

**Commission on
Parliamentary
Reform**

Your Parliament
Your Voice

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Ath-leasachadh
Pàrlamaideach

Do Phàrlamaid
Do Ghuth

Agenda

7th Meeting

Monday 30 January 2017

The Commission will meet at 2.30 pm at Eden Court, Inverness.

1. The Commission will discuss engagement and influence from a distance with—

Cllr David O'Neill, President, and Adam Stewart, Policy Manager, COSLA;
Rory Mair, Chair, and Stephen Carr, Secretary, Commission on Highland
Democracy.

Paper CPR/7/1 – written views of discussion participants
Paper CPR/7/2 – note by the Secretariat (private paper)

2. The Commission will discuss engagement and influence from a distance with—

Andrew Howard, Managing Director, Moray Estates Development Company;
Jan Baird, Director of Adult Care, NHS Highland; and
Matthew Friess, Highland Homeless Trust.

Paper CPR/7/1 – written views of discussion participants
Paper CPR/7/3 – note by the Secretariat (private paper)

3. The Commission will consider the discussions held at items 1 and 2 (in private).

Commission Secretariat
Room CG.07
The Scottish Parliament
Edinburgh
Tel: 0131 348 6400
Email: cpr@parliament.scot

Commission on Parliamentary Reform

7th Meeting, Monday 30 January 2017

Written comments

Introduction

1. Written comments have been provided by the following organisations and individuals giving evidence at today's Commission meeting.

- Commission on Highland Democracy (Annexe A);
- COSLA (Annexe B);
- Moray Estates Development Company (Annexe C)

Written comments from the Commission on Highland Democracy

Background

There is an appetite from people across the Highlands to be more involved in democratic and decision making processes. However, we know that people in the region do not feel that they are involved in how the Council spends its money, or that they have influence over decision making in their local area. A survey of Highland residents in 2014 showed that:

- 77% were interested in the democratic process;
- 69% would like to be more involved in decision-making in their area or in the country
- 48% agreed that every citizen should get involved in democracy if it is to work properly.

However, the survey also showed that only:

- 20% agree that the Council involves people in how it spends money; and
- 18% feel that they have any influence over decision-making in their local area.

The Commission on Highland Democracy was established to continue conversations locally about the kind of democracy we want to have in the Highlands and to follow up on the work of the National Commission on Strengthening Local Democracy.

Highland Council has supported the establishment of an independent commission, and Rory Mair was approached to be the independent chair. A further 14 Commissioners were appointed, including six Councillors representing all political groups at the Council. People were approached to be on the Commission who have the skills to ensure that it is able to understand and interpret the wishes of the people of the Highlands. The Commission met for the first time in September 2016, and it is expected to produce its final recommendations in May 2017. More information on the Commission can be found at: www.highlanddemocracy.wordpress.com

Engagement Approach

The Commission's work can be viewed as three main phases of work.

Phase 1: Listen and Understand

This first phase involves open discussion about what people think about the state of local democracy in the Highlands. This phase of the work is intended to inform and direct the work of the Commission. The Commission has been careful not to define the terms of the conversation or restrict what people want to talk about.

Call for Evidence

The initial call for evidence is attached, Appendix 1. It contains 8 open questions on local democracy and was designed to help people say what they wanted whilst allowing the Commission to easily spot and interpret any common themes that responses contained. However, it was also stated that if the questions were not

helpful and people had something quite different to say to tell the Commission anyway and that all responses would be taken into account. 500-1,000 people have responded to the call for evidence online or have emailed or sent their comments to the Commission.

Public events

The Commission have attended public events across the Highlands, and through these has spoken to hundreds of people. This has included a focus on speaking to young people through area youth forums. The Commission has been pragmatic in taking opportunities to attend and become involved in locally organised events where people are meeting for a variety of reasons. At these events, Commissioners have held open discussions, allowing people to give their views.

Opportunities for people to submit their views to the Commission have been publicised through local networks, social media (Facebook and Twitter), through the local press/ press releases, and through the website.

Phase 2: Reflect and Test

Having collected the views of people in the Highlands, this phase involves trying to understand any common themes that are arising about the state of democracy in the Highlands. These themes are based solely on what the Commission has heard and not on the professional or personal views of the commissioners. The Commission has carefully discussed the content of the written responses and the views they had heard at the public meetings.

These themes will now be published and a second round of engagement will occur, both on-line and through public meetings. This will make sure that the Commission has heard correctly what the issues are in Highland, and will start the process of further in-depth discussion.

Phase 3: Solve and Recommend

The final phase of the Commission's work, whilst not yet fully defined, will involve open and collaborative discussion and investigation to find solutions and recommendations to improve local democracy in the Highlands. A final report will be published in May 2017.

Initial Findings

The Commission met on the 12th December and discussed what they have heard so far from people across the Highlands. Findings which may also be relevant to the Commission on Parliamentary Reform include:

1. In general, people agree that four things are needed to have strong local democracy in the Highlands:
 - i. People are well represented through the local democratic process.
 - ii. The process of how decisions are made by those who have been elected is clear.
 - iii. Communities and individuals should be able to influence these decisions.
 - iv. Communities should be able to make local decisions for themselves.

This is not to say that people agree that this is being achieved.

2. The Commission has not found a large amount of support from citizens/communities to take over complete control of services. So far there has been greater demand from people to be able to better understand how services are delivered and how decisions are made, and to be able to influence this (empowered consumers of services rather than active participants).

3. People are highlighting there is a big and important difference between consultation and involvement in decision making. Involvement is on-going and authentic. There is a feeling that consultation happens when a decision is at the point of being made and it is therefore very hard to influence.

4. There is an issue around feedback. The Council consults on various decisions but then does not feedback how this affected the decision making process. This has contributed to a feeling of “consultation fatigue”, and has made consultations less empowering than they should otherwise be.

Three main points we would like to make to the Commission:

- Much of what the Commission on Highland Democracy has heard relates to people wanting to be more empowered consumers, rather than taking on services directly. People want to see a better balance between the role of the professional, representative, and local community in local decision making.
- The balance between representative and participative democracy needs to be reevaluated. Often consultation and engagement exercises focus on being representative, and this can overlook a range of valuable views and opinions.
- There are a wide range of existing networks which could be better made use of in terms of hearing the views of local people and communities.

Appendix 1: Call for Evidence

The Highland Council, like every other Council in Scotland, makes daily decisions about everything from home care to bin collections and from building schools to cutting grass. But are they making these decisions in the right way for you or might you be making them instead?

We believe that people's lives are better when they have more control over decisions which affect them. We want your views about what happens now, and what the future of democracy in the Highlands might be.

The job of the Commission on Highland Democracy is to find out how local people want to be involved in decisions and services that directly affect their lives and their communities. We believe we should not even start our work without asking local people what you think of this issue and how we should move forward. We hope your answers will direct our work and tell us what problems, if any, you want to get sorted.

The 8 questions we are asking are designed to help you to say the things you want to say and to allow the commission to easily spot and interpret any common themes that your answers contain. However, if the questions are not helpful and you want to say something quite different, please tell us anyway, as we promise that every response will be taken into account as we move forward.

In the Highlands, decisions are made based on democratic processes. We believe that to have strong local democracy in the Highlands four things are needed:

1. People are well represented through the local democratic process.
2. The process of how decisions are made by those who have been elected is clear.
3. Communities and individuals should be able to influence these decisions.
4. Communities should be able to make local decisions for themselves.

Q1. Do you agree with the comments above?

Q2. How do you feel about the current state of local democracy in the Highlands?

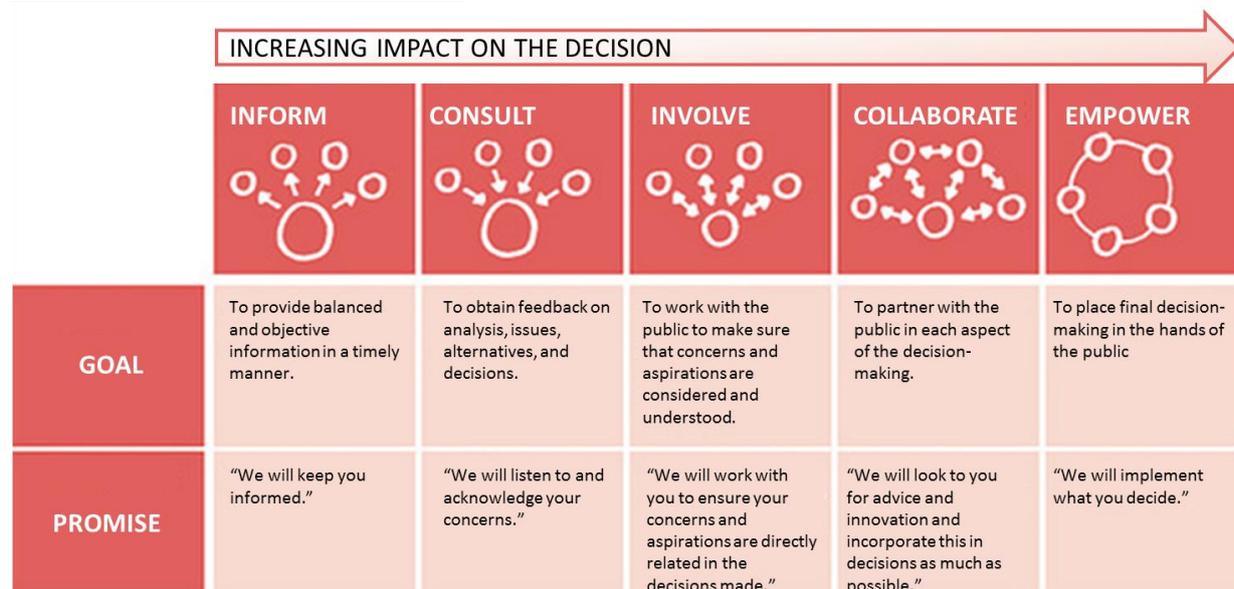
Q3. Is it clear how decisions that affect you have been taken?

Q4. Once you have elected a representative (Councillor, MSP, MP etc), do you think they should be expected to make decisions on your behalf without any further consultation?

Q5. Do you want to be more involved in local decision making? And if so, what would help you to do this?

We have included a diagram on the “spectrum of public participation”. This gives a range of options for how public bodies (such as the Council) and communities work together to reach decisions. We feel that all these approaches have value in different circumstances. Looking at this diagram, and thinking about decision making in the Highlands please answer the questions that follow.

Spectrum of Public Participation



Source: International Association for Public Participation. www.iap2.org.uk

Q6. How do you feel about the ways in which the decisions that affect your community are made at present?

Q7. In the future, how would you like decisions to be made in your community?

Q8. What do you feel would need to happen to improve the current processes of decision making in your community?

Thank you for taking the time to respond to our questions. We may want to contact you in the future to discuss some of the things that you have raised. If you would be happy to speak about these in more detail please fill out your contact details.

Your response will count just as much whether you provide contact details or not. We guarantee that any information that we receive from you will be treated in the strictest of confidence and will not be used for any purposes other than the work of the Commission.

Q9. Name

Q10. Email address

Q11. Contact telephone number

Written comments from COSLA

1. COSLA is pleased to provide this submission to the Commission on Parliamentary Reform, which is intended to provide context to its verbal evidence on 30 January 2017.
2. We are committed to engaging closely and positively with the Scottish Parliament, Committees and Parliamentarians, and we regularly do so in a variety of ways. Like the Commission, COSLA and local government are also fundamentally committed to enabling people to participate in decisions that affect them, and we welcome the work of the Commission to explore this further.
3. The remit of the Commission is to consider how the Scottish Parliament can 1) increase its engagement with wider society and involve the public, 2) clarify its identity, and 3) be assured of the right 'checks and balances'.
4. Our submission addresses each of these objectives. We are ambitious about what can be achieved, and it is for this reason that we do not primarily focus on our day to day interaction with the Parliamentary process. Instead, we want to help the Commission take a step back and consider the opportunities to address its remit by looking at Scotland's overall system of democracy.

The Commission on Strengthening Local Democracy

5. Much of our evidence draws on the work of the Commission on Strengthening Local Democracy. Run independently of COSLA, it brought together local government, civic society, and a range of experts to consider how to strengthen democracy and empower communities.
6. It found that local government is out of step with other modern democracies; geographically large scale, without legal protections, and over 50 years, witness to powers shifting to the centre. Its evidence also suggested that this 'top down' way of working hasn't tackled the inequalities that are holding back many communities and has led to a culture that hasn't empowered those around it.
7. It was able to build that view because of the open conversation that it engaged in with thousands of people across Scotland, the UK and Europe - all of its evidence is publicly available at www.localdemocracy.info. It invested heavily in that process, which included participative listening events around the country and with different communities of interest, webcasting 13 expert evidence sessions involving over 70 witnesses, an Ipsos MORI survey of 1000 households, a Call for Written Evidence, and a major conference to explore local democracy. We believe that this work broke the mould, and provides valuable lessons for how the Scottish Parliament can extend its engagement processes too.
8. A key component of its final report, published in August 2014, was the need to reinvent the structures and practices of democracy to actively empower citizens and communities, and build participation at all levels of government. We're pleased that many of these ideas are now entering the political debate.

The checks and balances of a democratic system

9. We welcome the Commission's focus on the Parliament's system of checks and balances. We believe that there are opportunities to strengthen these, and in particular that this question must consider the role of local government as part of the governance of Scotland. There are 2 key issues to consider:
- *Local Democracy and the Parliamentary System*
10. The first is the design of the Parliament itself. Scotland has a Parliament with a single chamber. Our intention is not to debate the relative merits of bicameral and unicameral systems, but what is clear is that strong local government must be a key check on Scotland's system for sharing power within this single chamber design.
11. As a democratically elected sphere of government, councils must be able to express the priorities of their local community, and be accountable for these to those who elect them. Too much control from the centre will hinder this spectrum of checking and balancing, and hinder Scotland's overall democracy.
12. This is all the more important given that recent experience has demonstrated some limits to the anticipated checks and balances built into the Parliament, particularly in relation to overall parliamentary majority, and opportunities to strengthen the Committee system through elected chairs and other measures highlighted by some Commission witnesses.
13. However, strong local democratic checks do not mean diminishing the role of national government, or the Scottish Parliament in holding it to account- we absolutely recognise its right to focus on priorities for the whole of Scotland, and to set out the rights that everyone should enjoy. But so too do we need to recognise that people's daily lives are not just about the internal workings of Holyrood, but about their democratic right to determine the priorities and choices they want locally too.
- *Protecting Local Democracy*
14. Given the vital role of local government in balancing Scotland's democracy, the second checks and balances issue relates to the constitutional relationship between Scotland's system of government and the Parliament. Local democracy in Scotland and the UK is almost unique amongst western democracies because it has no status or protection in law and is wholly subject to the will of Parliament.
15. Despite the establishment of the Scottish Parliament, Scotland has continued to rely on the old way of doing things in this regard. Ministers have effectively the same power to give powers or take them away as the Secretary of State for Scotland had prior to 1999.
16. In practical terms, it is national government that sets the shape, size, powers and functions of local decision making, not communities and their locally elected representatives. Scotland does not operate the basic constitutional protections that are available in other mature democracies. In fact, local government in Scotland lacks the right to exist at all, and the reality is that Parliament could,

should it wish to do so, change or remove local government tomorrow without the checks and balances that are legally required in most other countries.

17. The principle of local democratic checks and balances is already well established internationally at United Nations, Commonwealth and European levels. The European Charter of Local Self Government, for example, highlights that subsidiarity:

“should be at the heart of any debate about the nature of central/local relationships and the promotion of a new local democracy... this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment”.

18. A glance to Europe demonstrates that Scotland's national-local relationship is unusual and in need of reform. If Germany is taken as an example then Article 28(1) and 28(2) of the Basic Law guarantee the existence of elected councils for counties and municipalities and, *“the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws.”* Similar constitutional guarantees can be seen in Spain, where the constitution states in Article 137 that, *“The State is organised territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests”* and France where the principle has been reinforced under the 2003 constitutional reform.
19. Scotland should be no different, and COSLA is therefore very clear that the principles and provisions of the European Charter of Local Self Government must be adopted into law in Scotland in order to enshrine subsidiarity and strengthen democracy.

Increasing engagement and improving the identity of the Parliament

20. Our starting point is that we fundamentally believe that people in Scotland care passionately about the decisions that affect them, their families, and their local services. However, our evidence is that for many people, decision making feels distant and opaque.
21. We applaud the efforts being made through this Commission to open up the activities and processes of the Parliament, and we are keen to highlight what we consider to be significant key opportunities to transform engagement.
- *Subsidiarity and Participation*
22. The first question to address concerns the motivation that communities have to engage in decision making. In Scotland and around the world, it is now well accepted that it is fundamentally better for decisions to be made by those that are most affected by them. It follows, therefore, that if people are to have control over their lives, they need services that are accountable locally and that reflect their local priorities. After all, it is at the local level, in the places where people live, that people have most contact with services and most opportunity and motivation to share in their governance.

23. Yet in Scotland and the UK we have witnessed a 50-year trend towards centralising – by all parties - powers and decision making. In simple terms, we believe that this position contributes to a sense in many communities that they are spectators rather than full participants in their democracy. Many decisions are taken far away from where people live, and it may be little wonder that many do not actively seek to participate in these processes.
24. While improvements to parliament's existing processes can undoubtedly be found, our view is that this will only address a small part of the overall increase in participation that is possible. Instead, we believe that the key to vitalising the whole democratic process is to devolve powers and resources out of Edinburgh and into the lowest appropriate level in communities. This subsidiarity principle should therefore be a prominent focus for the Parliament's guiding principles.
- *The Identity of the Parliament and Improving Transparency*
25. The landscape which communities need to navigate is also an important factor. A founding principle of the Parliament is that the Scottish Government is accountable to it. But the wider system of accountability is much less clear. It includes locally elected councils but also a plethora of public agencies and quangos that are accountable to Scottish Government rather than local people. This complex environment makes the relationship between the Scottish Government, Parliament, Local Government and other organisations highly unclear. From a citizen's perspective, our sense is that many people have little idea about who is democratically accountable for the services they experience.
26. The role of the Parliament in that accountability has not, in our experience, always been clearly understood. COSLA and councils are committed to engaging openly with all of our stakeholders, and no less so parliamentarians and the committee system. But we are clear that as a democratically elected sphere of government, Councils are ultimately accountable to their communities. The perception can be that local government reports to Parliament or its Committees, and that national politicians are a 'higher authority' in terms of decision making and accountability.
27. For all the above reasons, the relationship needs to be clarified. A key challenge is that the current system operates without any map of powers and responsibilities. We believe that it is therefore time to define the competencies of central, local and community governance.
28. One way to do so would be to look to the EU system by clarifying in law the roles and responsibilities of democratically elected bodies in Scotland. In federal systems or states with written constitutions, the basic rules of the law are codified and the relationships between different spheres of governance are set out.
29. A constitution is not a prerequisite to clarify Scotland's democracy in this way. For example, under the Scotland Act 1998, the Scottish Parliament can make primary and secondary legislation in those areas not reserved to Westminster or protected from modification.

30. Whatever the vehicle, the benefit would be that for the first time, people would have clarity about what they can expect from different spheres of government, and be able to engage with and hold their elected representatives to account accordingly. The transparency created by codification would also help Parliamentary scrutiny, and enhance the ability of differing spheres of governance to identify and support shared priorities.
31. Because the Scottish Parliament, local government and community government would exist in their own right and have their own clear democratic mandate, it would also follow that no part of government could be abolished or significantly changed without a clear mandate- further improving overall checks and balances.
32. A more negotiated set of relationships would therefore not only free local people to engage in more decisions affecting their lives, but also provide the more consensual style of politics envisaged by the Scottish Constitutional Convention in the founding days of the Parliament. Indeed, the evidence that we have accumulated suggests that some tensions in our system are much less familiar in other countries that have taken this approach; they simply get on with the job.

Conclusion

33. We want all those who are democratically accountable and involved in the governance of Scotland– the Scottish Government, Scottish Parliament and Local Government – to work together on the task of democratic renewal. The Parliament's day to day processes and procedures can be strengthened, but greater transformation in Scottish democracy is also possible.
34. Our aspiration is about more than short term changes that are possible now, and we recognise that some of the issues we highlight will require a longer term approach. We also recognise that some of these ideas will not be familiar. Some may feel that controlling the levers of power is the only way that politicians at all levels can carry out their mandate or that devolving decision making and resources is less effective than a one size fits all approach. We hope that the Commission on Parliamentary Reform can help focus on the journey that is required, and bring together everyone with an interest in building Scotland's democratic strength.
35. We look forward to supporting that task.

COSLA
January 2017

Written comments from Moray Estates Development Company

As Managing Director of Moray Estates I have prepared both written submissions and given oral evidence to the RACCE Committee at Holyrood. As a Director of Scottish Land and Estates I was also involved in the preparation of written evidence for that organisation and gave oral evidence to the RACCE Committee on its behalf. In both cases submissions / evidence has been related to Agricultural Holdings and Land Reform Legislation.

Written Submissions

As a general rule I find consultation documents produced by the Scottish Government to be of a high standard. They tend to set out the issues clearly and ask clear direct questions whilst providing opportunity for wider submissions if relevant. Information is well presented and interpretable. The consultation documents, being well structured, assist in providing a structure for any evidence. Whilst I can imagine this is primarily done to assist those analysing responses it is of clear assistance to the resposdee. It is of course impossible to know how much impact, or notice, is taken by Government of evidence / submissions.

Oral Evidence

My experience of giving evidence to the RACCE Committee is a little more mixed. On the positive side the process of invitation and attendance at Holyrood is well organised and accessible. There has also been clear direction as to the issues the committee wishes to focus on that day.

I have attended Committee sessions where both sides of the 'debate' are in attendance and also where the entire industry has not been and thus one side of the on-going debate is presented. In each case the mechanics of the session have been well managed by the chairs. What has been less positive has been the sense that the committee is, on occasion, going through the motions and in some cases is not that interested in taking on board the evidence being given or occasionally not being particularly interested in understanding why the position being presented has been taken.

I accept that in the case of both Agricultural Holdings and Land Reform the evidence I have been giving has not been supportive of the proposed government policy position. However I was far from alone in some evidence sessions in expressing grave reservations about the likely impact and effectiveness of the policy proposals and there seemed a general disinclination to take on board views which were contrary to government policy. This was particularly the view under the SNP majority administration where the role of opposition politicians had been diminished. I fully respect the right of government to set policy. However I think committees have a responsibility to probe and test those policy positions even if their political inclination is to support them. I did not always see evidence of this. The impact will be poor quality legislation that may well not achieve its objective. In some circumstances it will have exactly the opposite effect to that intended despite warnings to the committee during evidence.

Andrew Howard

Moray Estates 22nd January 2017