



Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 2

ORDER-MAKING POWERS

Procedure

25 Procedure

- (1) An order under this Part must be made by statutory instrument.
- (2) The Scottish Ministers may not make an order under section 14 or 17(1) unless—
 - (a) they have consulted in accordance with section 26,
 - (b) following that consultation, they have laid before the Scottish Parliament—
 - (i) a draft order, and
 - (ii) an explanatory document prepared in accordance with section 27, and
 - (c) the draft order has been approved by resolution of the Parliament.
- (3) Except as mentioned in subsection (7), the Scottish Ministers may not make an order under section 15 unless—
 - (a) they have consulted in accordance with subsection (4),
 - (b) following that consultation, they have laid before the Parliament—
 - (i) a draft order, and
 - (ii) an explanatory document prepared in accordance with subsection (5), and
 - (c) the draft order has been approved by resolution of the Parliament.
- (4) The Scottish Ministers must consult any person, body or office-holder in respect of which they propose to add an entry to schedule 5.
- (5) The explanatory document must give details of—
 - (a) any consultation undertaken under subsection (4),
 - (b) any representations received as a result of the consultation,

- (c) the changes (if any) made to the proposals mentioned in subsection (4) as a result of those representations.
- (6) Subsections (2) to (4) of section 27 apply to consultation under subsection (4) of this section as those subsections of section 27 apply to consultation under section 26; and references to subsection (1)(f)(ii) in section 27(2) and (3) are to be read as references to subsection (5)(b) of this section.
- (7) Where an order under section 15 contains only a provision mentioned in subsection (2) (b) of that section and, if applicable, a provision mentioned in subsection (4) of that section, the order is subject to annulment in pursuance of a resolution of the Parliament.

26 Consultation

- (1) If the Scottish Ministers propose to make an order under section 14 or 17(1) they must—
 - (a) consult such organisations as appear to them to be representative of interests substantially affected by the proposals,
 - (b) where the proposals relate to the functions of one or more persons, bodies or office-holders, consult those persons, bodies or office-holders, or persons appearing to them to be representative of those persons, bodies or office-holders,
 - (c) in such cases as they consider appropriate, consult the Scottish Law Commission, and
 - (d) consult such other persons as they consider appropriate.
- (2) For the purposes of any consultation required by subsection (1), the Scottish Ministers must—
 - (a) lay before the Parliament—
 - (i) a copy of the proposed draft order, and
 - (ii) a copy of the proposed explanatory document referred to in section 25(2)(b)(ii) (excepting the details required by section 27(1)(f)),
 - (b) send a copy of the proposed draft order and proposed explanatory document to any person to be consulted under subsection (1), and
 - (c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament under paragraph (a).
- (3) In calculating any period of 60 days for the purposes of subsection (2)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (4) If, as a result of any consultation required by subsection (1), it appears to the Scottish Ministers that it is appropriate to change the whole or any part of their proposals, they must undertake such further consultation with respect to the changes as they consider appropriate.
- (5) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this section, those requirements are to that extent to be taken to have been satisfied.

27 Explanatory document laid before the Scottish Parliament

- (1) The explanatory document referred to in section 25(2)(b)(ii) must—
 - (a) explain under which power (or powers) in this Part the provision contained in the draft order is made,
 - (b) introduce and give reasons for the provision,
 - (c) in the case of an order under section 14—
 - (i) explain why the Scottish Ministers consider that the conditions in section 16(2) (where relevant) are satisfied or the condition in section 16(10) is satisfied,
 - (ii) explain how the provision made by the order would improve the exercise of public functions, and
 - (iii) if the order relates to the functions of the Scottish Ministers, or confers functions on or transfers or delegates functions to, the Scottish Ministers, describe the functions and identify the part of the Scottish Administration through which the functions are, or are to be, exercised,
 - (d) in the case of an order under section 17(1)—
 - (i) explain why the Scottish Ministers consider that the conditions in section 18(2) (where relevant) are satisfied or the condition in section 18(8) is satisfied, and
 - (ii) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens (within the meaning of that section),
 - (e) identify and give reasons for—
 - (i) any functions of legislating conferred by the order, and
 - (ii) the procedural requirements attaching to the exercise of those functions, and
 - (f) give details of—
 - (i) any consultation undertaken under section 26,
 - (ii) any representations received as a result of the consultation,
 - (iii) the changes (if any) made to the proposed draft order as a result of those representations.
- (2) Where a person making representations in response to consultation under section 26 has requested the Scottish Ministers not to disclose them, the Scottish Ministers must not disclose them under subsection (1)(f)(ii) if or to the extent that to do so would (disregarding any connection with proceedings in the Scottish Parliament) constitute a breach of confidence actionable by any person.
- (3) If information in representations made by a person in response to consultation under section 26 relates to another person, the Scottish Ministers need not disclose the information under subsection (1)(f)(ii) if or to the extent that—
 - (a) it appears to the Scottish Ministers that the disclosure of that information could adversely affect the interests of that other person, and
 - (b) the Scottish Ministers have been unable to obtain the consent of that other person to the disclosure.
- (4) Subsections (2) and (3) do not affect any disclosure that is requested by, and made to, a committee of the Parliament charged with reporting on the draft order.

28 Combination with powers under European Communities Act 1972

- (1) The power to make an order under section 14 or 17(1) may be exercised together with, and by the same instrument as, the power to make an order under section 2(2) of the European Communities Act 1972 (c. 68).
- (2) Where the powers referred to in subsection (1) are so exercised—
 - (a) sections 25 to 27 apply to the order under section 2(2) of the European Communities Act 1972 as they apply to the order under section 14 or 17(1) of this Act, and
 - (b) paragraph 2(2) of Schedule 2 to the European Communities Act 1972 does not apply.