I am not in a position to make a detailed submission on this Bill, but I would like to draw the Committee’s attention to paragraph 20 of the Policy Memorandum. This purports to be the assessment of the impact of the Bill for sustainable development but is woefully inadequate. Surely many of the Bill’s provisions will have a much more profound economic, social and environmental impact, especially for rural communities? The inadequacy of the consideration of sustainable development is a widespread failing (see below extract) and it does seem a real lost opportunity that the Parliament is not using this device as a means of thinking carefully about what the measures we pass today will mean for the future.


(1) Procedure

The Standing Orders of the Parliament require most Bills to be accompanied by a Policy Memorandum that among other things sets out “an assessment of the effects, if any, of the Bill on … sustainable development”.¹ This is potentially a strong tool for ensuring that the full implications of proposed legislation are considered across the whole range of elements covered by the concept. However, a study of the first five years of the Parliament by Ross concluded that these memoranda “reveal[ed] no significant pattern and overall, the quality has remained variable”, with “minimal effect on the subsequent parliamentary debates”.² An examination of the memoranda for the Bills that became Acts during 2008 and 2009 reveals the same picture.

The recent memoranda continue to show a remarkable lack of consistency in phrasing, focus and depth. On some occasions there is just a simple statement that there will be no,³ or no direct,⁴ or no negative,⁵ impact on sustainable development, often a somewhat surprising conclusion given the range of social, economic and environmental factors included within sustainable development. Where more is said, on a few occasions there is reference to the wider policy context,⁶ on others the

¹ Scottish Parliament, Standing Orders (3rd edn 4th rev, June 2009) orders 9.3(3), (3A); Executive Bills must be accompanied by such a memorandum, Committee and Member’s Bills may be accompanied by one, but Budget Bills are exempt (SO 9.16(2)).
³ Policy Memorandum (para 38) on the Health Boards (Membership and Elections) (Scotland) Act 2009, which surely is relevant to governance and social justice issues.
⁴ Policy Memorandum (para 31) for the Convention Rights Proceedings (Amendment) (Scotland) Act 2009, which again surely has some relevance to social justice.
⁵ Policy Memorandum (para 178) for the Sexual Offences (Scotland) Act 2009, where the absence of negative effects is only part of the story and there is a contrast with the Memorandum (para 25) on the Offences (Aggravation by Prejudice) (Scotland) Act 2009 where the social benefits of tackling crime are mentioned.
⁶ E.g. the Policy Memorandum (para 49) for the Scottish Register of Tartans Act 2008 expressly refers to the indicators in the Scottish Government’s template for assessing the sustainable impact of policies and that for the Flood Risk Management (Scotland) Act 2009 (paras 182-187) to the Government’s five Strategic Objectives.
focus is on the operational activities that will flow from the matters dealt with in the Bill, and only occasionally is there substantial consideration of a range of sustainability issues. Legislation has even proceeded where the memorandum has noted adverse environmental consequences, with little by way of counter-argument on other grounds. The memoranda appear not to be fulfilling their potential as a means of ensuring consistent and thorough regard for sustainable development in the legislative work of the Parliament.

---

7 E.g. the Policy Memorandum for the Judiciary and Courts (Scotland) Act 2008 (para 149) refers to the Scottish Courts Service carrying out their (sic.) functions with due regard to energy efficiency and sustainable travel plans; similarly the Memorandum for the Glasgow Commonwealth Games Act 2008 (para 81) notes that although the Bill will have no impact on sustainable development, the Games will and then outlines steps being taken to deal with this.

8 E.g. Policy Memoranda for the Climate Change (Scotland) Act 2009 (paras 179-188) and Flood Risk Management (Scotland) Act 2009 (paras 182-187).

9 Policy Memorandum (paras 62-67) for the Abolition of Bridge Tolls (Scotland) Act 2008.