

# **Public Services Reform (Scotland) Act 2010: Extension of Part 2 Order Making Powers Consultation**

**December 2019**

# **Public Services Reform (Scotland) Act 2010: Extension of Part 2 Order Making Powers: consultation**

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## Introduction

1. This consultation seeks views on extending the duration of Part 2 Order making powers under the Public Services Reform (Scotland) Act 2010 (PSR Act), for a further 5 year period from June 2020.
2. The Scottish Government is seeking to extend the Public Services Reform (Scotland) Act 2010, (PSR Act): Part 2 order making powers for a further 5 years by exercising the powers conferred by section 134(4) of the PSR Act. This section allows Scottish Ministers by order to extend or (on one or more occasion) further extend the 5 year period.
3. Part 2 (sections 14 through to 30 and schedules 5 to 7) of the PSR Act provides Scottish Ministers with order making powers to improve the exercise of public functions in relation to efficiency, effectiveness and economy, and to reduce or remove burdens of public bodies listed in the PSR Act.
4. In order for the Parliament to approve a further 5 year extension to Part 2 of the PSR Act, the Scottish Government will require to provide evidence that based on their past and possible future use that there is a clear need for the duration of these powers to be extended.
5. Part 2 of the PSR Act came into effect on 1 August 2010 and due to the addition of a “sunset” clause during the passage of the original Bill, these order making powers cease to have effect after 5 years. The current arrangement will expire in June 2020. The Scottish Government now looks to extend the duration of the order making powers for a further 5 years by seeking the Parliament’s approval to do so in June 2020.
6. The Scottish Government continues to believe that Part 2 powers provide an essential mechanism for making small-scale changes to public functions. We consider that it is vital to retain the order-making powers for another 5 years as these provide Government and Parliament with the flexibility to make changes quickly, as and when opportunities arise, without taking forward primary legislation.
7. Attached to Part 2 powers there is also an enhanced form of super-affirmative procedures that require to be followed, so that any proposals to utilise these powers will be subject to full public consultation, Parliamentary scrutiny and if necessary amendment before a draft order can be laid before Parliament for consideration. This additional scrutiny mechanism provides a safeguard that the Part 2 order making powers will not be misused.
8. This consultation seeks your views on the Scottish Governments proposal to seek the Parliament’s approval to a further 5 year extension to Part 2 Order in the PSR Act.

## **Public Services Reform (Scotland) Act 2010: Part Two Order Making Powers**

**9.** Part 2 of the PSR Act provides Ministers with order-making powers to improve the exercise of public functions in relation to efficiency, effectiveness and economy, and to reduce or remove burdens of public bodies listed in the Act.

**10.** It is not possible to change the provisions of Part 2 in the PSR Act, the Act only allows for the duration of Part 2 powers to be extended for a further 5 years.

### **Why extend the Part 2 Order Making Powers**

**11.** The order-making powers provide an important vehicle for making adjustments without taking forward primary legislation. The safeguards provided in the PSR Act, including the preconditions that must be met and the requirement for consultation of stakeholders and approval by Parliament, mean that any proposed changes are subject to rigorous examination and scrutiny.

**12.** The powers have, to date, been used to make important, but relatively straightforward, changes to the public bodies landscape (e.g. establishing the Poverty and Inequality Commission as a statutory Advisory Non Departmental Public Body). Where significant changes to the public bodies landscape have been made (e.g. merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland), these have been delivered through primary legislation. This demonstrates that the powers have been used appropriately.

**13.** It is important to retain the powers for the future given the need to have the flexibility to adjust public bodies in light of wider developments and requirements. The challenging financial context further reinforces the need to have these powers in place that will enable Government to make changes to improve the deployment of resources and deliver efficiencies where appropriate.

### **How have the Order Making Powers been used since their introduction?**

**14.** Since the introduction of the PSR Act in 2010 a relatively small number of orders have been taken forward to make important changes. We consider that this evidence clearly demonstrates and provides reassurance that the powers have been used appropriately by Scottish Government. In each case, as the Act determines, the orders were subject to full public consultation followed by Parliamentary scrutiny and where necessary the orders were amended accordingly.

**15.** Ten orders have to date been taken forward on the basis of using Part 2 powers; four using section 14 (efficiency, effectiveness and economy) and six using section 17 (removing or reducing burdens).

In summary these orders have

- Declassified the General Teaching Council for Scotland as a public body and turned it into an independent profession-led organisation;
- Transferred the functions of the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland to a new Commissioner for Ethical Standards in Public Life in Scotland; (this was a proposal by the Parliament)
- Created the roles of prison monitoring co-ordinator and independent prison monitor, and transferred the functions of prison visiting committees to those roles;
- Provided the basis for measures to provide a greater level of confidence in the working relationship between landlords and tenant farmers
- Enabled Ministers to recover the costs of Education Scotland carrying out inspection of independent Further Education colleges and English Language schools
- Help to streamline and simplify the planning system in two specific areas
- Allowed NHS National Services Scotland to provide shared services across the public sector with a view to improving efficiency and productivity
- Established the Poverty and Inequality Commission as a statutory public body
- Amended the Insolvency Act 1986 and the Small Business Enterprise and Employment Act 2015

**16.** It should also be noted that where significant changes to the public bodies' landscape have been proposed, these have (quite appropriately) been delivered through primary legislation. An example of this being the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland to form Historic Environment Scotland.

### **Responding to this consultation**

**17.** The consultation questions can be found on page 9. We are inviting responses to this consultation by 24 February 2020.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space <https://consult.scotland.gov.uk/>. Access and respond to this consultation online at <https://consult.gov.scot/public-bodies-unit/public-services-reform-scotland-act-2010-extension/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 24 February 2020.

**18.** If you are unable to respond using our consultation hub, please complete the Respondent Information Form on page 7 to

Public Bodies Unit,  
Scottish Government,  
Area 3F North,  
Victoria Quay,  
Edinburgh EH6 6QQ

### **Handling your response**

**19.** If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

**20.** All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**21.** If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

**22.** To find out how we handle your personal data, please see our privacy policy <https://beta.gov.scot/privacy/>

### **Next steps in the process**

**23.** Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, or offensive material, we will make responses available to the public at <http://consult.gov.scot> . If you use the consultation hub to respond, you will receive a copy of your response via email.

**24.** Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### **Comments and complaints**

**25.** If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [PublicBodiesUnit@gov.scot](mailto:PublicBodiesUnit@gov.scot).

## **Scottish Government consultation process**

**26.** Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

**27.** You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

**28.** Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise, the responses received may:

- Indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

**29.** While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



## Public Services Reform (Scotland) Act 2010: Extension of Part 2 Order Making Powers

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

## Consultation questions

### Question 1

**Do you agree that the Scottish Ministers should seek the Parliament's approval to extend the Public Service Reform (Scotland) Act, Part 2 order making powers for a further 5 years from June 2020?**

**Yes**

**No**

**Unsure**

**If possible please provide your reason(s) for response**



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