



# Public Services Reform (Scotland) Act 2010

2010 asp 8

## PART 2

### ORDER-MAKING POWERS

#### *Removing and reducing burdens*

#### **18 Preconditions**

- [<sup>F1</sup>(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—
- (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).

*Changes to legislation: Public Services Reform (Scotland) Act 2010, Section 18 is up to date with all changes known to be in force on or before 10 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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.]

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

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 5 Ch. 3A amendment to earlier affecting provision 2019 asp 6, s. 12(2) by [S.S.I. 2023/127 reg. 3\(4\)](#)
- Pt. 5 Ch. 3A inserted by [2019 asp 6 s. 12\(2\)](#)