

## FINANCE COMMITTEE CALL FOR EVIDENCE

### CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL: FINANCIAL MEMORANDUM

#### SUBMISSION FROM SCOTLAND'S COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

1. I am writing to express my views relating to the Financial Memorandum accompanying the Children and Young People (Scotland) Bill, and I would be grateful if this letter could be admitted as a late submission of written evidence on that document.

2. My comments are restricted to Part 2 of the Bill, whose provisions would extend my office's powers under the Commissioner for Children and Young People (Scotland) Act 2003 to include the handling and investigation of complaints concerning individual children<sup>1</sup>. I understand this provision was included in the Bill as a result of calls made by organisations working with children and young people in response to the Scottish Government's consultation on proposals for a Rights of Children and Young People (Scotland) Bill in 2011. It was subsequently consulted upon in *A Scotland for Children: Consultation on a Children and Young People (Scotland) Bill*<sup>2</sup>.

3. I supported that proposal in principle then, and I support Part 2 of the Bill now, subject to it being sufficiently resourced. This is a view shared widely across the children's sector.

4. It is important in this context to consider the purpose of the extension of the Commissioner's s. 7 power. The Scottish Government's documentation suggests that Part 2 would amend the 2003 Act so as to provide a mechanism for 'redress'<sup>3</sup> for children. Since the Scottish Government has (for now) rejected the continuing calls for full incorporation of the UNCRC into Scots Law, which among other things would provide redress for rights violations through the courts, it appears that the extended power in Part 2 is envisaged to be the principal means of redress for such complaints<sup>4</sup>.

5. Against that background, the Scottish Government's financial estimates relating to Part 2 are based on a number of assumptions. One central assumption is

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<sup>1</sup> Such investigations are currently specifically excluded from the Commissioner's powers by s. 7 (3)(b) of the 2003 Act.

<sup>2</sup> Paras 58-60.

<sup>3</sup> *A Scotland for Children*, para 59; Children and Young People (Scotland) Bill, *Policy Memorandum*, para 49.

<sup>4</sup> The other key mechanism of redress would be litigation. However, this is inaccessible to most children and hindered by at least the following factors: the limitations of the current legal framework, including the non-enforceability of UNCRC rights; the impenetrable processes involved; the potentially serious cost implications and the diminishing availability of legal aid, especially for children and Judicial Review.

that the Commissioner would undertake between 1 and 4 investigations per year<sup>5</sup>. Another key assumption relates to an aspect of the new power that would provide a mechanism by which the Commissioner may take any appropriate steps to secure a resolution to a child's complaint without resorting to an investigation, if the matter is capable of being so resolved<sup>6</sup>.

6. I will comment on these two crucial assumptions in turn.

7. Firstly, it is not clear what the Scottish Government's estimate that there will be between 1 and 4 investigations per year is based on. I have consistently queried its provenance and accuracy in my discussions with the Scottish Government. In addition, I have expressed concern about the apparent mismatch between these estimates and the notion that the purpose of the proposed extension of investigatory powers is to provide a mechanism of 'redress' for children.

8. Secondly, the nature, scope and volume of 'complaints casework' are important dimensions of the discussion about the appropriate level of resources for the effective implementation of Part 2 of the Bill. Despite the implicit recognition of its existence in the provision in news. 7 (5), there is no reference to this work in the Financial Memorandum.

9. I am strongly of the view that in practice the effectiveness of the new powers would depend on this aspect of Part 2 and its adequate setup and resourcing. Whatever the correct number of investigations per year will be, it requires an effective mechanism to receive complaints, gather sufficient information, and assess the information obtained with a view to determining the appropriate route for resolution, and carrying out the disposal of the complaint accordingly.

10. This 'triaging' work can be complex and time-consuming, not least in light of the very wide range of issues currently brought to the office as enquiries. As you are aware, I currently have no power to investigate such enquiries as complaints. However, my office was involved, as far as permissible under current powers, in over 100 enquiries, which under Part 2 powers would have been treated as individual complaints in 2011-12<sup>7</sup>. It is my assessment that this 'complaints casework' will significantly increase and is likely to form the majority of work carried out under the proposed power in Part 2. I understand this to be in line with the experience of other bodies, such as Children's Commissioners with powers similar to that envisaged in this Bill, and other complaints-handling bodies with a broader remit.

11. The Financial Memorandum does not fully take account of this significant element of the increased workload. The cost estimates relating particularly to areas which would be affected by the 'complaints casework' discussed above, include staffing and IT. At the time of writing, I am still in discussion with Scottish Government about these matters. I believe the resources must take proper account of the likely nature, scope and volume of this work, and it is this which needs to be

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<sup>5</sup> Children and Young People (Scotland) Bill, *Financial Memorandum*, para 31.

<sup>6</sup> New s. 7 (5), introduced by s. 5 (2) of the Bill, p. 4, lines 35-38.

<sup>7</sup> This is out of a total of 423 enquiries in that year, many others of which involved some degree of engagement with the matter raised in order to facilitate effective signposting, etc.

understood to assess the actual impact on the workload of the office. All of this matters to children and young people and those advocating for them, as it goes to the heart of the effectiveness of the means of redress promised to them by Part 2.

12. I note the written evidence submitted by the Presiding Officer on behalf of the Scottish Parliamentary Corporate Body, which as you are aware is the Commissioner's 'sponsor body'. I was not privy to any discussions between the SPCB and the Scottish Government, although it appears that the SPCB evidence relies on the same assumptions as Scottish Government discussed above.

13. I understand the need for financial constraint at this time and this has already impacted on the resources of the Commissioner's office. However, I do believe that the additional resources required to deliver Part 2 of this Bill have to be based upon a realistic appraisal of the work it will actually involve, and the likely impact on the office's existing statutory functions.

14. I trust this submission is of interest to the Committee and I would be happy to provide any further information that the Committee would find useful in its deliberations.