



SCRA response to the Standards, Procedures and Public Appointments Committee's inquiry

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- whether concerns relate to their welfare or behaviour, the needs of children or young people in trouble should be met through a single holistic and integrated system
- a preventative approach, involving early identification and diagnosis of problems, is essential
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

Response Summary

We have drawn on significant experience of the scrutiny process relating to a number of complex pieces of legislation over the last few years to inform this response. We have considered where, in our view, the process could be improved in order to enable the production of a better standard of legislation. In summary, our experience has led us to the following conclusions:

- The legislative process often takes place very quickly and risks lacking sufficient rigour as a result
- The existing three stage process lacks sufficient flexibility and does not cope as well with the detail of large technically complex pieces of legislation
- Organisations with an operational perspective can be effectively excluded from the process at precisely the point their perspective would be of most use
- The "all or nothing" approach to secondary legislation risks resulting in a lower quality standard than would ideally be the case

Detailed Response

Timescales

While it might not always feel that way to Committee members, legislation makes its way through the Parliamentary scrutiny process extremely quickly. While Committees have the power to extend the time for Stages 1 and 2 to take place, they rarely seem to exercise a similar power to provide for much additional time *between* Stages where the legislation is very lengthy or complex. This creates significant pressures on all those involved. There are a number of consequences to these timescales:

- Some amendments, which might otherwise be pursued to the benefit of the legislation, are not due to a lack of time and/or capacity
- Consultation on the wording of amendments which are pursued can be limited
- There are no formal opportunities to comment on amendments once they have been lodged, this is particularly a problem for NDPBs and statutory bodies (see below)

In practice there have been recent examples of very significant amendments being introduced at Stage 3, presenting a real challenge for the Parliament in giving them adequate scrutiny. However, there appears to be a reluctance to remit legislation back for further Stage 2 consideration in these cases, even where this additional time might be of benefit to the consideration of the Bill.

Process

We note that legislation is not always published in draft before it is introduced to the Parliament. This means that the first opportunity to comment may be at Stage 1, which is intended to be about general principles rather than the detail and specifics of drafting. NDPBs and other statutory bodies rarely disagree with the Government on matters of policy, but often wish to contribute constructively on the detail of how that policy intention is enacted, and on the effects (sometimes unintended) of particular forms of drafting.

The lack of a formal route for those bodies to contribute their views at Stages 2 and 3 therefore presents a problem. These are the organisations which have most to offer in terms of practical experience of operating legislation, but their sensitivities around engaging in activity that might be characterised as “lobbying” means that they are effectively excluded from the process at precisely the point that their expertise would be of most use to the Committee. This can risk amendments being accepted that are in practice extremely difficult to implement operationally. It would be helpful therefore if the scrutiny process was more flexible, for example by providing the Committee with a power to issue a further call for evidence (which could be limited in scope and with short timescales) at Stage 2, in order to provide a formal and politically “safe” route for NDPBs and statutory bodies to submit their views on the detail of legislation and on lodged amendments.

Secondary legislation

Finally, the inability of Committees to amend SSIs means that those who might constructively critique the drafting of these crucial instruments may have to consider whether by doing so they wish to risk having the whole instrument fall, with the consequent delays to implementation and frustration of policy goals. The result is that a lower than ideal standard is sometimes applied to SSIs. If Committees were able to amend secondary legislation, in some cases if not all, then this problem could be avoided.

Conclusion

We suggest therefore a number of ways in which the process could be improved to deliver a better standard of legislation.

- All legislation should be published in draft and consulted on in advance of introduction to the Parliament. Where significant changes are made, a further (perhaps more time limited) consultation on drafting should take place
- Committees should more resolutely resist any pressure to push legislation through at pace, particularly in relation to Stages 2 and 3



- A more flexible scrutiny process that enables a Committee dealing with complex legislation to hear formally at Stage 2, or between Stages 2 and 3, from organisations with an operational perspective
- A procedure that allows some secondary legislation to be amended in Committee, rather than taking an “all or nothing “approach

SCRA
March 2014

