Introduction

SCVO is pleased to have the opportunity to respond to this inquiry. Given our experience with recent bills such as the Public Bodies and Procurement Bills, we believe this inquiry is timely and important.

The Scottish Parliament is open - MSPs and Ministers can engage with interest groups, constituents and others, including the third sector; they can engage with anyone who has an interest in how policy and legislation are created in Scotland. It’s vital that we retain this openness but we need to be aware that openness is not the same as transparency or accountability.

We agree with the concerns raised outlined in the Committee’s call for evidence and our key points are as follows:

- How does the legislative programme achieve the strategic vision for the kind of country we want Scotland to be – and how do we prevent the vision for a Bill, as outlined by Ministers, getting lost in the process which creates a bill document?

- If the Scottish Parliament is truly open and transparent and accountable to the Scottish people, what say do they have in decisions about which pieces of legislation are taken forward?

- Is there enough time given to scrutinise bills? Is scrutiny – in a majority government as is currently the case, or a minority government or a coalition – successful? At a time when voters and the public in general are disillusioned with politics, how do we ensure parliamentary processes are robust and are better connected to the people who are most likely to be affected by the legislation after it completes parliamentary processes?

- Are all bills necessary? SCVO and our members have questioned the purpose of a number of Bills. There are concerns that we may be legislating for the sake of it, rather than for wider good.

- How do we know if legislation has achieved its intended outcomes? Is it helping to achieve key strategic aims? And what processes are in place to rectify things if the legislation hasn’t worked? There should be an agreed review process which looks at legislation and if it has achieved its wider goals.
Key Points

Strategic vision

The Scottish Government places great stock on strategic direction within the Budget and its’ legislative programme. It highlights three underpinning aims:

- accelerating economic recovery and creating more jobs;
- creating a fairer Scotland and empowering communities; and
- mitigating the impacts of austerity on people in Scotland

The First Minster's introduction to the legislative programme said:

“All 13 of the bills in this year’s programme will make a genuine difference to the people of Scotland. They demonstrate effective governance.”

How do we know if legislation contributes to achieving these overall goals? Should the parliament and relevant Committees have a direct role in reviewing the overall effectiveness of the Government programme?

Secondly, whilst the process leading to draft bills being produced can involve a range of interests, we would ask if there is any involvement of outside interests (individuals affected, third sector organisations) in shaping decisions about which Bills are needed.

Lastly, Cabinet Secretaries and Ministers often articulate clear visions for Bills which can enthuse the third sector and which appear to address the issues and concerns of those we support on a daily basis. However, that vision can sometimes be lost in the process of producing a bill document – much to the frustration of a number of interests. This means that time spent in responding to consultations is effectively wasted.

Time Constraints

Time for legislative scrutiny is often tight and the ability of the public and those with interests, including the third sector, to shape legislation can be limited. Stage 2 and 3 in particular are important as they allow the sector to work with parliamentarians to ensure they understand what Bills might mean in practice and to identify potential gaps, conflicts or issues which may affect particular groups. Yet, the time allowed to influence amendments and seek to strengthen bills can be very limited. An illustrative example of this is contained in the letter of the Delegated Powers Committee in relation to the Children and Young People’s Bill which underwent significant Stage 2 amendments.

Complexity of Bills and Legislative Process

The process of scrutinising and amending bills is complex both for MSPs and for outside interests. Whilst Ministers and officials have found ways to work with third sector and other interests in shaping legislation before it gets to the Parliament –
through advisory groups, consultation exercises and direct engagement with people affected by the legislation, and with detailed and comprehensive evidence sessions at Stage 1. Whilst interested bodies may provide briefings for Stage 2/Stage 3, the level of input from outside bodies at those stages - those affected by legislation and third sector organisations – is more limited.

Following and inputting to the Stage 2 process and Stage 3 debate is a challenge for all who are interested in making legislation work for people across Scotland. For example, the Public Bodies Bill was so technical that those experienced in policy, and those representing the voices of service users had many documents and amendments to wade through – in incredibly short timescales. The complexity will be off putting at best; at worst, it has the impact of reducing the overall effectiveness of the legislation process.

Even with the increase in Chamber sessions, there are still lengthy Stage 3 debates, often running beyond timescales set for normal parliamentary proceedings. The Children and Young People’s Bill is again an example - Stage 3 ran late into the evening. We would ask if there is scope to split Stage 3 proceedings over more than one chamber session to allow for more detailed debate and more effective scrutiny.

There appears also to be a trend in recent years for creating large bills – take for example the Criminal Justice Bill which appears to bring together a number of changes simply because they are under the same portfolio.

This benefits no-one – MSPs or the people which the Parliament represents. Complexity, lengthy and technical bills can make it nearly impossible to get to the bottom of all policy issues and potential impact that might arise from proposed legislation.

We must find ways to simplify legislative processes, ensure clearer groupings of amendments and hear much more about the rationale for amendments. The challenges that the third sector had in securing amendments in the Public Bodies Bill and in the Self Directed Support Act are examples of this in action.

We must also capture and strengthen existing good practice and seek to maintain this.

**Scrutiny within the context of majority Government**

Voting along party lines can be seen to reduce the effectiveness of scrutiny processes. The Procurement Bill and the Public Bodies Bill are examples which demonstrate that sometimes, people’s interests may not be effectively represented. The third sector recently worked together to suggest a number of sensible amendments to the Public Bodies Bill, but very few of these were accepted. The result is legislation which may well undo any good practice and involvement of the third sector, service users and carers achieved as a result of the Reshaping Care agenda.

We must never lose sight of the fact that most legislation will have a profound effect on people’s lives. When votes move along party lines, in spite of the work of
individuals, third sector organisations and others to help shape and improve legislation, then faith is lost in that process. At a time when people are generally mistrustful of politicians we must consider whether these processes are delivering the right outcomes.

Remoteness

For those directly affected by Bills, the process as we move through the Stages can seem remote at best. As we quickly pass through Stage 2 and 3, it is hard for both organisations and individuals to keep up with amendments and to fully appreciate how those amendments will affect them.

We must also consider this issue in the context of decreasing voter turnout – do people have a reason to vote, and how connected are they to the kinds of processes which this inquiry seeks to review? As voter turnout continues to decrease, we must make sure that those who choose to get involved in the parliamentary process are not prevented from doing so because of complexity, a lack of time or resource.

What is legislation for?

We must also consider the purpose of legislation, and indeed whether some legislation is necessary. There is some sense that the parliament may look at legislation as a route when there may potentially be other avenues to investigate issues at parliamentary level e.g. consider the UK Parliament’s use of Select Committees and their strong scrutiny powers.

Scrutiny once legislation is enacted

Our last point relates to how we know legislation has achieved its goals – and that there are no unintended consequences. More time could be spent reviewing existing legislation and how well it is working. Moreover, we must ensure that those who are affected by legislation understand what it will mean for them. The third sector has a key role in this regard – but it places additional pressure on those organisations. E.g. Self-Directed Support Act.

Post legislative scrutiny must lead to action where legislation has not achieved what was intended. It should be within the gift of the Parliament to review Bills – indeed, one might suggest that review clauses should be part of all Bills, and that these ought to apply to the parliament instead of or in addition to Scottish Ministers, in order to ensure legislation comes back for parliamentary review.

There must also be scope for Parliament and relevant Committees to review the Scottish Government legislative programme.

Conclusion

The scrutiny work of the Scottish Parliament Welfare Reform Committee e.g. of the Scottish Welfare act, of government regulations (e.g. pass-ported benefits) has been quite powerful – giving an example of how wider legislative scrutiny might be improved.
At a time when the public might feel increasingly detached from the policies and legislation which affect their lives, the Standard Committee’s inquiry into legislative processes is timely. As voter turnout continues to decrease\textsuperscript{vii}, we must identify ways in which legislative processes and policy making at national and local level can be made more relevant to our day to day lives.

There are a number of different reviews - e.g. CoSLA and others which have been examining how democracy operates in Scotland. The Local Government Committee inquiry into the future of local authorities in Scotland is yet another. These reviews are important but they must lead to action. The year in which the Referendum takes place provides a relevant context for this Committee’s inquiry; it provides a context for us to consider how we reanimate politics, political processes and political engagement. There may not be an opportunity like this again, for a very long time.

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\textsuperscript{i} http://www.belfasttelegraph.co.uk/news/local-national/republic-of-ireland/survey-uncovers-nonvoters-reasons-28682782.html  
\textsuperscript{ii} http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Inquiries/DPLR_addsub.pdf  
\textsuperscript{iii} For example - http://www.mirror.co.uk/news/uk-news/public-faith-politicians-hits-record-2296348  
\textsuperscript{iv} E.g. http://www.theguardian.com/news/datablog/2012/nov/16/uk-election-turnouts-historic  
\textsuperscript{v} E.g. SCVO briefing, Scottish Independence Referendum Bill, 20 May 2013;  
\textsuperscript{vi} E.g. the last Scottish Government election registered turnout of only 50.6% in Scotland, (with just 37.7% turnout in Glasgow Shettleston for example), and just 39.7% in last year’s local elections. It is clear that something must be done now. Turnout in Go van by election last year stood at 20%.