STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO THE PROCEDURES FOR CONSIDERING LEGISLATION

WRITTEN SUBMISSION RECEIVED FROM CHILDREN 1ST, ABERLOUR, BARNARDO’S, TOGETHER, SCCYP, CAMPFILL SCOTLAND, ENABLE, CCPS, AND YOUTHLINK SCOTLAND

We welcome this inquiry and the opportunity to contribute our knowledge and experience to it. As a group of policy professionals we have worked with the current process for a number of years. As organisations working to promote the interests of children, we feel it is important to consider not just the accessibility of this process to us as policy professionals, but to children, young people and their families.

1. Overview

Stage 1 allows for a wide range of views to be gathered and considered, and there are usually adequate timescales for this. It is our understanding that this stage concerns the general principles, and should not take the place of later consideration of specific areas for improvement or amendment. Stages 2 and 3, however, do not allow enough time for meaningful consultation, comment and scrutiny to take place. This is a major concern as there is no mechanism to improve a bill once stage 3 is complete.

We have concerns about sudden short deadlines at stages 2 and 3 and the impact this can have on those wishing to make or comment on amendments. For those working in the policy sector this often requires increased working hours, late night working and increased levels of stress. This risks disproportionately affecting those working part time, and women in particular. It seems ironic that in order to make a positive impact on bills affecting children and families, our own family lives are required to bear the brunt of the short and sudden timescales involved in the process. The same may well apply to MSPs and their staff, and this may be a barrier to recruiting talented young women in particular to the various professions involved to the detriment of all.

This process should be transparent and accessible for everyone in Scotland, yet the process as it stands is technical and time consuming, and those who will be most affected by some of the legislation have little or no chance of being able to contribute to its formulation.

In our experience the staff working within these processes – committee clerks, bill drafters, bill teams, SPICe, and others – can be very helpful and open to discussion, with a real desire to make the process transparent and accessible. The issues we raise here are not with staff but with the process itself.

MSPs, too, can in our experience be very encouraging and willing to engage. MSPs have a democratic duty, particularly given how the Scottish Parliament prides itself on openness and transparency, to engage with people and organisations attempting to influence legislation, and in our experience are very willing to do so. There have,
though, been occasions where some MSPs have seemed unwilling to engage in dialogue with third sector organisations.

2. Accompanying documents

The policy memorandum is a very useful document which helps to clarify the policy intention of a bill. We would like to see more accessible documents about the bill process and ways to engage. This would enable a wider contribution to the process, and ensure that certain groups of society – children and those with learning difficulties, for example – are no longer disadvantaged by the process.

The quality and quantity of the analysis of the impact of a bill on human rights varies greatly. Ministers should be encouraged to provide and Committees should be encouraged to request information relating to the bill's compliance with other human rights obligations such as the UNCRC.¹

3. Purpose of stage 1

The stage 1 procedure does in our view provide for adequate scrutiny of the general principles. A very wide range of organisations and individuals often contribute to this stage of the bill process, and at this stage it is also reasonably easy for those with little policy experience to contribute their views.

Although stage 1 concerns general principles, it can focus on specific issues. When this happens, such as the early focus on corroboration in the Criminal Justice Bill, or the focus on the named person in the Children and Young People Bill, it can be difficult to have views on other issues heard.

There is a need to effectively organise stage 1 evidence on groupings of issues, especially where a bill contains a wide range of proposals that are not directly connected, and effective parliamentary scrutiny requires expert testimony from a range of people.

4. Time allowed at stage 1

In our view stage 1 usually allows enough time for contributions to be made. Sometimes, however, there have been shorter timescales at stage 1 and it is concerning that there appears to be no recommended timescales. The resulting inconsistent timescales can make it difficult to plan ahead, which could affect the ability to inform and influence.

Stages 2 and 3, however, often do not allow for the same level of either contribution or scrutiny.
5. Amendment stages

There are several issues at these stages:

Timescales

Timescales can be short and they can also be sudden. Marshalled lists and grouped amendments are very useful as they allow similar or related amendments to be viewed together, which allows those reading them to gain an overview of all the amendments made in a certain area. In practice, though, the marshalled list is often not made available until very close to the debate, which makes it impossible to prepare a relevant briefing until just before the debate. This can make it very difficult to influence debates, and disproportionately affects those working part time, or are unable to work late, often because of caring responsibilities. This is a problem with parliamentary debates generally, as it is not now uncommon for the title of a debate to be announced two or three days in advance, and the motion(s) may not be available until the day before. This is profoundly unhelpful if public and expert sector involvement is to be encouraged.

It is not unusual for government amendments to be published on a Tuesday and for the final amendment deadline to be that Thursday, which in practice only gives one day to consult with civil society before finalising amendments. This makes it near impossible to consult on the detail of amendments.

In addition, the official report on day 1, stage 2 proceedings often isn’t published until after the deadline for the submission of amendments for day 2. This makes it very difficult to keep track of the debate in order to support the formulation of appropriate amendments.

Process

Lists of amendments take a great deal of time to read through line by line and coordinate with the bill in question. This is a technical process and takes even seasoned policy professionals a great deal of time and effort. Individuals or members of the general public who want to influence a bill and are coming to this process for the first time could easily be put off by this process. If each amendment were accompanied by an explanation, this would make the whole process completely transparent and enable members of the public to understand the intention of each amendment. This would be particularly useful when amendments refer to previous legislation. A great deal of time and resource is used to understand what effect these amendments would have, and could arguably be better used to usefully inform and influence other areas of the process.

We note that there has recently been a lack of amendments coming from opposition and being accepted by committees at stage 2. In practical terms, it could be argued that stage 2 is currently very similar to stage 3 in terms of outcomes, because we are rarely seeing successful opposition amendments at this stage.
Consultation

It can be incredibly difficult to consult with those we represent during the amendment stages of the bill process. CHILDREN 1ST, Barnardos and Aberlour, for example, regularly consult with children and families we work with about the general principles of a bill, but due to timescales and deadlines it is very difficult to continue with this consultation throughout stages 2 and 3. If there are particular amendments that we would like to consult on, but the amendments are not available to see until a week before the debate, this is not enough time to undertake any meaningful consultation. In order to enable children and young people, and those with disabilities, to contribute in a meaningful way, ongoing supportive, face-to-face work often needs to be carried out – this is not simply a case of sending an email or questionnaire. Timescales should reflect this, as should timings themselves – consulting on the Children and young People Bill over the summer holidays, for example, made it very difficult to consult with children and young people. We are increasingly finding that in order to undertake any form of meaningful consultation we have to engage children and families much earlier in the process when an initial proposal is made. This means people are able to contribute but does mean they miss out on contributing to the arguably more impactful amendment stages of the process.

6. The role of secondary committees

We are concerned at the lack of post legislative scrutiny currently happening; this was intended as a key role of committees but has very rarely happened. This can mean there is very little accountability regarding the implementation of legislation. A recent example of this is that the lack of Risk of Sexual Harm Orders being used was only picked up as part of a wider inquiry into sexual exploitation; if appropriate post legislative scrutiny had occurred, this may have been picked up earlier. More importantly, if this separate, issue-based petition had not taken place, this issue may not have been picked up at all. The resulting capacity for inconsistency is very worrying. A rolling programme of reviews of legislation would avoid gaps in implementation being allowed to continue.

It can be difficult to scrutinise secondary legislation, particularly when a great deal of guidance is released for comment all at once. The Children’s Hearings Act was particularly difficult because there was a vast amount of secondary legislation released on the same date.

The Finance Committee appears sometimes to lack a proper opportunity to fully scrutinise the financial implications of stage 2/3 amendments, even where there is a Supplementary Financial Memorandum. During the Children and Young People Bill process, for example, the Finance Committee reported on the Supplementary Financial Memorandum on the morning of the stage 3 debate.

Other comments

We suggest that equality impact assessments and Child Rights Impact Assessments are conducted on any new processes. This would help to ensure that any changes do not have any unforeseen impacts which disproportionately affect any groups of people.
It is very concerning when informal consultations are undertaken instead of the usual formal consultation process. The informal process undertaken as part of the Violence Against Women and Girls strategy, for example, meant that many organisations did not have the opportunity to respond. This will have an impact on the outcome of any consultation and, potentially, any subsequent legislative processes.

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21 MARCH 2014

\[ i \text{ s. 29 (2)(d) of the Scotland Act 1998 provides that the provision of an Act of the Scottish parliament is 'not law' if it is incompatible with the ECHR (or 'the Convention rights' as defined in s. 1 (1) HRA98) }\]