POLICY NOTE

THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010 (PART 2 FURTHER EXTENSION) ORDER 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 134(4) of the Public Services Reform (Scotland) Act 2010. The instrument is subject to affirmative procedure.

Summary Box

This instrument extends the duration of Part 2 order making powers under the Public Services Reform (Scotland) Act 2010 for a further 5 year period from June 2025.

Policy Objectives

Part 2 of the Public Services Reform (Scotland) Act 2010 (sections 14 to 30, and schedules 5 to 7) provides Ministers with order-making powers in two instances. These are to add, remove or change the functions of public bodies to improve their efficiency, effectiveness and economy (section 14); and to reduce or remove burdens for any person resulting from legislation (section 17).

The order-making powers provide an important vehicle for Ministers, with the approval of Parliament, to make provision through the use of order-making powers, in ways that are more streamlined and flexible than primary legislation would require. The safeguards provided in the 2010 Act for any proposed use of these powers, including preconditions on the circumstances in which they can be used and the requirement for consultation of stakeholders and approval by Parliament through super-affirmative procedure, mean that any proposed changes are subject to rigorous examination and scrutiny.

These order-making powers require to be renewed every 5 years in order to continue. The Scottish Government considers it is important to retain the powers for the future, against a challenging financial context, as a lever in ensuring public services remain affordable in the near future, sustainable longer-term and continue to support better outcomes for people across Scotland. The powers can support the work of the Scottish Parliament. For instance, Scottish Ministers took forward an order referred to above, which created the new office of Commissioner for Ethical Standards in Public Life in Scotland, on behalf of Parliament. The section 17 power can be used to reduce burdens on businesses and charities (for example, orders previously made using these powers have amended requirements relating to agricultural tenancies, and streamlined and simplified the planning system).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the

Public Services Reform (Scotland) Act 2010 (Part 2 Further Extension) is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
The Scottish Government undertook a full public consultation from 16 December 2024 to 10 February 2025 seeking views on the proposal to seek a further 5 year extension to Part 2 Order Making Powers contained in the Public Services Reform (Scotland) Act 2010.

As the Order making powers cannot be changed, only extended, the scope of the consultation was very limited to simply asking if consultees were in favour or not of the Scottish Government seeking the Parliament's approval to extend, although we asked respondents to provide their reason(s) for the response they provided.

We received a total of 21 responses, from public bodies (9), members of the public (6), local authorities (4) and two other bodies.

There was overall support for extension: 16 respondents supported the proposals whilst 4 opposed them and 1 was neutral.

Respondents offered several reasons for supporting the proposals. These included that the order-making powers can support more effective and efficient operations; they can be used to reduce burdens; and they allow changes to be made with flexibility and without the need for lengthy and burdensome legislative processes that primary legislation requires.

The existence of suitable safeguards on the use of these powers was an important issue for respondents. Several in favour of the proposals referred to the presence of these safeguards as a reason for their support.

Three of the four respondents who opposed the proposals also raised the issue of safeguards against inappropriate use of these powers. One stated that that public consultation should always be sought whenever SG proposes changes. On this concern, we can point out that a requirement for consultation with representatives of any interests likely to be substantially affected by the proposal is already built into the order-making process (through section 26 of the 2010 Act), as a fundamental part of the safeguards in place.

The other expressions of opposition on this point were (i) that order-making powers are fundamentally an abuse of democracy, and (ii) a fear that the powers could be used by an administration to reduce the authority or resources of regulatory bodies and other organisations which are critical for government to run democratically. We are satisfied that a super-affirmative SSI procedure as in this case offers broadly similar democratic protections to primary legislation (which is the vehicle any proposal would need to use without these order-making powers). In particular, both can only become law with a positive vote of approval from the full Scottish Parliament chamber.

As a result of this consultation, legislation is being laid to extend the duration of Part 2 order making powers under the Public Services Reform (Scotland) Act 2010 for a further 5 year period from June 2025.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report which will be published on the Scottish Government website in due course.

Impact Assessments
A Child Rights and Wellbeing Impact Assessment has been completed on the **Public Services Reform (Scotland) Act 2010 (Part 2 Further Extension)** and is attached. There are no impact issues relating to children.

Financial Effects
The Minister for Public Finance confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Public Service Reform Directorate

February 2025