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Convener
Social Security Committee

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8th November 2017

Dear Convener,

I set out in a letter to you on 27th October my proposals for ensuring that a Poverty and Inequality Commission with a wide remit is established in statute.

I am pleased to be able to let Committee know that I have today laid a draft Public Services Reform (Poverty and Inequality Commission) (Scotland) Order 2018 for consultation.

The Order is a practical, pragmatic way of delivering a statutory Poverty and Inequality Commission with a wide-ranging remit. It will improve the exercise of public functions, having regard to efficiency, effectiveness and economy, by allowing a single statutory body to provide the wide range of independent advice on poverty and inequality that Parliament and stakeholders clearly support. As you know, that remit cannot be provided for by amendment at Stage 3 of the Child Poverty (Scotland) Bill because the subject matter of that Bill is limited to child poverty.

The draft Order will be subject to a 60-day consultation period, closing on 23 January 2018. I attach for Committee members' attention a copy of the draft Order and draft explanatory document. I welcome representations from members during the consultation period and would be happy to discuss in more detail.

Yours Ays

ANGELA CONSTANCE



Proposed draft Order laid before the Scottish Parliament under section 26(2)(a)(i) of the Public Services Reform (Scotland) Act 2010, for the purposes of consultation required by section 26(1) of that Act.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

REGULATORY REFORM

EQUALITY

**The Public Services Reform (Poverty and Inequality
Commission) (Scotland) Order 2018**

Made - - - - - *2018*

Coming into force - - - - - *1st July 2019*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14(1), (3)(a) and (b), and (7) of the Public Services Reform (Scotland) Act 2010^(a) (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers consider that the relevant conditions in section 16(2) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with section 26 of the Act.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, the draft of this Order has been approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Public Services Reform (Poverty and Inequality Commission) (Scotland) Order 2018 and comes into force on 1st July 2019.

Amendment of the Child Poverty (Scotland) Act 2017

2.—(1) The Child Poverty (Scotland) Act 2017 is amended as follows.

^(a) 2010 asp 8. The effect of sections 14 to 30 and schedules 5 to 7 of the Act has been extended by virtue of section 134(4) and S.S.I. 2015/234. Section 25 was modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

- (2) In section [6A](a) (Poverty and Inequality Commission), for subsection [(1A)] substitute—
- “[1A] In addition to the functions conferred on it by this Act, the functions of the Commission are—
- (a) to advise the Scottish Ministers on any matter relating to poverty or inequality in Scotland, including the impact of their policies and use of resources in reducing such poverty and inequality,
 - (b) to monitor progress in reducing poverty and inequality in Scotland,
 - (c) to promote the reduction of poverty and inequality in Scotland.
- [1B] The Commission may do such things as it considers appropriate for the performance of its functions, including in particular—
- (a) gathering evidence,
 - (b) carrying out research,
 - (c) preparing and publishing such reports as it considers appropriate.
- [1C] The Commission must publish any advice it provides to the Scottish Ministers.”.
- (3) In the schedule, in paragraph 1 (membership)—
- (a) in sub-paragraph (1)(b) (number of members additional to chairing member), for “2 but no more than 4” substitute “4 but no more than 8”;
 - (b) in sub-paragraph (4) (experience and knowledge of proposed members)—
 - (i) for “or” substitute “and”;
 - (ii) for “child poverty”, in both places where it occurs, substitute “poverty and inequality”;
 - (iii) for paragraph (c), substitute—

“(c) working with persons who have experience of poverty or inequality (or both).”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(a) References are to the Bill for the Act, as amended at Stage 2.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Child Poverty (Scotland) Act 2017 (“the 2017 Act”) to allow the Poverty and Inequality Commission established by section [6A] and the schedule of that Act to consider a wider range of poverty and inequality issues than those that are contained in the 2017 Act.

In summer 2017 the Scottish Ministers tasked a body of persons with providing advice on reduction of poverty and inequality in Scotland. Subsequently the Scottish Parliament enacted the Child Poverty (Scotland) Bill to establish a Poverty and Inequality Commission (“the Commission”), with functions relating to child poverty targets described in that Bill. It would promote efficiency, effectiveness and economy in the exercise of public functions for the two functions to be combined and delivered by a single body. Article 2(2) of this Order expands the functions of the Commission accordingly.

Article 2(3) expands the membership of the Commission and broadens the experience and knowledge that is to be considered when the Scottish Ministers propose persons to the Scottish Parliament for approval for appointment to the Commission.

EXPLANATORY DOCUMENT

THE PUBLIC SERVICES REFORM (POVERTY AND INEQUALITY COMMISSION) (SCOTLAND) ORDER 2018

INTRODUCTION

1. The Scottish Ministers consider that this draft Order, if enacted, will improve the exercise of public functions in regard to efficiency, effectiveness and economy. It will do this by allowing a single statutory body to provide the wide range of independent advice on poverty and inequality that, as explained below, Parliament and stakeholders have indicated they wish to have made available to Ministers.
2. Provision contained in the draft Order would be made under section 14(1), 14(3)(a), 14(3)(b), and 14(7) of the Public Services Reform (Scotland) Act 2010.
3. The Order does not relate to functions of the Scottish Ministers, or confer, transfer or delegate functions to them. Neither does it confer any functions of legislating.
4. Please note that the numbering in the draft Order is consistent with the Child Poverty (Scotland) Bill as amended at Stage 2. The numbering will be amended in any subsequent drafts of the Order to reflect the Bill as passed.

BACKGROUND

5. The establishment of a national Poverty and Inequality Commission was a key commitment in the Scottish Government's Fairer Scotland Action Plan¹. The Scottish Government's vision was for a Commission that was inclusive and engaged, providing scrutiny, challenge and accountability on poverty and inequality across the full range of Government portfolios.
6. That Commission was established on 3 July 2017, with the announcement of Douglas Hamilton as the Independent Chair, and Naomi Eisenstadt and Kaliani Lyle as Deputy Co-chairs. The Scottish Government published a position paper setting out the proposed remit of the Commission². Broadly, the Commission has three key roles:
 - A role in providing independent advice to Scottish Ministers and scrutinising how governmental budgets, policy and practice can have the strongest impacts on poverty and inequality. This is to include a strong initial focus on child poverty, providing advice during the development of the first delivery plan to be prepared under the Child Poverty (Scotland) Act 2017 (once enacted).

¹ <http://www.gov.scot/Publications/2016/10/9964>

² <http://www.gov.scot/Publications/2017/07/1335>

- A scrutiny role in monitoring progress towards tackling poverty and inequality and openly holding Scottish Ministers to account on their progress.
 - An advocacy role; for example, it will be able to work with business and wider civic society to promote the importance of particular issues where resources allow.
7. The voices of those with experience of poverty will be central to the Commission and it will use these to test its assumptions and guide its focus.
 8. At stage 2 of the Child Poverty (Scotland) Bill, amendments were lodged by Adam Tomkins MSP to establish a statutory Poverty and Inequality Commission. The Scottish Government's position was that, because the narrow scope of the Child Poverty (Scotland) Bill would effectively limit the remit of a Commission to matters related to child poverty targets, it would be preferable not to tie the Commission to the Bill. The Cabinet Secretary for Communities, Social Security and Equalities wrote to the Convener of the Social Security Committee, outlining the non-statutory Commission with a wider-ranging remit, and shared a draft copy of the position paper mentioned above with the Committee³.
 9. The Committee decided that a Commission on a statutory footing was needed, and so the amendments were accepted at stage 2. A Commission with specific child poverty functions is therefore provided for by the Bill. Responding to the decisions, Oxfam Scotland said:

“As recognised by Committee members, it is essential that alongside scrutiny of the child poverty targets, the new Poverty and Inequality Commission must also have a wider focus on poverty and inequality because these challenges are so deeply linked.

“We must avoid a situation in which we have a Poverty and Inequality Commission in statute but which in practice is a body focused narrowly on child poverty. We therefore welcome the desire for Committee members to have further discussions with the Cabinet Secretary for Equalities before this Bill is finalised.”
 10. Since stage 2, the Scottish Government has been exploring options for giving the Commission the wide remit that was supported by stakeholders, while maintaining the statutory footing that there was a clear desire for.
 11. An Order under the Public Services Reform Act 2010 is a pragmatic way of resolving this issue. It allows Scottish Ministers to propose to Parliament an expanded remit for the limited statutory Commission set out in the Bill. It gives Parliament a clear role in approving the revised functions of that Commission, due to the enhanced scrutiny attached to the procedure for such an Order.

³http://www.parliament.scot/S5_Social_Security/General%20Documents/20170619_Cab_Sec_CSSE_to_Convener.pdf

EFFECT OF PROVISIONS OF DRAFT ORDER

12. The draft Order would come into force on 1 July 2019. This is the day after the current, non-statutory Commission contracts terminate. This allows the current Commission to proceed on the basis set out in the position paper, which has been welcomed by stakeholders. Specifically, that will allow the current Commission to provide advice to Ministers on the first delivery plan for meeting the child poverty targets to be set by the Child Poverty (Scotland) Bill, once enacted. The Bill envisages that these will be prepared for the period from 1 April 2018 to 31 March 2022. It also allows the current Commission to advise on the first progress report, to be prepared by 30 June 2019, and gives time for the necessary arrangements to be put in place for the statutory Commission to take over the current Commission's work from 1 July 2019. For example, the public appointments process, and Parliament's approval of appointments, will need to take place in advance of the 1 July 2019 commencement date.
13. Section 2(2) of the draft Order expands the functions of the statutory Commission. The new functions are in line with those of the current Commission, set out in the position paper and described above at paragraph 5, and retain the functions that the Child Poverty (Scotland) Act 2017 will give the statutory Commission.
14. Section 2(3) increases the minimum and maximum number of Commission members from those set out in the Bill. This is in recognition of the broader remit, and more closely reflects the membership of the current number of Commissioners appointed by Douglas Hamilton. This subsection also amends the experience and knowledge provisions set out in the Bill, to ensure that the Commission as a whole is required to have skills and knowledge related to poverty and inequality, rather than just child poverty.

Section 16(2) of the Public Services Reform (Scotland) Act 2010

15. With reference to provision contained in the draft Order, the relevant conditions set out in section 16(2) of the Public Services Reform (Scotland) Act 2010 are considered to have been met.
16. The Scottish Ministers consider that the provisions of the Order are proportionate to the policy objective. The policy objective is that Ministers should receive independent advice on the full range of poverty and inequality issues to inform policy development and delivery. The statutory body to be set up under the Child Poverty (Scotland) Bill is not capable of fulfilling that wide role; its functions are limited to matters related to the child poverty targets. Of course, it makes sense that the statutory body established under that Bill would be the same body that gives advice on the wider issues around poverty and inequality. It would not be efficient or effective to have two separate advisory bodies of this nature.

17. The proposal does not remove any necessary protection, in fact it does not remove any function of either the current Commission or the statutory Commission. The effect is to combine their functions, within the expanded remit to be given to the statutory Commission.
18. The Poverty and Inequality Commission established by the Bill is mainly tasked with looking at progress related to the child poverty targets set out in that Bill. There are four income-based statutory measures in the Bill, which look at different aspects of income poverty. Together, they give a clear picture of the scale of child poverty in Scotland. In giving advice on how the Scottish Ministers can achieve the targets, it is clear that it would be helpful for the Poverty and Inequality Commission to have the powers to look at wider issues around poverty and inequality, as set out in the Order. The Scottish Ministers therefore consider that the functions which would be modified by the draft Order are broadly consistent with the general objects and purpose of the Poverty and Inequality Commission established in the Child Poverty (Scotland) Bill.
19. The Scottish Government will seek to amend the Child Poverty (Scotland) Bill at its stage 3, so that the Commission established by that Bill is listed in schedule 5 of the Public Services Reform (Scotland) Act 2010. As set out in the previous paragraph, the additional functions to be conferred on that Commission are broadly consistent with its general objects and purpose.

CONSULTATION

20. In developing this draft Order, the Scottish Ministers have taken into account the contributions made during the Child Poverty (Scotland) Bill stage 1 and stage 2 proceedings. A number of members and stakeholders expressed the desire to see a Poverty and Inequality Commission with a broad remit on a statutory footing. Adam Tomkins MSP, in lodging his amendments on the statutory Commission, said:

“I would expect and hope that in future, the cabinet secretary and others will seek to amend and enlarge the commission’s scope so that it focuses not only on child poverty but on poverty and inequality in the round.”
21. Scottish Government officials have also held discussions on the approach set out in the draft Order with key interested parties, including the Chair of the non-statutory Poverty and Inequality Commission, Oxfam Scotland, the Poverty Alliance, and the Child Poverty Action Group Scotland.
22. In relation to the specific provisions in the Order, the Scottish Ministers will undertake a sixty day consultation period commencing on the day that the draft Order is laid before Parliament (calculated without taking account of any time during which Parliament is dissolved or in recess for more than four days).

IMPACTS

23. An Equality Impact Assessment and Children's Rights and Wellbeing Impact Assessment will be published in due course.

Scottish Government

November 2017