SUBMISSION FROM THE SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS

About SCVO

1. The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the voluntary sector. There are over 45,000 voluntary organisations in Scotland involving around 137,000 paid staff and approximately 1.3 million volunteers. The sector manages an income of £4.4 billion.

2. SCVO works in partnership with the voluntary sector in Scotland to advance our shared values and interests. We have over 1300 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

3. Further details about SCVO can be found at www.scvo.org.uk.

Introduction

4. SCVO welcomes the opportunity to provide evidence to the Education, Lifelong Learning and Culture Committee, which begins its examination of the Public Records (Scotland) Bill on 8 December 2010.

5. We wish to bring to the attention of the Committee the concerns of many of our members, who are in principle supportive of the aim to improve public record keeping. However, we are concerned about the way in which this Bill is drafted, and in particular, the potential for unintended consequences that could have a significant resource implication for the voluntary sector.

6. The Bill is relevant to the voluntary sector because it includes a statutory definition of “public records” that includes records "created by or on behalf of a contractor in carrying out the authority's functions" i.e. includes records kept by voluntary or private sector organisations working under contract to public authorities to provide public services. A record is defined in the Bill as “anything in which information is recorded in any form”.

7. According to the policy memorandum that accompanies the Bill “the Bill covers these records in a way which does not impose new and unreasonable burdens on voluntary and private sector organisations”. However, there is no specific evidence of how this has been determined.

8. The Bill sets out the duty on public authorities to establish a Records Management Plan (RMP), but does not give details of the model RMP nor does it specifically say that public authorities must follow it, rather they must “have regard to it”. So at this stage, it is quite difficult to know what the implications of the Bill might be for voluntary organisations.
Key Message

9. In brief, because of a series of concerns around the potential negative impact on the voluntary sector (detailed below) and our lack of engagement in the development stages of this Bill, SCVO requests that the Committee recommend the withdrawal of the Bill pending a fuller consultation with the voluntary sector.

What are the concerns for the voluntary sector?

- Despite the direct impact it will have on our sector, no one knows anything about it. This is in part due to a very limited consultation process. The Bill was consulted on for 6 weeks only, from 22 June to 4 August 2010. Only three voluntary sector organisations submitted responses (87 responses were received in total). This timeframe does not respect the best practice guidelines laid out in the Compact1, nor has there been any explanation for why the consultation should have been curtailed from the usual 12 weeks. We also note the limitations of running a consultation in the middle of the summer.

- The terms of the Bill, especially the broad scope of the definition of “public record”, were not obvious from the terms of the consultation. Those voluntary sector organisations who did have early discussions with the Bill team, did not anticipate from the tone of those discussions, to see the Bill drafted in such broad terms.

- While we are told that the intent of the Bill is not to place additional burdens on the voluntary sector, the Bill does not make this clear and leaves the door wide open to all sorts of potential additional administrative burden and attendant costs.

- There is an apparent lack of proportionality and no mechanism to relate the new system to levels of risk – while the original issue of poor record keeping related to looked after children, the solution is now to cover any and all public functions, and any voluntary sector organisation that is performing the functions of a public authority.

- The law of unintended consequences: the Bill team have assured us that the new legislation will result in fewer records being kept, not more. However, this is not reflected on the face of the Bill; the Bill places no limits whatsoever on the definition of public record, or on public functions. We cannot ignore the fact that we live in a highly risk averse culture, with recent examples of legislation designed to simplify, enable and improve access, that result in the opposite, or that create a new scheme that is disproportionately resource

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1 A Compact between the Government and the voluntary sector was signed in October 1998, and refreshed in 2004. The Compact is an agreement on the principles of working in partnership, based on a mutual understanding of the distinctive values and roles of the Scottish Executive and Scottish Parliament and the voluntary sector. [http://www.scotland.gov.uk/library2/doc16/cgpg-00.asp?textonly=FALSE](http://www.scotland.gov.uk/library2/doc16/cgpg-00.asp?textonly=FALSE)
intensive and bureaucratic (e.g. Data protection or PVG - £50 million plus to create a barred list of less than 400 people)

- Voluntary organisations already provide records to public authorities, as specified in contracts; voluntary organisations would not want to see public authorities asking for more information, or expecting voluntary organisations to set up new systems, as a result of the Bill. If new obligations are placed on voluntary organisations, these must be properly costed and funded; however, in the current funding climate we have serious concerns about the ability of our sector to win that argument.

- While consistency might be one of the potential benefits of this legislation, it is unclear that the Bill would result in more consistency, because public authorities do not have a duty to follow the model plan but only to 'have regard to it'; Voluntary organisations often operate under contract to several public authorities, and providing different information, or information in different formats, to different public bodies is/would be an administrative burden.

- There is a risk of further duplication where public authorities feel they are obliged by their RMP to ask for information that is also submitted to other bodies, such as the Office of the Scottish Charity Regulator (OSCR) or the Care Commission [NB, this is particularly important as the Public Service Reform Act regulations appear to give Social Care and Social Work Improvement Scotland (SCSWIS) inspectors the right to ask providers to keep/provide any information they see fit].

- What records would be included is not clear from the Bill, but will be set out in the guidance and in individual records management plans – how likely is it that the voluntary sector will be able to engage meaningfully with public authorities in the design of these plans; we say that public authorities must only include records in their records management plan which relate directly to the running of public services. Where the voluntary sector is concerned, this can become very complicated and difficult to manage; e.g. board minutes, research reports, etc.

- Voluntary organisations are concerned that information disclosed to them by the people they support is often provided on the basis that it is confidential; this is crucial to developing and maintaining trusting relationships, which voluntary organisations often have with those who would not otherwise engage with statutory services. Voluntary organisations have some real concerns about the impact on confidentiality/trust of records becoming public property.

- Voluntary organisations would also like to discuss the issue of ownership of records: once a contract is over, would records be the property of the voluntary organisation or the public authority? Voluntary organisations holding confidential records have developed systems for archiving and protecting these records, while at the same time allowing appropriate access to them, and would have concerns about handing records over to public authorities for archiving.
Some organisations have also raised the issue of how this Bill fits with Freedom of Information (FOI). A separate consultation on extending Freedom of Information provisions that was published earlier this year did not propose to extend FOI to those providing services under contract to local authorities. We would seek clarity on whether or not the Public Records Bill introduces FOI to voluntary organisations “by the back door”.

Conclusion

10. In conclusion, the sector very much wants to work with the Bill team to find a solution that achieves the core aim of improving public record keeping in a proportionate and measured way. As it stands, the Bill has the potential to cast a very wide net across our sector that tangles us all up in a resource intensive bureaucracy disconnected from the original policy intent of the legislation. We do appreciate that this is not the intent of the Bill, but that is the way it is currently drafted. We need more certainty about how this Bill will address the high risk areas in a way that does not duplicate, lead to inconsistency across public authorities, or place additional burdens where there is no resource to meet them or risk to justify them.

11. We discussed two options. One option was to withdraw the Bill, in order to provide for more thorough consultation with our sector. A second option was to amend the Bill. We considered that the Bill would have required major amendment to narrow the scope of the definition of public record, and minimise the potential disruptions caused to the work of voluntary organisations. We would also have needed to be given assurances that the sector would be properly involved in the development of the model records management plan and guidance.

12. Of these two options, we decided that withdrawal of the Bill is the only appropriate action at this time. This is because, we are concerned that given the limited time left in this session of Parliament there may not be time to properly rework the Bill to make it fit for purpose. We therefore request that the Committee recommend the withdrawal of the Bill pending a fuller consultation with the voluntary sector.

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