What is the proposal trying to achieve? • What are the impacts on consumers, if any? • Is it likely that harm will be experienced by consumers as a result of this proposal? • What alternative proposals are there than can improve outcomes for consumers and/or reduce harm to consumers? • How do these alternative proposals compare to the original proposal? 	
	Identify and fill any gaps in evidence to answer questions above	

Assessment and improvement of proposal	Consider answers to stage 2 to assess the impact of the strategic decision on consumers	
	Consider if any improvements need to be made to the initial proposal in light of findings of impact on consumers	
	Consider if any further consumer engagement is necessary	
Decision	Consider the findings of previous stages and agree any changes to the proposal	
	Document clearly how you have met the consumer duty: <ul style="list-style-type: none"> • The impact of the strategic decision on consumers and the desirability of reducing harm to consumers have been considered throughout the process • That an outcomes-based approach has been taken to achieve the best outcomes for consumers 	
Publication	The Consumer Scotland 2020 Act requires public authorities to publish information about the steps which they have taken to meet the duty.	

Annex B – Assessment not required

5.1 This is an example template that could be used to document that a duty impact assessment is not required for a decision. The template should be authorised by an appropriately senior member of staff, recognising that meeting the consumer duty and improving outcomes for consumers is a priority for the organisation.

Table 2 – Assessment not required template

Title of the programme/proposal/decision	
Programme/proposal/decision implementation date	
Directorate/Division/Service/Team	
Responsible officer for taking decision	
Who else participated in taking the decision	
Was the decision taken by a partnership?	
Rationale for decision	e.g. consumer duty requirements met through other means and therefore an impact assessment is not required
Declaration: I confirm that the decision not to perform a consumer duty assessment has been authorised by: Name and job title: Date:	

5.2 A downloadable version of this template can be found on the publications page of the Consumer Scotland website⁴.

Annex C – Evaluation tool

6.1 This is an example template that could be used by a public body to review their approach to the consumer duty and evaluate whether a different approach would be more effective in future.

Table 3 – Evaluation tool

	Fully met	Partially met	Not met	Not applicable
Planning A decision was taken at the start of the process as to whether this was a strategic decision or not.				
Planning The aims and outcomes of the proposal understood at the planning stage.				
Gathering evidence Sufficient evidence was gathered before an assessment of the proposal was completed				
Assessment and improvement The evidence gathered was used to assess the impact of the strategic decision on consumers and alternative proposals were considered				

<p>Decision Findings from the assessment and improvement stage were used to come to a final proposal</p>				
<p>Decision The reason for the final proposal was documented, including any consideration of how to meet the consumer duty</p>				
<p>Publication The steps taken by the public body to meet the consumer duty have been or will be published</p>				

6.2 A downloadable version of this template can be found on the publications page of the Consumer Scotland website⁵.

¹ <https://consumer.scot/publications/how-to-meet-the-consumer-duty-guidance-for-public-authorities-html/>

² <https://consumer.scot/publications/how-to-meet-the-consumer-duty-guidance-for-public-authorities-html/>

³ <https://consumer.scot/publications/how-to-meet-the-consumer-duty-guidance-for-public-authorities-html/>

⁴ <https://consumer.scot/publications/consumer-duty-guidance/>

⁵ <https://consumer.scot/publications/consumer-duty-guidance/>