STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO THE PROCEDURES FOR CONSIDERING LEGISLATION

WRITTEN SUBMISSION RECEIVED FROM RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

The Rural Affairs, Climate Change and Environment Committee considered the questions set out in your committee’s terms of reference, requesting views on the procedures for considering legislation, at its meeting on 26 March 2014. Our response to you is set out below.

The information provided is based on the experience of this Committee from 2011 onwards.

Public bill process - overview

1. Does the current three stage process deliver legislative scrutiny that is fit for purpose? In particular, how effective are the procedures for each of the main stages, the timescales allowed for these stages, and the time allowed between stages? To what extent does the current legislative process encourage engagement from interested parties?

The Committee is of the view that, broadly, the three stage process is fit for purpose. However, the timescale for passage of a bill, and the time allowed for consideration at each of the stages, can be restrictive and impact upon the quality of the scrutiny, particularly where a bill is either complex or controversial. Timing is a particular issue in stages 2 and 3 (discussed below in detail).

In terms of engagement, generally Stage 1 works well but Stages 2 and 3 are not very transparent or accessible for anyone outside the Parliament and consideration as to how best to address that, whilst keeping the process fit for purpose, is necessary.

This Committee has had experience of designation as lead committee on a bill, the Long Leases (Scotland) Bill, for convenience. In that case the Justice Committee considered and reported on the Bill at Stage 1, but the Bill then fell at the end of the last session and was re-introduced in the current session. This Committee was designated as lead committee and then repeated the Stage 1 consideration and considered the Bill at Stage 2. This was not an ideal situation and raises questions in relation to the rationale for designation. The Committee is of the view that bills should be considered by committees with the most expertise, where their remit is fully engaged, even if that means the creation of sub-committees in order to ensure the most effective scrutiny.
Accompanying documents

2. Are any changes needed to the rules on the supporting documents which should accompany a bill on introduction?

The Committee has some concerns about the quality of the documents accompanying draft bills. The Committee has generally found the Explanatory Notes and Policy Memoranda accompanying draft bills to be helpful in explaining the provisions of the bills and in setting out their policy objectives, with one notable exception. This is highlighted in this Committee’s reports on the Aquaculture and Fisheries (Scotland) Bill and on the Regulatory Reform (Scotland) Bill, where the Committee expressed concerns in relation to the adequacy of the sections in the Policy Memoranda in relation to sustainable development.

The Committee remains concerned that the assessment of sustainable development in Policy Memoranda fails to fulfil its potential as a means of ensuring a consistent and thorough regard for the environmental, economic and social impacts of the changes proposed; the alternatives; and the impacts of the proposals. Often this section is limited to a brief statement to the effect that the bill will have no negative impact on sustainable development and there is little or no explanation of the assessment process or detail on how this conclusion has been reached.

The Committee is of the view that this section of the Policy Memorandum accompanying each bill should be strengthened by the inclusion of information on the environmental, economic and social impacts of the changes proposed; the alternatives; and their impacts (including potential negative impacts and trade-offs).

The Committee has generally found the accompanying Financial Memoranda for bills to be lacking in detail. Whilst the Committee appreciates that there can be genuine difficulties in estimating costs and issues in relation to uncertainty it expects a greater consideration of the budgetary implications and the financial cost of alternative options and detail on where the funding will come from. Currently the information is often vague and insufficiently specific, therefore it is difficult to assess options and their relative merits based on the financial implications. The Committee is of the view that there is scope for improvement of these supporting documents.

If there are concerns in relation to the quality of these accompanying documents there may be a question about the rules regarding the admissibility of these and whether the Stage 1 scrutiny process should question the robustness and acceptability of such documents.

Purpose of stage 1

3. Stage 1 involves a lead committee considering whether the general principles behind a bill should be agreed to. In recent times stage 1 reports have frequently looked in detail at the specifics of a bill, including recommending amendments at the amendment stages. Does the stage 1 procedure provide for adequate scrutiny? Are there any changes which could be made to improve stage 1 scrutiny of public bills?
Stage 1 is essentially a committee inquiry and, as such, in the experience of this Committee is generally as open, transparent, accessible and innovative as committee inquiries can be.

This stage has worked particularly well where the Committee has engaged with stakeholders and those likely to be affected by a bill via site visits in addition to the calls for evidence and oral evidence sessions. This has enabled the Committee to fully understand the potential impact of the provisions of a bill at a local level, and for different groups, and therefore has assisted the Committee in making informed recommendations. To be meaningful, this stage should, as it does, allow for a detailed understanding of the purpose and impact of the provisions and, where necessary, ensure that Committees have an opportunity to comment on the specific provisions of the bill, including making recommendations on the requirement for any amendment of the bill. This stage is currently the only point in the process where the need for amendment and the impact of amendments can be properly debated. This process can also provide an indication of the likely complexity and length of the subsequent amending stages.

Time allowed for stage 1

4. Are changes needed to the timescales for stage 1 and how they are set?

The Committee understands that the Government will normally have an end date in view for completion of a bill and this will influence the introduction date and time available for consideration at each of the stages. This has required Parliament to work back from the Stage 3 deadline and therefore impacts considerably on the time available at Stages 1 and 2. In practice this can limit the time available to call for, and consider, evidence at Stage 1. Committees will wish to give stakeholders sufficient time to reflect on a bill and its impacts and this can be difficult for many stakeholders, such as local authorities, whose internal approval systems require consideration and responses require to be agreed by a committee or executive group. This shortened consultation period for the receipt of written evidence has resulted in this Committee taking oral evidence before the deadline for written evidence. In this situation it is possible that issues arise late in the day and the Committee then has either limited or no opportunity to consider them in detail.

It would be helpful to have a greater degree of flexibility in the timing of the Stage 1 process to reflect the complexity or contentious nature of the bill, the practical difficulties for stakeholders and interested parties who wish to submit written evidence, and the need for committees to undertake fact-finding visits.

Amendment stages

5. The amendment stages involve line by line consideration of a bill in committee (stage 2) and then in the Chamber (stage 3). Are any changes needed to the rules on the deadlines for lodging amendments? Is the procedure for considering amendments in committee and the Chamber (using a marshalled list of amendments and groups of amendments) sufficiently transparent and understandable? Are there any alternative approaches which might be less technical and more accessible?
The support of the legislation team in providing advice to members and in drafting amendments at Stages 2 and 3 is vital and is appreciated by members. However, the process for consideration of amendments is complex and may be difficult for many, including stakeholders and the general public, to understand (although the Committee recognises that an element of this may be inherent in any legislative process). The potential number and complexity of amendments can be difficult to predict and the time available at Stage 2 can be restricted and can often feel rushed. Amendments can also raise new issues or additional concerns on issues previously identified but not fully considered by a committee at Stage 1. Encouraging more time for taking evidence at Stage 2, and making the Stage 2 process much longer, would help address some of the transparency and accessibility issues and ensure that the rationale behind amendments and the impact of pursuing them (or not) could be fully explored and debated.

Grouping amendments for consideration and debate is sensible, as is preparing a marshalled list, but simplification of the language used, rather than the processes themselves, may be helpful to stakeholders and the public in understanding and following parliamentary proceedings.

Consideration at Stage 3 encounters similar issues as it is often condensed into one afternoon and several members have expressed concerns about the time available at Stage 3 to speak to and debate amendments. Given that this is the last amending stage it is vitally important that sufficient time is made available. This Committee recently dealt with legislation which corrects previous legislation that has been found to be defective (i.e. the Agricultural Holdings (Scotland) Act 2003 and the Crofting Reform (Scotland) Act 2010) and is strongly of the view that Parliament should take the time that is needed at this stage to ensure effective scrutiny. The likelihood of Parliament being required to deal with correcting legislation may well have been reduced if a longer period of time had been available for scrutiny at Stage 3 in particular.

The role of secondary committees

6. Committees considering primary legislation receive reports from the Delegated Powers and Law Reform Committee (DP&LR) and the Finance Committee and from other subject committees which have an interest in a particular bill. How well does this reporting process work in practice at stage 1? To what extent do the DP&LR and Finance Committees have an opportunity to scrutinise changes made to bills at stage 2?

This Committee has been formally designated as a secondary committee on one bill this session, the Regulatory Reform (Scotland) Bill, where a substantial part of the bill fell within the Committee’s remit.

The Committee welcomes the opportunity for any committee with an interest in a bill to submit views to the lead committee or to report directly to Parliament. There may, however, be issues around designating secondary committees at Stage 1, but Stage 2 being considered only by the lead committee. If a committee’s remit is engaged sufficiently at Stage 1 then perhaps it should consider that part of the bill at Stage 2. In the case of the Regulatory Reform bill this committee had taken evidence and reported on a substantial part of the bill at Stage 1 and had, therefore, developed a
significant depth of knowledge and level of expertise in the detail of the bill and the need for amendment. This expertise was then not available throughout the Stage 2 consideration to inform the debate on detailed amendments. This could also impact on the consideration of additional evidence during the Stage 2 process should an issue arise that had not previously been fully reflected during the Stage 1 process.

The reporting process of the Delegated Powers and Law Reform and Finance Committees has worked well at Stage 1 in the experience of this Committee.

ROB GIBSON MSP
CONVENER
RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
SCOTTISH PARLIAMENT
27 MARCH 2014