

Business and Regulatory Impact Assessment

January 2020



Scottish Government
Riaghaltas na h-Alba
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Final Business and Regulatory Impact Assessment

Public Services Reform (Registers of Scotland) Order 2020

Purpose and intended effect

Background

Registers of Scotland (RoS)'s function is to maintain the public registers for which the Keeper of RoS is statutorily responsible and make the information they contain publicly available. Since 1 April 1996 RoS has operated as a trading fund with the financial framework set out in the Public Finance and Accountability (Scotland) Act 2000 (PFA Act). Until now it has made no call on the Scottish Government Consolidated Fund and was required to cover all expenditure from income generated. Its classification status meant that RoS were able to accumulate and carry forward reserves across financial years.

In addition to the above section 9 of the PFA Act conferred the financial power on the Keeper of the Registers of Scotland to retain excess income in reserves and apply them to meet relevant expenditure across a number of financial years.

The Office of National Statistics (ONS) made a classification decision on 20th March 2019 that changed the classification of RoS to a central government body.

As a result of the reclassification to central government RoS' full income and expenditure will now fall to be charged to the Scottish Government's budget and RoS will be required to comply with HM Treasury's Consolidated Budgeting Guidance (CBG). While compliance with the CBG will not impact operationally on RoS, there are financial and administrative impacts of the reclassification, in particular:

- RoS will no longer be able to carry reserves between financial years
- RoS will no longer be able to access or apply its accumulated reserves.
- The body will be required to set its budget as part of the Scottish Government annual budgeting process
- RoS will fall within the Scottish Government's in year budget monitoring and management procedures

These changes mean that the powers currently defined in section 9 are inconsistent with the fiscal framework that RoS will be required to operate in as a result of the reclassification, therefore section 9 of the PFA Act requires revision to reflect the new regime.

Objective

As described above the legal powers currently conferred on the Keeper by section 9 of the PFA Act are inconsistent with the requirements of the regulatory framework that now applies. To allow RoS to operate within the constraints of the CBG, Scottish Ministers are bringing forward an Order under section 17 of the Public Services Reform (Scotland) Act 2010 to repeal section 9 of the PFA Act.

Consultation

The proposed Order is following a Super Affirmative process through the Scottish Parliament. This means there is a mandatory 60 day consultation period before following the usual parliamentary process for secondary legislation. Registers of Scotland provided the Scottish Government with a list of stakeholders who may have an interest and/or be affected if the proposed Order comes in to effect. The following organisations have been consulted:

- Registers of Scotland
- Scottish Law Society
- Lord President
- Scottish Courts and Tribunal Service
- Accountant in Bankruptcy
- Crofting Commission
- Scottish Law Commission
- Revenue Scotland
- Ordnance Survey

Given that the scope of the change will not impact on the operations of RoS, or the services that they offer, a public consultation has not been deemed necessary.

Options

In this instance 'do nothing' is not a viable option as the reclassification of RoS is a final decision made by the ONS which is binding on both RoS and the Scottish Government. As a result of this it is necessary to resolve the regulatory inconsistencies between the existing powers conferred in section 9 of the PFA act and the requirements of the CBG. It has been deemed that the most effective way to rectify these inconsistencies is by taking forward secondary legislation to remove section 9 of the PFA Act, which legislates the current financial arrangements for the Keeper of RoS, and to include RoS in future Scottish Budget Bills.

Sectors and groups affected

The operations of RoS and the services provided to their stakeholders will remain unchanged by the provisions of the order, therefore RoS will be the main body affected. The main change being that to date RoS have been able to plan programmes of work spanning several years without reference to Scottish Government budget, as they have been able to use money held in their reserve to fund programmes that they may not have been able to cover through in year revenue alone. Whereas under the new financial regime this will be a matter for the Scottish Government budget process.

The consultation has determined whether other sectors and groups feel they will be affected. Responses indicate they will not be effected.

Benefits

The legislative change is required to enable RoS to comply within the required regulatory framework consistent with their new status. They will continue to produce financial reports and accounts to ensure transparency and will continue the proper handling and reporting of public funds as per the Scottish Public Finance Manual (SPFM).

Costs

There are no financial costs, beyond initial administration, to taking forward this order.

Scottish Firms Impact Test

The order impacts entirely on the administrative and financial framework of RoS and as such there will be no impact on the services RoS provides to, and its relationships with, key stakeholders, investment in these services will now form part of the Scottish Budget process.

Competition Assessment

The order enables RoS to comply with the new financial and administrative regime arising as a result of reclassification and does not impact on the services that RoS currently supply, as such there is no change to the competitive environment that RoS currently operate within.

Consumer Assessment

As above, the order enables RoS to comply with the new financial and administrative regime arising as a result of reclassification and does not impact on the services that RoS currently supply, investment in these services will now form part of the Scottish Budget process, as such there is no change to the parties that consume the services provided by RoS.

Test run of business forms

As the proposed Order will not affect the functions of RoS, or the day to day operations, there will be no new business forms.

Digital Impact Test

As the proposed Order will not affect the functions of RoS, or the day to day operations, there will be no digital impact to business, investment in these services will now form part of the Scottish Budget process.

Legal Aid Impact Test

As the proposed Order will not affect the functions of RoS, or the day to day operations, there will be no increased use of legal processes and will not create new rights or responsibilities, and will therefore not impact on the legal aid fund

Enforcement, sanctions and monitoring

As a result of the reclassification RoS will be required to comply with relevant guidance for central government bodies e.g. CBG, and continue to comply with SPFM and FReM.

Implementation and delivery plan

In order to comply with the reclassification it is intended that RoS will operate within the new financial and administrative framework from 1st April 2020.

Post-implementation review

N/A (as the measures in the Order are designed to make RoS compliant with the financial framework that central government bodies are required to operate within.)

Summary and recommendation

It is recommended that the measures in the Order are adopted as they are necessary to ensure that RoS can comply with the financial and administrative requirements of a central government body.

Declaration and publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- **Sign-off for Final BRIAs:** I have read the Business and Regulatory Impact Assessment and I am satisfied that;
 - a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
 - b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Kate Forbes

Date: 29 January 2020

**Miss Kate Forbes
Minister for Public Finance and Digital Economy**

Scottish Government Contact point: Scott MacKay and Derek Glover