



# Public Services Reform (Scotland) Act 2010

2010 asp 8

## PART 2

### ORDER-MAKING POWERS

#### *Improving the exercise of public functions*

#### **14 Public functions: efficiency, effectiveness and economy**

- [<sup>F1</sup>(1) The Scottish Ministers may by order make any provision which they consider would improve the exercise of public functions, having regard to—
- (a) efficiency,
  - (b) effectiveness, and
  - (c) economy.
- (2) In subsection (1), “public functions” are functions of the persons, bodies and office-holders listed in schedule 5, subject to any limitations specified in that schedule.
- (3) The provision that may be made under subsection (1) includes provision—
- (a) modifying, conferring, abolishing, transferring, or providing for the delegation of, any function,
  - (b) amending the constitution of a person, body or office-holder listed in schedule 5 other than—
    - (i) the Scottish Ministers,
    - (ii) the Scottish Court Service,
    - (iii) a cross-border public authority,
    - (iv) a person listed by virtue of section 15(5)(e), or
    - (v) a company (within the meaning of the Companies Act 2006 (c. 46)),
  - (c) creating—
    - (i) a person, body or office-holder on which functions are conferred,
    - (ii) a person, body or office-holder to which functions (modified or otherwise) are transferred or may be delegated.

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- (4) For the purposes of subsection (3)(b)(ii), the constitution of the Scottish Court Service is as set out in schedule 3 to the Judiciary and Courts (Scotland) Act 2008 (asp 6).
- (5) The transfer or delegation referred to in subsection (3)(a) must be a transfer or delegation to—
- (a) a person, body or office-holder listed in schedule 5,
  - (b) a person, body or office-holder created in pursuance of subsection (3)(c), or
  - (c) a local authority (meaning a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)).
- (6) An order under this section containing provision creating a person, body or office-holder in pursuance of subsection (3)(c)—
- (a) must include provision adding that person, body or office-holder to schedule 5,
  - (b) may include provision adding that person, body or office-holder to schedule 6,
  - (c) may specify the extent to which any functions are to be public functions for the purposes of subsection (1).
- (7) An order under this section may—
- (a) modify any enactment, instrument or other document,
  - (b) contain such consequential, incidental, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (8) An order under this section may include provision dissolving any person, body or office-holder listed in schedule 5, other than those listed in subsection (3)(b)(i) to (v), but only if the person, body or office-holder has, or will have by virtue of the order, no exercisable functions.
- (9) An order under this section may bind the Crown.
- (10) An order under this section must be made in accordance with this Part.]

**Textual Amendments**

- F1** Ss. 14-30 cease to have effect (2.8.2015) by virtue of [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [s. 134\(2\)\(3\)](#) (with [s. 134\(4\)\(5\)](#)); however, ss. 14-30 continue to have effect until 4.6.2020 by virtue of [The Public Services Reform \(Scotland\) Act 2010 \(Part 2 Extension\) Order 2015 \(S.S.I. 2015/234\)](#), [arts. 1, 2](#); which continuation is further extended until 5.5.2025 by [The Public Services Reform \(Scotland\) Act 2010 \(Part 2 Further Extension\) Order 2020 \(S.S.I. 2020/140\)](#), [arts. 1, 2](#)

**Commencement Information**

- I1** S. 14 in force at 1.8.2010 by [S.S.I. 2010/221](#), [art. 3\(2\)](#), [Sch.](#)

**15 Public functions: further provision**

- [<sup>F1</sup>(1) Schedule 5, which lists persons, bodies and office-holders for the purposes of section 14, has effect.
- (2) The Scottish Ministers may by order modify schedule 5 by—
- (a) adding an entry for any person, body or office-holder falling within subsection (5),
  - (b) removing any entry.

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- (3) An order under subsection (2)(a) containing provision adding an entry to schedule 5 may include provision adding a corresponding entry to schedule 6.
- (4) An order under subsection (2)(b) containing provision removing an entry from schedule 5 must include provision removing any corresponding entry from schedule 6.
- (5) Those persons, bodies and office-holders are—
  - (a) an office-holder in the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions,
  - (c) a cross-border public authority,
  - (d) a publicly-owned company,
  - (e) any other person, not being a public body or the holder of a public office, who either—
    - (i) appears to the Scottish Ministers to exercise functions of a public nature, or
    - (ii) is providing, under a contract made with a person, body or office-holder listed in schedule 5, any service the provision of which is the function of that person, body or office-holder.
- (6) A company is publicly-owned for the purposes of subsection (5)(d) if it is wholly owned—
  - (a) by the Scottish Ministers, or
  - (b) by any other person, body or office-holder listed in schedule 5 except a person, body or office-holder listed—
    - (i) by virtue of subsection (5)(e)(i) in relation only to some of its functions, or
    - (ii) by virtue of subsection (5)(e)(ii).
- (7) For the purposes of subsection (6) a company is wholly owned—
  - (a) by the Scottish Ministers if it has no members except—
    - (i) the Scottish Ministers or companies wholly owned by the Scottish Ministers, or
    - (ii) persons acting on behalf of the Scottish Ministers or of such companies,
  - (b) by any other person, body or office-holder if it has no members except—
    - (i) the person, body or office-holder or companies wholly owned by the person, body or office-holder, or
    - (ii) persons acting on behalf of the person, body or office-holder or of such companies.
- (8) An entry added to schedule 5 by an order under subsection (2)(a) made by virtue of subsection (5)(e) must specify the functions of a public nature or, as the case may be, the service being provided; and only those functions or that service are public functions of the person in question for the purposes of section 14(1).
- (9) In this section—
  - “company” includes any body corporate;
  - “local authority” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

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“Scottish public authority with mixed functions or no reserved functions” is to be construed in accordance with paragraphs 1(4) and 2 of Part 3 of Schedule 5 to the Scotland Act 1998 (c. 46); but does not include a local authority.]

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#### Commencement Information

**I2** S. 15 in force at 1.8.2010 by [S.S.I. 2010/221](#), [art. 3\(2\)](#), [Sch.](#)

## 16 Preconditions

[<sup>F1</sup>(1) The Scottish Ministers may not make provision under section 14, other than provision which merely restates an enactment, unless they consider that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.

(2) Those conditions are that—

- (a) the effect of the provision is proportionate to the policy objective,
- (b) the provision does not remove any necessary protection,
- (c) any public function which is to be modified will, as modified, be broadly consistent with the general objects or purpose of the person, body or office-holder concerned,
- (d) any function which is conferred on a person, body or office-holder listed in schedule 5 (other than a function being transferred without substantial modification from another such person, body or office-holder) is broadly consistent with the general objects or purpose of the person, body or office-holder concerned,
- (e) any function which is conferred on a person, body or office-holder created by virtue of section 14 is broadly consistent with—
  - (i) the general objects or purpose of a person, body or office-holder listed in schedule 5 which is abolished, or whose functions are modified, by virtue of section 14 or otherwise, or
  - (ii) public functions abolished or modified by virtue of that section or otherwise.

(3) Examples of protections for the purposes of subsection (2)(b) are (without prejudice to the generality of that provision) protections in relation to—

- (a) the independence of judicial decision-making, or decision-making of a judicial nature, by a person occupying a judicial office,
- (b) civil liberties,
- (c) health and safety of persons,
- (d) the environment,
- (e) cultural heritage (including access, through display, exhibition or otherwise, to cultural heritage).

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- (4) For the purposes of subsection (2)(b), the continued independence of the judiciary as mentioned in section 1 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) is a necessary protection.
- (5) For the purposes of subsection (2)(b), the holding, care or preservation of property which is cultural heritage by persons separate from the Scottish Ministers and any statutory restrictions on the disposal of such property are necessary protections where the property is vested in such persons as trustees for the public under statute.
- (6) For the purposes of subsection (2)(b), the provision in paragraph 7(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) as to who the convener shall be in relation to certain proceedings before the Mental Health Tribunal for Scotland is a necessary protection.
- (7) For the purposes of subsection (2)(b), a provision is not to be treated as removing a necessary protection if provision is made that delivers the same or similar protection in an alternative manner.
- (8) For the purposes of the application of subsection (2)(c), (d) and (e) to functions exercised, or to be exercised, by the Scottish Ministers, references to their general objects or purpose are to the broad remit of the part of the Scottish Administration through which the functions are, or are to be, exercised.
- (9) For the purposes of subsection (2)(d), a modification of a function being transferred is not to be treated as substantial if it is necessary to enable the effective exercise of the function by the person, body or office-holder to which it is transferred.
- (10) The Scottish Ministers may not make provision under section 14 which merely restates an enactment unless they consider that the provision made would make the law more accessible or more easily understood.
- (11) In subsection (3)(a) “judicial office” means—
  - (a) the office of judge of any court,
  - (b) the office of member of any tribunal,
  - (c) any other office, or appointment, consisting of functions of a judicial nature.]

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#### Commencement Information

- I3** S. 16 in force at 1.8.2010 by [S.S.I. 2010/221](#), [art. 3\(2\)](#), [Sch.](#)

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