



**Commission on Scottish Devolution:
Submission by Children in Scotland
2 September 2008**

Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents over 470 members, including 90% of Scottish Local Authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland) and the National Voluntary Children's Forum. Children in Scotland also hosts Enquire - the national advice service for additional support for learning, and Resolve:ASL, Scotland's largest independent education mediation service.

Introduction and overview

Children in Scotland welcomes the opportunity to make a submission to the Commission on Scottish Devolution.

Children in Scotland has always supported the principle of devolution. We, and our members, were aware that (prior to the establishment of the Scottish Parliament) there was often insufficient time within the Westminster Parliament for legislation and scrutiny of areas of legislation and policy that are different in Scotland. In respect of child and family policy, Scotland's separate education and child welfare systems were inadequately served by the Westminster Parliament. For example, as a result of being placed on the 'back burner' at Westminster the *Children (Scotland) Act* was enacted six years after equivalent legislation in England and Wales.

The creation of a Scottish Parliament has enabled the passage of important and effective legislation in these areas. A Scottish Parliament has encouraged, and allowed for, input from a wider range of Scottish stakeholders, including children, young people and their families. Their inclusion has helped to strengthen the resulting legislation. Examples of legislation that we believe have benefited from this process include: the *Standards in Scotland's Schools Act 2000* (which set out the rights of every child to education and for their views to be considered in those decisions affecting them) and the *Education (Additional Support for Learning) (Scotland) Act 2004* which expanded eligibility for additional support and gave valuable new rights to children and their parents.

In our view, these are examples of legislation that benefited from devolution – i.e., more time and more extensive engagement in the legislative processes made possible by the establishment of the Scottish Parliament. Equally important, children and young people have been the greatest beneficiaries of these areas of devolution.

However, although devolution has directly benefited children and their families, we believe there is still room for further improvement. The areas that still need to be addressed fall into three categories:

- Better consultation with Scotland on 'reserved' matters
- Confusion over boundaries of areas of policy that are explicitly devolved, but still affected by reserved legislation and policies
- Adverse impacts on information, statistics and policy development.

In this submission, we offer examples in respect of these and consider what could be done to improve the situation.

I. Better Consultation with Scotland on 'reserved' matters

Where areas are reserved to the Westminster parliament, there need to be clearer channels for eliciting Scottish views and more robust consultation with key stakeholders in Scotland on proposed legislation and policies. 'Reserved' is supposed to refer to legislation and policy that includes Scotland, but also includes other

nations within the UK. It was never intended to mean that Scotland is overlooked or undermined in these areas of legislation and policymaking.

An example of relevance to our own interests would be *leave provision for parents*. This is a key area of family policy. Whilst we are copied in to papers published on this issue, we often have been treated as marginal within the consultation processes. Where an issue is being developed on a UK basis, there needs to be much more effort made to ensure adequate consultation with, and account being taken of advice from, the devolved parts of the UK.

2. Confusion over boundaries of areas of policy that are explicitly devolved, but still affected by reserved legislation and policies

There are a number of examples of this on-going confusion. Perhaps the most significant at present relates to early years policy and financing. Early years services for young children are an officially devolved matter for the Scottish Parliament. And yet, in practice, there are areas of reserved policy that impinge on Scotland's ability to act. This has constrained the approach that might have been taken in Scotland in developing the best possible early years services. Early years policy has involved a mixture of supply (Scottish-based) and demand (UK-wide) subsidy in a ratio that has not necessarily been appropriate for Scotland. Scotland would have benefited from a stronger supply subsidy approach, which would have been able to build on Scotland's initially higher levels of public services and could have better supported the wider approach to offering early childhood services favoured by successive governments in Scotland.

In addition, there have been specific UK-wide initiatives undertaken by UK government departments that often have not been consulted on properly with Scotland. The rationale for such initiatives has been developed on a UK-wide basis rather than forming part of the devolved policy framework. Examples of this include the Treasury's funding of the UK Sure Start programme and the extended schools programme funded by the Department of Work and Pensions (which has a UK remit).

Another example (relating more widely to the children's area) was the Changing Children Services Fund. Whilst additional resources of this kind will always prove popular, they have contributed to fragmented structures and a 'project culture' damaging to the development of a coherent long-term system of finance and service delivery.

This policy and legislative confusion extends to workforce qualifications in the children's sector. As an organisation, we very much regretted the decision taken

immediately prior to devolution to establish national training organisations (subsequently sector skills councils) on a UK-wide basis – because it divided university-based professional qualifications from industry-based knowledge and a competency approach. Whilst, at one level, it can be seen as helpful to encourage a UK-wide approach to some aspects of qualifications, it is not clear to us that these could not be accommodated through an EU framework.

3. Adverse impacts on information, statistics and policy development

In our view, the issues outlined above make for unnecessarily ‘messy’ policymaking and unhelpful results. An additional dimension to this is that confusion over devolved and reserved matters adversely affects the quality of information and statistics about Scotland. This, in turn, makes it more difficult to adequately scrutinise/monitor particular issues and develop policies that are as well informed as possible.

For example, some key UK-wide data cannot be accurately disaggregated at the Scottish level, while other Scottish data cannot be accurately compared with English data because of differing definitions and methods. Ending confusion should result in both better nation-specific information and better information sharing across nations within the UK.

What could be done to improve the situation?

Interviewed in the Children in Scotland magazine in October 2006, Lord Sutherland of Houndswood suggested a review to look at the kind of issues that we have outlined “...and see what structures might best deal with these and try to anticipate those that hadn’t been thought about so far”. We believe this is a sensible suggestion and might have the added advantage of improving our statistics and information about specific areas of policy.

We also believe that if devolution is to be meaningful, then it is necessary to consider any associated savings in financial terms from a decision to subsidise services. As Lord Sutherland pointed out in his Children in Scotland interview, the issue of what you do about budgeting when there are net savings to consider is a civil service-wide problem “...because you know if you make a saving in one department a spending department doesn’t benefit from that, and that leaves a lot of bad practice”.

Attached are copies of 'Blue Sky Thinking' *Children in Scotland*, October 2006 featuring the interview with Lord Sutherland, along with an article exploring young peoples views on devolution from *Children in Scotland*, November 2006.

Children in Scotland would be happy to provide any further information you require or amplify any of the above points. Our fundamental goal is to ensure that whatever degree or structure of devolution is in place – or being contemplated – yields the maximum possible benefits to children, young people and their families throughout Scotland. We think that any new proposals about devolution should be judged, at least in part, on their likely impacts upon the lives and life chances of Scotland's children and young people.

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