

EXPLANATORY DOCUMENT

THE PUBLIC SERVICES REFORM (POVERTY AND INEQUALITY COMMISSION) (SCOTLAND) ORDER 2018

SSI 2018 No. 316

INTRODUCTION

1. The Scottish Ministers consider that this draft Order, if approved, will improve the exercise of public functions in regard to efficiency, effectiveness and economy. It will do this by allowing a single statutory body to provide the wide range of independent advice on poverty and inequality that, as explained below, Parliament and stakeholders have indicated they wish to have made available to Ministers.
2. Provision contained in the draft Order would be made under section 14(1), 14(3)(a), 14(3)(b), and 14(7) of the Public Services Reform (Scotland) Act 2010 and will come into force from 1 July 2019, which is the date the statutory Commission referred to below is established.
3. The Order does not relate to functions of the Scottish Ministers, or confer, transfer or delegate functions to them. Neither does it confer any functions of legislating.

BACKGROUND

4. The establishment of a national Poverty and Inequality Commission was a key commitment in the Scottish Government's Fairer Scotland Action Plan¹. The Scottish Government's vision was for a Commission that was inclusive and engaged, providing scrutiny, challenge and accountability on poverty and inequality across the full range of Government portfolios.
5. Scottish Ministers, on 3 July 2017, established a non-statutory Poverty and Inequality Commission in order to provide that scrutiny, challenge and accountability. It has Douglas Hamilton as its Independent Chair, with Naomi Eisenstadt and Kaliani Lyle as its Deputy Co-chairs. Their appointments run to 30 June 2019.
6. At stage 2 of the Child Poverty (Scotland) Bill, amendments were lodged by Adam Tomkins MSP to establish a statutory Poverty and Inequality Commission, but the narrow scope of the Bill limited its remit to matters related to child poverty targets.
7. In deciding that a Commission on a statutory footing was needed, the Social Security Committee recognised the need for the Commission to have a wider focus on poverty and inequality. Stakeholders also support that view, for example at the time Oxfam Scotland said:

¹ <http://www.gov.scot/Publications/2016/10/9964>

“As recognised by Committee members, it is essential that alongside scrutiny of the child poverty targets, the new Poverty and Inequality Commission must also have a wider focus on poverty and inequality because these challenges are so deeply linked.

We must avoid a situation in which we have a Poverty and Inequality Commission in statute but which in practice is a body focussed narrowly on child poverty.”

8. This Order will deliver that expanded remit for the statutory Commission.

EFFECT OF PROVISIONS OF DRAFT ORDER

9. The Public Services Reform (Poverty and Inequality Commission) (Scotland) Order 2018 amends the remit and membership of the Poverty and Inequality Commission established within the Child Poverty (Scotland) Act 2017.
10. The Order expands the remit beyond the narrow focus on child poverty, and will improve the exercise of public functions, having regard to efficiency, effectiveness and economy, by allowing a single statutory body to provide the wide range of independent advice on poverty and inequality.
11. The Order, if approved, will come into force on 1 July 2019, allowing a smooth transition from the existing non-statutory Commission and allowing the Commission to continue to operate with a wide remit.
12. The draft Order amends the Child Poverty (Scotland) Act 2017 in the following ways:
 - The amendment to section 8, subsection (2) expands the functions of the statutory Commission. The new functions are in line with those of the current Commission, set out in the position paper published by the Scottish Government on 3 July 2017, and the amendment retains the functions that the Child Poverty (Scotland) Act 2017 will give the statutory Commission.
 - The amendment to the schedule increases the minimum and maximum number of Commission members from those set out in the Act. This is in recognition of the broader remit, and more closely reflects the membership of the current non-statutory Commission. It also amends the experience and knowledge provisions set out in the Act, to ensure that the Commission as a whole is required to have skills and knowledge related to poverty and inequality, rather than just child poverty.

Section 16(2) of the Public Services Reform (Scotland) Act 2010

13. With reference to provision contained in the draft Order, the relevant conditions set out in section 16(2) of the Public Services Reform (Scotland) Act 2010 are considered to have been met.

14. The Scottish Ministers consider that the provisions of the Order are proportionate to the policy objective. The policy objective is that Ministers should receive independent advice on the full range of poverty and inequality issues to inform policy development and delivery. The statutory body to be set up under the Child Poverty (Scotland) Act 2017 is not capable of fulfilling that wide role; its functions are limited to matters related to the child poverty targets. Of course, it makes sense that the statutory body established under that Act would be the same body that gives advice on the wider issues around poverty and inequality. It would not be efficient or effective to have two separate advisory bodies of this nature.
15. The proposal does not remove any necessary protection, in fact it does not remove any function of either the current Commission or the statutory Commission. The effect is to combine their functions, within the expanded remit to be given to the statutory Commission.
16. The Poverty and Inequality Commission established by the Act is mainly tasked with looking at progress related to the child poverty targets set out in that Act. These comprise of four income-based statutory measures, which look at different aspects of income poverty. Together, they give a clear picture of the scale of child poverty in Scotland. In giving advice on how the Scottish Ministers can achieve the targets, it is clear that it would be helpful for the Poverty and Inequality Commission to have the powers to look at wider issues around poverty and inequality, as set out in the Order. The Scottish Ministers therefore consider that the functions which would be modified by the draft Order are broadly consistent with the general objects and purpose of the Poverty and Inequality Commission established in the Child Poverty (Scotland) Act 2017.

CONSULTATION

17. With regards to consultation, the conditions set out in section 26(1) and (2) of the Public Services Reform (Scotland) Act 2010 have been met.
18. On 8 November 2017, Scottish Ministers laid a Draft Order, and explanatory material, subject to a 60 day consultation period, closing on 23 January 2018. A letter outlining this action was sent to the Social Security Committee; the Committee considered the Order on 18 January 2018². Feedback obtained during this consultation was incorporated into the final draft of the Order.
19. Draft copies of the Order and explanatory material were sent by Scottish Ministers to impacted or interested stakeholders including; the existing Poverty and Inequality Commission (established by Ministers on 3 July 2017); Oxfam Scotland; Child

² http://www.parliament.scot/S5_Social_Security/Meeting%20Papers/SSCPublicPapers_20180118.pdf

Poverty Action Group (CPAG); Poverty Alliance; the Equality and Human Rights Commission (EHRC); and all members of the former Ministerial Advisory Group on Child Poverty.

20. Comments were received from the existing Commission, Oxfam Scotland, Poverty Alliance, CPAG Scotland, EHRC and COSLA. Stakeholders warmly welcomed the draft Order. For example, both CPAG and the Poverty Alliance confirmed that they were satisfied with the draft Order and would seek no further changes to it. Oxfam Scotland confirmed that the draft Order fulfils their initial expectations, and welcomed the constructive nature in which they have been able to input into its development, and EHRC were supportive of the Order and did not make any comments.
21. A few minor comments were made, and these were considered prior to laying the final draft of the Order. No changes have been made the proposed amendment of section 8 (other than to update the numbering to reflect that of the Act, rather than the Bill as amended at Stage 2). In relation to the amendment of the schedule, the existing Commission recommended that the Order include direct experience of poverty and inequality as one of the skills criteria which the Commission as a whole is required to fulfil. The Scottish Government revised the Order to make this explicit and as a result has altered the layout and style of the amendment.

IMPACTS

22. An Equality Impact Assessment, Fairer Scotland Duty Impact Assessment and Children's Rights and Wellbeing Impact Assessment have been published alongside this Order.

Scottish Government
June 2018