Thank you for the opportunity to provide evidence to the above Inquiry. Along with many of our member organisations we were closely engaged with the Children and Young People (Scotland) Bill since its proposals’ inception and believe this experience provides a useful case study from which a number of lessons may be drawn. Further to this submission, we also endorse the joint response coordinated by Children 1st.

Public bill process – overview

In answering this question we would also like to address questions 3-5 on the purpose and timing of each parliamentary stage. The Children and Young People Bill was in scope, one of the largest pieces of legislation to come before the Scottish Parliament. The final version contained 17 parts and four schedules covering areas as diverse as children’s rights, powers of the Commissioner for Children & Young People, children’s services planning, provision of a named person service, single child’s plan, early learning & childcare, corporate parenting, services for children in care and care leavers, support for kinship carers as well as various legal reforms in the areas of adoption, children’s hearings, legal aid and child performances. The Bill largely fused together two previously separate proposed Bills on children’s rights and children’s services which had gone out to consultation, though a number of other sections were added as a result of government or government-inspired amendments at Stage 2, including a substantial section on reforming rural school closures procedure announced after the Bill’s publication. In total more than 400 amendments were lodged at stage 2 and further 200 at Stage 3.

The Bill’s proposals have potentially profound implications for children and families, including many vulnerable children and those with additional support needs. As the umbrella organisation for Scotland’s children’s sector, Children in Scotland engaged closely with our members, Ministers, Scottish Government officials and MSPs from across the party spectrum in attempt to help shape the Bill including carrying out a number of member and public events which in turn informed our own submissions to the Government and parliamentary committees. We also played a coordinating role in proposing and marshaling support for various amendments prior to stages 2 and 3.

Our overall impression of the scrutiny process was that timescales were primarily driven by political objectives to ensure its main proposals, particularly around early learning and childcare, were implemented by August of this year. We are in no doubt that the Education and Culture Committee tried to ensure as wide range of witnesses as possible were called to give oral evidence at Stage 1, however, an inevitable consequence of this timescale was that the scrutiny of some sections were squeezed out or at least limited considerably by discussion around the Bill’s ‘big ticket’ items. For example we expressed some concern regarding lack of witnesses
from organisations with a focus on children with disabilities or other additional support needs despite the Bill’s provisions having considerable impact in this regard. Furthermore, the Scottish Government’s decision to incorporate proposed changes to the Schools (Consultation) (Scotland) Act 2010 by means of Stage 2 amendments to this Bill subsequent to its publication meant that this section was technically beyond the scope of the Committee’s Stage 1 inquiry. We did however express concern in our written evidence that this, coupled with the Scottish Government’s decision to consult during the school holiday period was unsatisfactory and as a result we were unable to fully engage with these proposals and consult with member organisations as we would have liked.

In terms of time allowed between stages and as the Education & Culture Committee submission notes, the time originally allocated between stages 2 and 3 was the minimum required under standing orders. This would have made it virtually impossible for the sector to digest the stage 2 process, collectively discuss, propose and marshal support for further amendments and draft briefings as we had done during previous stages. As a result Children in Scotland coordinated a joint letter from a range of member organisations to the Presiding Officer and Parliamentary Bureau members seeking a postponement of the Stage 3 chamber proceedings and debate. While we were grateful these were consequently delayed until Wednesday 19th February, the deadline for amendments was only extended by six more days due to the February recess, which we felt remained an unreasonably short timescale for a Bill of this scope and potential impact. We would raise similar concerns that the Bill’s revised financial memorandum was considered by the Finance Committee on the morning of the Bill’s final proceedings. As you will be aware, this meeting resulted in the Convener issuing a letter to the Minister raising concerns about lack of clarity in the Financial Memorandum as well as a number of points of order during that afternoon’s chamber proceedings. Clearly, as an organisation and sector this meant we were unable to engage in any meaningful way with the issues arising but it also meant that MSPs voted on the Bill while these issues remained outstanding.

With respect to the three stage process as a whole, we would recognise value of the lead subject committee’s involvement in this process given the expertise which members are able to build up through its wider work over a number of months and possibly years as opposed to an ad hoc committee created purely for the purpose of scrutinising a particular piece of legislation. However on the other hand, because the political composition of committees reflects that of the parliament as whole, its effect as a check on government is minimal. In the case of the Children and Young People Bill, of the more than 400 amendments lodged at stage 2 of the Children and Young People Bill, nearly all votes divided along party lines with only government amendments or those proposed by government back-bench members being accepted. Indeed a number of amendments inspired by children’s organisations designed to effect recommendations of the Committee’s own stage one report, for example with respect to incorporation of certain articles of the United Nations Convention on the Rights of the Child, were also defeated. We would acknowledge this raises larger questions beyond the scope of this particular inquiry, not least the unicameral nature of the Scottish Parliament and the failure of the Additional Member voting system to deliver a proportional outcome, however in practical terms, the fact the government enjoys a majority at each legislative stage makes it
extremely difficult if not impossible to effect change to primary legislation through engagement in the parliamentary process.

We would also echo the points made by the Education & Culture Committee regarding the time available for considering, speaking to and disposing of amendments, particularly at Stage 3 as the final opportunity to scrutinise and change legislation. The lack of flexibility in the timescale coupled with the Bill’s scope and consequent volume of amendments meant that MSPs were limited to as little as 30 seconds when speaking to an amendment or precluded from speaking at all limiting opportunities for the sector’s views and concerns to be placed on the record. Comment has been made with regard to the irony of the proceedings of a Bill including provisions on childcare being subject to an evening sitting of parliament and we would support extending consideration to more than one day’s sitting, as has been the case with other Bills in the past, if it results in greater opportunity for scrutiny and for views to be articulated. For this reason we would also question the value of routinely holding the Stage 3 debate immediately after the disposal of amendments as this not only further truncates the time available to debate amendments, but does not afford MSPs time to properly digest the outcome of those proceedings and consult stakeholders before commenting on them.

Accompanying documents

Notwithstanding concerns regarding the completeness of the Bill’s Financial Memorandum in this case, policy memoranda and explanatory notes are generally helpful in terms of clarifying policy intention and putting in context often complex legislative proposals although they are not necessarily presented in a very user-friendly format. However, bringing the relevant documents together alongside the record of proceedings on the lead Committee’s website is helpful. We would however comment that the publication of the Official Report of Committee proceedings up to a week later can make it difficult for organisations and interested individuals to follow and engage with the process. As part of our service to members we produced a number of our own briefings and held events around the Children & Young People Bill in order to help make the process as accessible as possible as well as to facilitate discussion and inform our own position. Children in Scotland also produced easy-read versions of some of the Scottish Government’s consultation material and would be happy to work similarly with Parliament in helping to ensure the process can be as accessible and participative as possible both for the sector and for children and young people themselves including those with additional support needs.

The role of secondary committees

We would endorse the view expressed in the Education & Culture Committee’s submission that the involvement of secondary committee at Stage 1 generally works well. For example we felt it was particularly useful that the Local Government & Regeneration Committee were able to take evidence on the Children & Young People Bill alongside the Public Bodies (Joint Working) Bill given the number of overlapping issues. However, there appears to be limited practical opportunity for consideration of any changes by secondary committees beyond Stage 1. Particularly given the range and volume and cost implication of amendments at
stage 2, further scrutiny in this respect could have been helpful in informing the Stage 3 proceedings. In this context we would also reiterate our concern that the consideration of the revised Financial Memorandum by the Finance Committee took place on the morning of the Bill’s Stage 3 proceedings.

Finally we restate our support for Child Rights Impact Assessments to be a routine part of the legislative process and which we hope will be developed for future legislation as well as any changes to process.

I hope this is helpful to the inquiry. Please do not hesitate to contact us if there are any queries arising or if we are able to provide any further information which may be useful to the Committee.

ROSS GILLIGAN
POLICY OFFICER
CHILDREN IN SCOTLAND
21 MARCH 2014