



Reform of Parliamentary Business

October 2011

The FSB is Scotland's largest direct-member business organisation, representing over 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

We welcome the opportunity to contribute to the above review. Since devolution, the FSB has regularly engaged in parliamentary processes. Most of our work with Parliament takes place during the early stages of the legislative process and post-legislation. This is because of the nature of the devolved powers that impact on business – there are relatively few pieces of primary legislation that focus on measures that impact on business (with some obvious exceptions, e.g. licensing). Instead, much new regulation for business is outlined in principle at the earliest stages and details only become clear in secondary legislation.

Since our role is limited to engaging in the legislative process, the FSB has no particular comments to make on configuration of the parliamentary week or the format/content of question time or chamber debates. Based on our experience, however, we do have some comments about the time and attention given to scrutiny of amendments and the potential for parliamentary committees to play a clearer role in scrutinising public bodies or agencies.

Making informed decisions

The FSB wants to see parliamentary procedures which ensure that our elected members are empowered to make informed decisions on the development of legislation, which will stand the test of implementation and effectively meet the purpose for which it was proposed. In order for this to be possible, some account has to be taken throughout the stages of legislative development of future impact on those parties who will need to interact with the laws made. The review of parliamentary procedures may present an opportunity to ensure that the legislative process takes better account of future impact, by making better use of an already existing tool: the Business Regulatory Impact Assessment (BRIA).

Because the greatest impact of any legislation on business is usually the cost and administrative burden associated with compliance rather than de facto compliance with the spirit of the legislation, the FSB supports moves which ensure 'better regulation' in Scotland. Lamentably, progress in achieving better regulation has often been slow since devolution. As a member of the Regulatory Review Group (RRG), we were involved in the development of BRIAs, introduced in 2010, to accompany consultations and draft legislation and we welcome the Scottish Government's acceptance of this new process of impact assessment. BRIAs provide vital information to stakeholders and decision-makers from the earliest stages of policy development, through to how proposed legislation would affect the wider business community and allow an assessment of whether the aims of legislation are being achieved in a proportionate and targeted way. Their value, however, depends heavily on when in the drafting process they are undertaken, how thoroughly the BRIA has been developed, and how much attention they are paid.

Notwithstanding the right of Parliament to agree whatever measures it deems appropriate, the FSB is concerned that the current legislative process may not take sufficient account of the cumulative business impact of additions and amendments to legislation on those who will have to interact with it. These additions might be in the form of amendments at Stages 2 or 3 or in the form of enabling clauses which leaves much of the detail to be worked out at a later date. There are several examples of existing Scottish legislation which, once implemented, either failed to comply with good regulatory practice, or worse still, was revealed to be unworkable in practical terms.

Example 1: Alcohol etc. (Scotland) Act 2010

Provisions for a social responsibility levy were made in the 2010 Alcohol Act from Stage 1. None of the details of how this levy might be charged were worked out before the Act was passed and, in fact, have still to be determined. One of the key reasons for including a social responsibility levy in the Act was to counter balance any benefit that might be derived from the introduction of minimum pricing by alcohol retailers. In the event, at Stage 3, minimum pricing was rejected by Parliament but the social responsibility levy and the questions surrounding its future application were retained. Once the Act was passed, a consultation on a set of draft social responsibility levy regulations was issued, which demonstrated that such regulations were unworkable within the principles of better regulation.

The Scottish Government has opted to place on hold plans to introduce such regulations at present, but the provisions for such regulations remain. Further legislation in relation to alcohol is due to be introduced to Parliament in the current session.

Example 2: Knife Dealers' Licensing Scheme

Initial consultation on licensing/regulations for knife dealers took place in 2005 prior to the Custodial Sentences and Weapons Scotland Act 2007 which made provision for amendment of the Civic Scotland Act 1982 to introduce a knife licensing scheme. It did not appear that concerns raised then about the practicality of such a scheme were taken on board at the point where the second consultation took place in 2008. Neither of these consultations referred in any way to a Regulatory Impact Assessment

or gave any indication that the cost and burden either to businesses or to local authorities had been assessed or weighed up against the hoped-for outcome.

Much of the detail was left unconsidered by Parliament and the accompanying guidance to the regulations did not address the issues which were identified as requiring clarification by both consultations.

The scheme was implemented in June 2010 and we are aware of a number of difficulties that arose during implementation which had been raised at an earlier stage in the legislative process.

Recommendation

The FSB therefore considers that more detailed scrutiny of the potential business impact and practicality of the proposed amendments and additions to legislation at the later stages in the process would be helpful. This should include examination of whether:

- The objective can/will be achieved with the policy levers available;
- Any unforeseen consequences of amendments;
- The cumulative impact of any amendments;
- The cost and burden to business is worth the pursuit of the objective; and
- How additional costs and administrative burden can be minimised in implementation (both for the regulators and regulated).

Scrutiny Role of Committees

In a recent report on the 2010 revaluation of non-domestic property process, we discussed the role of the Scottish Assessors, who are responsible for all aspects of assessing properties and handling appeals. The Assessors are independent and are not accountable to ministers. Due to the importance of this process, particularly its impact on the Scottish economy, we felt that an opportunity for some degree of scrutiny of the role of the Scottish Assessors would be beneficial. Parliament, particularly the relevant committee, would be well-placed to perform this function. It may be the case that there are other independent statutory bodies, perhaps those with a regulatory function, over which parliament could have an element of structured oversight.

For further information on any of the points raised in this submission, please contact Mary Goodman, Senior Policy Adviser, email: mary.goodman@fsb.org.uk t: 0141 221 0775.