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Authors

This briefing was written by Evelyn Gillan based on one case study of her PhD which explored the role of civil society in policy making in post-devolution Scotland. It was edited by Jennifer Flueckiger and Fran Wasoff.

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Centre for Research on Families and Relationships
The University of Edinburgh,
23 Buccleuch Place, Edinburgh EH8 9LN
Tel: 0131-651 1832
Fax: 0131-651 1833
E-mail: crfr@ed.ac.uk

The politics of family policy in post-devolution Scotland: the case of family law reforms

The promise of devolution was 'to do politics differently' by creating a more plural, consensual and participative political landscape. In this context, it might be expected that post-devolution Scotland would provide a fertile environment for fostering innovation in family policy-making. This study explores the role of civil society in family policy-making in post-devolution Scotland, investigating who influences the family policy agenda and how political activity by civil society impacts on government policy. This briefing details some of these findings and examines the role different groups played in the development of the Family Law (Scotland) Act 2006.

Key Points

- Devolution has enhanced the role of civil society in family policy making but, rather than provide a platform for consensus, the paradoxical effect has been to increase the potential for interests to clash
- Devolution has not reduced conflict in family policy debates – the family continues to be a contested area with the politics and policy streams closely interrelated
- Engaging an 'authentic' Scottish voice about issues into decision-making structures can be problematic
- Specific policy outcomes can be directly linked to interest-group influencing activity
- Interest groups can achieve influence without securing substantive outcomes by redefining issues during debates
- The way interest groups view an issue and how they choose to describe it can have the potential to constrain and shape future policy developments

Background

Proposals to reform family law were first made by the Scottish Law Commission in 1989 and 1992. The coalition government of the newly-elected Scottish Parliament published the consultation document *Improving Scottish Family Law* in February 1999. This was followed by *Parents and Children* in November 2000 and *Family Matters* in June 2004.

Family Matters (2004) contained three firm proposals where a consensus had emerged from previous consultations:

- conferring automatic parental rights and responsibilities (PRRs) to unmarried fathers who jointly register the birth of a child with the mother
- reducing the separation period required prior to divorce
- amending domestic abuse legislation to extend protection for cohabitants

Other *Family Matters* (2004) proposals included extending legal rights for cohabitants, making it easier for married step-parents to secure PRRs, and a right of contact for grandparents.

The Study

The findings are based on analysis of data from documentary sources, observation of parliamentary

debates and 26 in-depth interviews with key policy actors in Scottish civil society, members of the Scottish Parliament (MSPs) and senior civil servants involved in the policy process.

Interest Group Influencing Activity

A range of interest groups representing formal and informal civil society participated in the policy process of family law reform. Different actors came to the fore at different stages of the legislative process. Faith groups, fathers and grandparents engaged in activity early in the process. Scottish Women's Aid (SWA) and the family relationship bodies became influential voices when the process moved to Parliament.

Faith group activity

165 out of 251 responses to the consultation document *Parents and Children* (2000) "came from individuals, clergy or church groups as the result of a leaflet published by the Christian Institute" (Scottish Executive 2001). Similarly, a significant number of responses to *Family Matters* (2004) contained a degree of identical wording of phrases and sentences suggesting "that some respondents had not had sight of the consultation paper itself but had based their submissions on information provided to them by a third party" (Nicholson 2004).

Faith groups sought to shift the proposals to reform family law away from concerns about legal safeguards

towards a moral discussion about the 'family' and the place of marriage in society. This quote by a senior civil servant illustrates this point:

The views were polarised...you had the Christian Institute who were totally against anything which I would call socially modernist and you obviously had the other factions as well...there was an awful lot of individual responses which potentially skewed the percentage figures. For the main planks of policy that we were firm on, they were heartily endorsed by the main institutions.

Further evidence of faith groups' influence was the Scottish Parliament's Justice 1 Committee approval of an amendment opposing the government position to reduce separation periods required prior to divorce. The amendment by Margaret Mitchell MSP (Con) proposed reducing the separation periods, but by less time than the government's proposals. Marlyn Glen, a Labour MSP on the Committee, describes her reaction when the amendment was approved:

I was totally shocked. It was an Executive proposal that was seen to be totally acceptable and I don't think we took any evidence that was against that because people thought that 5 years was too long and that seemed to be agreed across the board yet when it came to the bit....but I was in a minority with the Lib Dems supporting the Executive's view which was quite strange....there was a lot of individual lobbying going on....I think people's personal beliefs came in rather than actually looking at it from what was supposed to be reflecting 21st century Scotland and I found it very difficult that because of an individual's background and circumstances they would allow that to colour what they were deciding.

Scottish Women's Aid and family relationship bodies

Two groups who had been virtually invisible during the pre-legislative phase became highly visible during the parliamentary phase of the policy process - SWA and family relationship bodies.

SWA expressed concerns about safe contact for children when domestic abuse was involved as this interviewee from SWA explains.

This had been a long drawn out policy process. In the earlier consultation there was reference to building in safeguards for children but when Family Matters came out there was nothing – no mention of domestic abuse in relation to contact. It was like all the evidence linking domestic abuse and abuse of children was ignored. The debate was skewed with everyone focusing on how the courts had a bias in favour of women. We felt we had gone through the proper procedures but it was the really emotive arguments being put forward by Families Need Fathers that were being listened to. They had encouraged their members to lobby

individually and that was definitely reflected in the debate when Family Matters was launched.

SWA proposed that there should be a rebuttable presumption against contact inserted into the Bill in cases where domestic abuse had occurred and launched an intensive lobbying campaign on this issue.

The other interest group to emerge during the parliamentary phase was family relationship bodies. Justice 1 Committee had called for a full review of existing relationship support services. This prompted family relationship bodies to highlight the need for increased service provision.

Outcomes

Tracing the policy and legislative process of the family law reforms from start to finish, it was possible to identify specific policy outcomes which could be directly linked to the influencing activity undertaken by the most visible and vocal interest groups. For example:

- a new welfare section covering safe contact was inserted into the Bill to accommodate the concerns raised by SWA
- £300,000 new funding was announced for capacity-building in local family support services
- fathers and grandparents groups could point to the new provision of contact compliance officers, the Parenting Agreement and the Grandchildren's Charter

The impact of faith groups and marriage as the 'gold standard'

The status of marriage as the 'gold standard' of family relationships dominated the final Parliamentary debate on the family law reforms. A number of interviewees linked the political accommodation of the 'pro-marriage' lobby to the 'fall-out' from the campaign to retain Clause 28¹. Some interviewees suggested the Clause 28 debate caused a four-year delay in family law reform progress. This quote from a civil servant illustrates this point:

The Family Law Bill, I suspect, got put into the long grass prior to the election because you don't want the backlash from the right wing saying you're in favour of quickie divorces and all the rest just prior to an election. I think they got their fingers badly burnt over Clause 28 and I think that put them off dealing with contentious issues.

Evidence from documentary sources does suggest a significant increase in faith group influencing activity on the family law reforms in the period immediately after the campaign in civil society to retain Clause 28. *Parents & Children* (2000), published post-Clause 28, yielded almost three times more responses than *Improving Scottish Family Law* (1999), published pre-Clause 28. And whilst the legal profession and the voluntary sector represent the largest contributing interest groups to the 1999 consultation, the number of 'individual' responses increased by almost 1000% becoming the largest single category of respondents in both the 2000 and 2004 consultations.

The Family Law (Scotland) Bill was approved by the Parliament on 15 December 2005. The research findings illuminate the different ways civil society interest groups can achieve influence and control over both *policy* and *political* outcomes (Dur and De Bievre 2007). The number of MSPs from across the political spectrum who publicly reiterated their support for the special status of marriage while voting through reforms which provide some legal rights for people who are unmarried, suggests that faith groups achieved *influence* but not *control* of policy outcomes by embedding a key message in cross-party political consciousness. This point was made by Margaret Jamieson MSP (Lab) during Stage 3 debate of the Bill:

I am concerned that the debate appears to be turning into a discussion of whether we value marriage and whether the Bill undermines marriage. To my mind, we are required to ensure that the legislation exists to move the process on when a marriage is over.
(15 December 2005: col 21778)

The Executive's response to the 'pro-marriage' lobby was to recognise both the place of marriage in society and the diverse composition of families in Scotland. This was in line with New Labour's Westminster broader family policy.

The political accommodation to a minority religious position is somewhat surprising given that, according to the Scottish Social Attitudes Survey 2004, almost half of the Scottish population define themselves as not belonging to any religion. Politicians' unwillingness to "speak out against the normative resonance of marriage" was similarly identified in the debates on the Family Law Act 1996 (England). The impact of the "pro-marriage idealist stand of opinion" was to "effectively de-legitimise potential alternative discourses" (Hassan 2006:283). The position adopted by the Evangelical Christians and the Catholic Church on the family law reforms was not supported by mainstream faith groups in Scotland making MSPs eagerness to embrace what was effectively a minority religious opinion, all the more surprising. Alison Elliot, a former Moderator of the Church of Scotland, describes the position adopted by the Church of Scotland.

When it comes to separation periods [prior to divorce] we were much more focused on the care of children.... Now that's not somehow giving up on marriage it's that the alternative principle... that you should care for the vulnerable.

Faith groups opposed to the family law reforms could not point to substantive outcomes in the way that other interest groups could but were nevertheless highly successful in influencing the political discourse of the day.

The paradox of participation

Devolution has created a more fluid space for civil society participation in family policy-making. Paradoxically, however there is increased potential for interests to clash. There is also potential for unexpected alliances, for example, the Evangelical Christians and the Catholic Church.

This study shows engaging the 'authentic' voice of Scotland into the decision-making structures of the Parliament is problematic. It showed that civil society engagement in the policy processes was dominated by competing value claims and intra-civil society conflict. This supports the general consensus that there is no single, normative vision of civil society but a number of competing interpretations (Daly and Howell 2006, Hall and Trentman 2005).

By focusing on safeguarding the needs of children, recognising the special place of marriage in society, but also acknowledging that family life had changed, Scottish Ministers were, in the end, able to secure support for the family law reforms. However, the findings show that interest groups can have influence without achieving substantive outcomes by redefining the issues during debates. The findings suggest the legacy of the Clause 28 debate had a direct effect on the policy process of the family law reforms both in terms of increased influencing activity by faith groups and political accommodation of a 'pro-marriage' lobby. In this instance, the reforms did go through but these findings raise questions about the extent to which the way interest groups view an issue and how they choose to describe it can have the potential to constrain and shape future policy developments.

The findings also challenge early 'devolution' assumptions that increased participation would result in more consensual processes and more progressive and innovative policy outcomes.

Implications for policy

Democratisation of policy processes offers opportunities for interest groups to influence policy in fundamental ways achieving concrete policy outcomes and control over political outcomes. The contested nature of family policy debates may make securing progressive reforms more difficult and a future devolution effect could be to further embed the role of ideology in family policy debates in Scotland.

There is a need for more analytical, qualitative case studies to gain a better understanding of public policy processes and for more research on the influencing activity of interest groups, including faith groups, and their interaction with the policy process in post-devolution Scotland. A key ongoing task for researchers is to continue to question how policy issues get defined and framed, who the influential voices are and how they impact on policy.

¹Between 1999 and 2000 there was a highly charged debate in civil society following the Scottish Executive's announcement that they intended to repeal Section 28/2A of the Local Government Act 1986 which banned the 'promotion of homosexuality' in schools. The Keep the Clause campaign was launched by businessman and evangelical christian Brian Souter and was supported by the Catholic Church and the Daily Record newspaper. The campaign financed advertising hoardings during a byelection in Ayr and Brian Souter personally financed a postal referendum. The campaign was ultimately unsuccessful and the clause was repealed in June 2000.