

CONSULTATIVE STEERING GROUP



REFLECTIONS ON 20 YEARS OF THE SCOTTISH PARLIAMENT

October 2019



FOREWORD

In November 1997, the then Secretary of State for Scotland asked us to create a blueprint for the Scottish Parliament that was to be established in 1999. Our remit was:

To bring together views on and consider the operational needs and working methods of the Scottish Parliament

To develop proposals for the rules of procedure and Standing Orders which the Parliament might be invited to adopt

To prepare a report to the Secretary of State by the end of 1998, to inform the preparation of Standing Orders

Our report, *Shaping Scotland's Parliament*, was published a little over a year later and, as well as providing the new Parliament with founding principles to guide its operations, it formed the basis of the procedures and practices that have been followed by the Parliament in its first 20 years.

We were delighted to be asked by the current Presiding Officer, the Right Hon. Ken Macintosh MSP, to consider our report in light of the experiences of the Parliament over the intervening years.

We have all been involved, either directly or indirectly, in the Parliament's growth and development over those two decades and have seen it evolve into a central and permanent part of Scottish life. We are pleased, therefore, to offer our reflections on how the Parliament has lived up to our aspirations for what Donald Dewar called back then this "new voice in the land".

Before doing so, however, we wish to acknowledge the massive part played – not only in the work of the Consultative Steering Group but in their contributions on a number of fronts over many decades – by two of our members who are no longer with us: **Dr Campbell Christie CBE** and **Canon Kenyon Wright**. Their tireless dedication to improving the lives of the people of Scotland on a wide range of issues has had lasting benefits and for that we give our heartfelt thanks.

Rt Hon Henry McLeish

On behalf of the members of the CSG



INTRODUCTION

1. The starting point for our thoughts on 20 years of the Scottish Parliament is with the founding principles we offered for the new institution:

The Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive;

The Scottish Executive should be accountable to the Scottish Parliament and the Parliament and Executive should be accountable to the people of Scotland;

The Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation;

The Scottish Parliament in its operations and its appointments should recognise the need to promote equal opportunities for all.

2. We recognise that the context in which the Parliament is operating now differs markedly from the time of its establishment. Firstly, the devolution settlement itself has evolved significantly, with the Parliament having wider powers and responsibilities through the Scotland Acts of 2012 and 2016 than were delivered by the original 1998 Scotland Act, placing greater burdens on our elected parliamentarians.
3. Secondly, public finances are much more challenging now than they were at the time of our deliberations in 1998 and through the early years of the Parliament. This has led to a sharpening of focus on priorities and decision-making.
4. Thirdly, we recognise a relative polarisation of party politics in recent years, with constitutional issues in particular coming to the fore. While the devolution debates of 1998 were fundamentally about the constitutional arrangements in the United Kingdom, there was a far greater degree of consensus than is the case in relation to the current debates on Scottish independence and the UK's exit from the European Union. This has an impact on the operation of the devolved institutions in Scotland which we discuss later in this report.



OVERVIEW

5. We see – and applaud – a great deal of success in the Parliament’s first 20 years. World class legislation on, among other things, different approaches to the funding of higher education, climate change, free personal care, the smoking ban, proportional representation in local government elections, land reform and many other areas has more than vindicated the case for a legislative body in Scotland. The Scottish Parliament is now a fundamental and valued aspect of public life in Scotland and both the institution and its Members enjoy high recognition levels among the country’s electorate.
6. In our original report, we recommended that the Parliament embrace ICT opportunities to support the business of the Parliament and its Members and to inform the public of that business. ICT has developed out of all recognition since 1998 and we acknowledge and welcome the way in which the Parliament has harnessed the opportunities of that development to maximise its reach and influence.
7. We undoubtedly, therefore, start from a position of considerable success. Despite the fact that the early years of the Parliament were marred by issues such as “Lobbygate” and the controversy of the Holyrood building project, our vision for a participative, open and accessible Parliament holding the executive to account shone through and has thrived in the first 20 years of devolution. We do, however, see developments which cause us some concern and even disappointment.

IMPACT OF PARTIES

8. In general terms, we find that Parliamentary discourse in Scotland is driven much more by party political tribalism than we expected. Our vision in 1998 was to break the confrontational mould that dominated proceedings at Westminster and our report provided numerous mechanisms to achieve that ambition. We devised those mechanisms to give the Parliament a much greater say in its business as a contrast to the domination by the executive over the UK Parliament’s business. Our aspiration was for a new approach to politics where debate would be more deliberative and consensus-driven than has been the case.
9. Instead, we have seen parties dominate the debate with little scope for personal contributions and inclusive discourse. The concept of consensus politics has been attacked by some as unrealistically seeking a “clubby” approach to debate. This misunderstands the meaning of consensus which we argue means debating issues and being prepared to change one’s mind and compromise to reach a



majority view. This was our hope for debate in the new Parliament and it is a source of disappointment to us that the reality has been somewhat different.

- 10.** Polarised debate prevents, in our view, proper cross-party working. We do not believe that we were naive in 1998, but we find little reason to be as optimistic on this point as we were back then. The tribalism we have seen has blunted the scrutiny function of the Parliament and has prevented, in most cases, a pluralistic approach to policy scrutiny. On broad areas such as wealth creation and climate change, there can be little that separates the parties, yet we see a reluctance among the parties to come together to present a community against the challenges of the world.

EXTERNAL RELATIONSHIPS

- 11.** The Scottish Parliament has done much to be admired in being outward-looking in its approach. While committees have probably been less peripatetic than we envisaged, we accept that committees have in many cases substituted formal meetings around Scotland for other outreach and engagement activities to inform their investigative roles. This type of engagement can undoubtedly be effective in involving different people across Scotland and that should be the primary purpose of such activities. Committees may, however, wish to consider how to maximise the message that they are out and about in our communities, bringing the Parliament to the people. We do not doubt that this is happening, but it is not easy to discern from a more detached perspective.
- 12.** We recognise that successive governments have made significant efforts to work collaboratively with Westminster, with varying degrees of success. We have mentioned previously our concerns over the dominance of parties at Holyrood and we feel that if there was an increase in the collaboration between the parliaments in London and Edinburgh, the scope to broaden horizons is huge. The UK's impending exit from the European Union will, in our view, change the devolution settlement more than the 2012 and 2016 Scotland Acts did by creating shared space in policy areas in contrast to the current reserved/devolved divide. This brings with it a responsibility to work collaboratively in those spaces and we would hope that this will assist in diminishing the more negative aspects of the tribalism we refer to above.
- 13.** Looking closer to home, we are disappointed that devolution has, if anything, led to a weakening of the position of local government in Scotland. Our expectation was that devolution would set us on a path towards a subsidiarity arrangement for local government. The Scottish Constitutional Convention recommended that the Scotland Act should commit the Scottish Parliament to securing and maintaining a



strong and effective system of local government, embodying the principle of subsidiarity. It also recommended that the Parliament should embody the principles contained in the European Charter of Local Self Government, in particular a principle of general competence.

14. What we have seen instead with successive governments is a tightening of central control over local budgets and spending priorities. Our view is that the benefits of bringing decision-making back to Edinburgh in 1999 should flow through to proper empowerment of local communities through their local representative bodies. In the absence of a written constitution, consideration should be given to how best to enshrine and strengthen the powers of local government with a view to creating parity of esteem with central government.

PARLIAMENTARY COMMITTEES

15. There is no doubt that the Parliament's committees have achieved much over the past 20 years and played a crucial role in delivering the founding principles, particularly through their scrutiny and engagement work. However, one of our biggest disappointments is that the Parliament's committees have not emerged as a power in the land in the way that we had hoped.
16. In line with our proposals, committees in the Parliament are all-purpose subject committees, which combine the roles of Westminster Standing and Select Committees. We believed that this approach would allow MSPs on committees to develop an expertise in particular areas and bring an informed view to the consideration of legislation and scrutiny of the Scottish Government.
17. However, we did not foresee the Parliament passing the volume of legislation it has done over the last 20 years and for the sheer weight of the legislative function on committees as a result. This, we feel, is unlikely to change given the additional powers that have now been devolved. While this legislative scrutiny is valuable and necessary work, it should only be one part of the much wider role that we had envisaged for committees – which included initiating legislation, developing policy, and carrying out wide-ranging investigative functions.
18. As a result of this legislative workload, committees have not always had the capacity to become more involved in the policy development process. Nor have they initiated much of their own legislation – a function that we saw as fundamental to delivering the principle of power sharing. In fact, the Parliament has passed only seven Committee Bills in 20 years, with most of those being in relation to internal, technical matters for the Parliament. There has also been



limited scope for committees to conduct post-legislative scrutiny of the legislation passed by the Parliament.

- 19.** The unicameral nature of the Scottish Parliament was a deliberate design, with powerful, independent committees taking the oversight function performed in other jurisdictions by a second chamber. The fact that this has not happened inevitably raises the question of whether the structure needs to change.
- 20.** We believe that the decision to have all-purpose subject committees should be revisited. Having separate Bill committees to scrutinise legislation could allow subject committees greater scope to develop policy, whether on their own initiative or influencing at an earlier stage the development of government policy. We recognise that this would place additional burdens on the current membership, but we turn to the question of numbers below.
- 21.** There has also been a higher turnover in committee membership than we had anticipated. Our aspiration was that MSPs would largely serve on the same committee or committees throughout a parliamentary session, to allow Members to build up a deep understanding of the policy areas within committees' remits. We regret that this has not happened, with membership of committees changing regularly throughout a parliamentary session, often for reasons that are not immediately apparent.
- 22.** We are also disappointed that committees have not emerged as a more powerful voice in debating policy and legislation. In part, the broader issue of tribalism within the Parliament discussed earlier has resulted in committees sometimes becoming a forum for delivering party politics rather than for challenging ideas or building cross-party consensus.
- 23.** We also consider that committee conveners should be elected, an issue that we know is under current consideration by the Standards, Procedures and Public Appointments Committee. Direct election of conveners by fellow parliamentarians, rather than nomination by parties, would strengthen the independence of committees and give a clearer mandate for holding the government to account on behalf of the Parliament as a whole. Election of conveners would also provide an additional opportunity for progression for MSPs, other than becoming a Government Minister which is a career path that has been taken frequently in the last 20 years.



CHECKS AND BALANCES

- 24.** As we cover in our thoughts on parliamentary committees and on the impact of parties above, we consider that there is a deficit in the checks and balances we foresaw in 1998.
- 25.** While there are obvious benefits of a second chamber, particularly one that takes political party manoeuvring out of parliamentary considerations, we accept below that there is little, if any, appetite among the public for more politicians. As an alternative, we believe that there may be merit in examining the benefits and costs of People's Assemblies, Citizens' Juries or similar more formal methods for including the populace into the Parliament's decision-making process (and we note here that the Civic Forum established at the time of our original report ceased operating in 2009). As such innovations are in their early stages in Scotland, the Parliament may wish to monitor the progress of and learn lessons from the Scottish Government's *Citizens' Assembly of Scotland* announced in June of this year.

POLICY DEVELOPMENT FUNCTION

- 26.** Our report envisaged that the Parliament, not just through its committees, should play a key role in the policy development process as well as scrutinising any legislation subsequently brought forward. In our view, Parliament has not yet reached its potential as a forum for policy development and debate. At least in part, this may be down to the additional demands now placed on the Parliament.
- 27.** We have mentioned several times that the burdens placed on elected Members of the Scottish Parliament can be immense. Some of us have direct experience of the constant round of committee meetings, plenary debates, constituency casework and engagement activities in both parliamentary and representative roles. This can leave little time for reflection, sharing ideas and looking for innovative solutions to problems.
- 28.** The second Session of the Scottish Parliament saw the establishment of the Parliament's own "think tank", Scotland's Futures Forum (SFF). The idea behind its establishment was to bring politicians from all parties and none together with thinkers, innovators and practitioners on a wide range of fronts to learn from each other about issues connected to where Scotland is going – economically, socially and technologically. This environment allows politicians to look beyond the horizon of the next election and remove the tendency towards short-termism all too prevalent among elected Members.



- 29.** The Forum has devised and delivered many stimulating and thought-provoking sessions and, nearly 15 years on, continues to do so. The rate of involvement of parliamentarians, however, remains disappointingly low. We consider that creating the time for our politicians to think about issues and to reflect on longer-term policy development is vital to the health of our democracy. We believe that the structures are there, such as the SFF, external think-tanks, universities and other academic institutions, and Cross-Party Groups in the Parliament. What is missing is the capacity of Members to properly engage with ideas generated in these environments. We accept that the answer to this problem is tricky, but we urge that it is not overlooked.
- 30.** We also consider that the Parliament needs to have a greater belief in itself as a vehicle for policy development. It is the Parliament, rather than any one political party, that can speak on behalf of the nation. And it is the Parliament that can take the lead in establishing a more democratic and participative approach to policy making.

SIZE OF THE PARLIAMENT

- 31.** As mentioned above, the Scotland Acts 2012 and 2016 gave the Scottish Parliament significant new responsibilities in a range of policy areas, including tax raising and borrowing powers and social security. Moreover, while the exact implications of the 2016 referendum result in favour of the UK leaving the European Union remain unclear, Brexit has already had a considerable impact on the workload of the Parliament and will continue to do so.
- 32.** These new responsibilities require additional capacity to ensure that Parliament can deliver the founding principles of power sharing, accountability, openness and participation, and equal opportunities. There are a variety of ways in which capacity can be built and we note the Parliament has responded to these new responsibilities by building capacity in its research, legal and clerking functions. Increased capacity could also be achieved through extending the parliamentary week, either through later sittings or by using Mondays or Fridays to conduct more parliamentary business.
- 33.** In the longer term and if pressures continue to mount, consideration may also have to be given to increasing the number of MSPs to meet these additional demands, as is currently happening in Wales. Many of the changes we believe are necessary – such as strengthening the role of committees – may be difficult to achieve without the additional capacity that would come through having more MSPs.
- 34.** Any call for more Members is one that is unlikely to be popular with the public. If we are serious about looking to our Parliament to lead on the big issues of the day



and to do so in a collaborative, mature, cross-party way, this should not, in our view be automatically discounted from discussions. Even with a fair wind, any changes in this area would be complex and take significant time to bring to fruition. We should, however, be bold in including in the debate on strengthening our Parliament all possible avenues for doing so.

CONCLUSION

- 35.** As stated at the outset, we believe that the Parliament has been a huge success in its first 20 years of existence. We take some pride in seeing how it has developed and grown over the years and established itself right at the heart of Scottish public life. This short report offers some reflections on where the Parliament could do better and where there is potential to grow in its next 20 years. Regardless of the constitutional arrangements that are reached in partnership with the people of Scotland and beyond, that potential is enormous. Our view is that the next 20 years should be characterised by a growing maturity in relation to collaboration, compromise and consensus.

- 36.** We look back to 1998 and the question we asked ourselves then about what the new Scottish Parliament was for. We were clear that it was to improve the lives of the people of Scotland by legislating, debating and holding the executive to account and to do so in partnership with the Government and the people of Scotland. In the first 20 years of devolution, the Parliament has done all that and more. We urge the Scottish Parliament to build on the success of the first 20 years, to push beyond the confines of party domination and lead Scotland towards an inclusive, enlightened discourse for the benefit of us all.



Members of the Consultative Steering Group

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(Apologies were received from Lord Pentland (Paul Cullen QC) and Dame Joan Stringer DBE)