

Finance and Public Administration Committee  
Tuesday 11 March 2025  
9th Meeting 2025 (Session 6)

## Note by the Clerk on the Public Services Reform (Scotland) Act 2010 (Part 2 Further Extension) Order 2025 [draft]

### Overview

1. At this meeting, the Committee will take evidence from the Minister for Public Finance, Ivan McKee MSP, on the Public Services Reform (Scotland) Act 2010 (Part 2 Extension) Order 2025 [draft], before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Public Services Reform \(Scotland\) Act 2010 \(Part 2 Further Extension\) Order 2025 \[draft\]](#)

**Laid under:** [Public Services Reform \(Scotland\) Act 2010](#)

**Laid on:** 18 February 2025

**Procedure:** Affirmative

**Lead committee to report by:** 29 March 2025

**Commencement:** If approved, the instrument comes into force the day after the day the order is made.

3. Following evidence-taking on the SSI at agenda item 4, the Committee will be invited at agenda item 5 to debate and vote on motion [S6M-16547](#), lodged in the name of the Minister for Public Finance—

That the Finance and Public Administration Committee recommends that the Public Services Reform (Scotland) Act 2010 (Part 2 Further Extension) Order 2025 [draft] be approved.

### Procedure

4. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament. Further detail about the affirmative procedure is included at **Annexe A**.

## Delegated Powers and Law Reform Committee consideration

5. The DPLR Committee considered the instrument on [25 February 2025](#) and, in its [13th report, 2025](#), which was published on the same date, stated that—

“In relation to the above instrument, the Committee draws to the attention of the lead committee that this is a significant instrument which will further extend the operation of regulation-making powers which would otherwise expire in May 2025”.

## Purpose of the instrument

6. 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.<sup>1</sup> The 2010 Act provides Ministers with order making powers in two instances:

- 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).

7. The [policy note](#) accompanying the instrument is included at Annexe B to this paper. It explains that “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 policy note goes on to state that—

“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”.

8. The policy note further highlights the importance of retaining the powers in 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”.

## Consultation

9. Prior to laying the instrument, the Scottish Government undertook a public consultation on the proposal to seek a further 5-year extension to the order making powers from June 2025. The [consultation](#) ran from 16 December 2024 to 10 February 2025.
10. The Scottish Government’s consultation received 21 responses: 9 from public bodies, 6 from members of the public, 4 from local authorities, and 2 from other

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<sup>1</sup> These order making powers require to be renewed every 5 years to continue.

bodies. According to the policy note<sup>2</sup>, 16 respondents supported the proposals, 4 were opposed, and 1 was neutral. It explains that those respondents who supported the proposals did so for several reasons, including that they allow changes to be made with flexibility and without the need for “burdensome legislative processes that primary legislation requires”. Reasons for opposing the proposals included “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”.

11. In response to the respondents who opposed the proposed extension, the Scottish Government explains that the super-affirmative procedure<sup>3</sup> required for any use of the powers “offers broadly similar democratic protections to primary legislation”.

## Impact assessments

12. The policy note states that the Minister for Public Finance confirms that “no Business and Regulatory Impact Assessment is necessary as the instrument as no financial effects on the Scottish Government, local government or on business”. A [Child Rights and Wellbeing Impact Assessment](#) has been completed on the Order which notes that “there are no impact issues relating to children”.

## Report

13. Following the evidence session with the Minister for Public Finance and the debate and vote on the motion to approve the instrument, the Committee will report to the Parliament, setting out its recommendation on the instrument by the deadline of 29 March 2025.

Clerks to the Committee  
March 2025

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<sup>2</sup> The responses received do not appear to be published.

<sup>3</sup> The super-affirmative procedure would require Scottish Ministers to consult the Parliament on its proposals before it can lay a statutory instrument. Once the statutory consultation period has concluded, any statutory instrument giving effect to the proposals would be subject to the affirmative procedure.

## **Procedures for Committee consideration of affirmative instruments**

1. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
2. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject matter of the instrument, for scrutiny on policy grounds.
3. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
4. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  - an evidence session with the Minister and officials, followed by
  - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
5. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

**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.

Scottish Government Public Service Reform Directorate

February 2025