



Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 2

ORDER-MAKING POWERS

Removing and reducing burdens

17 Power to remove or reduce burdens

- (1) The Scottish Ministers may by order make any provision which they consider would remove or reduce any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.
- (2) In this section “burden” means any of the following—
 - (a) a financial cost,
 - (b) an administrative inconvenience,
 - (c) an obstacle to best regulatory practice,
 - (d) an obstacle to efficiency, productivity or profitability, or
 - (e) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- (3) For the purposes of subsection (1), a financial cost or administrative inconvenience may result from the form of any legislation (for example, where the legislation is hard to understand).
- (4) For the purposes of subsection (2)(c), “best regulatory practice” means practice under which (in particular) regulatory activities should be—
 - (a) carried out in a way that is transparent, accountable, proportionate and consistent,
 - (b) targeted only at such cases as require action.
- (5) In this section “legislation” means any of the following or a provision of any of the following—

Status: Point in time view as at 01/08/2010.

Changes to legislation: There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, Cross Heading: Removing and reducing burdens. (See end of Document for details)

- (a) a public general or local Act of Parliament (whenever passed) or an Act of the Scottish Parliament (whenever passed), or
 - (b) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made at any time under an Act referred to in paragraph (a).
- (6) The provision that may be made under subsection (1) includes provision—
- (a) abolishing, conferring or transferring, or providing for the delegation of, functions of any description,
 - (b) creating a body or office.
- (7) An order under this section may not amend the constitution of the Scottish Court Service.
- (8) For the purposes of subsection (7), the constitution of the Scottish Court Service is as set out in schedule 3 to the Judiciary and Courts (Scotland) Act 2008.
- (9) An order under this section may—
- (a) modify any enactment,
 - (b) contain such consequential, incidental, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (10) An order under this section may include provision dissolving any body or office, other than those listed in section 14(3)(b)(i) to (v), but only if the body or office has, or will have by virtue of the order, no exercisable functions.
- (11) An order under this section may bind the Crown.
- (12) An order under this section must be made in accordance with this Part.

Commencement Information

II S. 17 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

18 Preconditions

- (1) The Scottish Ministers may not make provision under section 17(1), 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 policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means,
 - (b) the effect of the provision is proportionate to the policy objective,
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it,
 - (d) the provision does not remove any necessary protection,
 - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.
- (3) Examples of protections for the purposes of subsection (2)(d) are (without prejudice to the generality of that provision) protections in relation to—

Status: Point in time view as at 01/08/2010.

Changes to legislation: There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, Cross Heading: Removing and reducing burdens. (See end of Document for details)

- (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).
- (4) For the purposes of subsection (2)(d), the continued independence of the judiciary as mentioned in section 1 of the Judiciary and Courts (Scotland) Act 2008 is a necessary protection.
- (5) For the purposes of subsection (2)(d), 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)(d), 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)(d) a provision is not to be treated as removing a necessary protection if provision is also made that delivers the same or similar protection in an alternative manner.
- (8) The Scottish Ministers may not make provision under section 17(1) which merely restates an enactment unless they consider that the provision made would make the law more accessible or more easily understood.
- (9) 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.

Commencement Information

I2 [S. 18](#) in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

Status:

Point in time view as at 01/08/2010.

Changes to legislation:

There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, Cross Heading: Removing and reducing burdens.