

THE STRUCTURE AND FUNCTIONS OF LOCAL GOVERNMENT UNDER A SCOTTISH PARLIAMENT

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As the general election looms, the prospect of a Scottish parliament being established before the turn of the century becomes a distinct possibility. It is likely that the new government, assuming it is Labour or a Labour-Liberal Democrat coalition, will use as its framework for legislation the work done by the Scottish Constitutional Convention. What clues does that give us as to the future for local government under a Scottish parliament, in particular in relation to its structure and its functions?

The most recent of the Convention's documents, **Scotland's Parliament, Scotland's Right**, published in November 1995, devotes five short paragraphs to the relationship between a Scottish parliament and Scottish local authorities.

These may be summarised as follows:

- the parliament is to be responsible for the system of local government in Scotland, its role, functions, structure and financing;
- the relationship between the two should be positive, co-operative and stable;
- the principles of the **European Charter of Local Self-Government** should be adopted, in particular Article 4 which provides that local authorities shall, within the limits of the law, have full discretion to

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Local Government and a Scottish Parliament

exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority;

in any future review of Scottish local government, the aims should be:

- (i) to safeguard and where possible increase local authority discretion;
- (ii) to ensure that any proposals for reform are widely acceptable in Scotland;
- (iii) to ensure a system of local government finance which sustains local accountability;

the Scotland Act should contain a section committing the parliament to secure and maintain a strong and effective system of local government, embodying the principle of subsidiarity as a guarantee of the importance of local government in service delivery.

POSITIVE RELATIONSHIPS

These are fine words indeed, music to the ears of those of us who work in local government, whether as officers or members. The years since 1979 have been fraught with difficulty, as successive Conservative governments mounted an onslaught on local government. Over 200 pieces of legislation affecting local government have been passed during that period, most of which were designed to weaken local government vis-a-vis central government and in some cases to increase the power of unelected quangos.

What the Constitutional Convention has to say about quangos is also relevant to local government. After commenting that there has been a steady transfer of important areas of government from elected representatives to quangos, the document recommends that a Scottish parliament should have the power to examine their role and to bring their activities under democratic control where it considers this necessary.

It makes sense that overall responsibility for local government, including its functions and its structure, should be devolved to a Scottish parliament. Functions and structure are inter-related. If the allocation of functions is considered first, that has a major impact on the structure adopted. If on the other hand, structure is considered first, this has the effect, to a large extent, of determining the functions allocated to local government. The Convention makes no explicit recommendations on either, but it is implicit in the

Scottish Affairs

document that local government should, at the very least, retain the functions which it currently carries out.

We will, of course, welcome a relationship which is positive, stable and co-operative, as a distinct change. We will be delighted to see the **European Charter of Local Self-Government** adopted. The present UK government has steadfastly refused to sign or ratify the Charter, unlike most of the other members of the Council of Europe, and a power of general competence for local government, which is what Article 4 amounts to, has long been argued for by a number of independent commentators, including the Wheatley Commission and the Redcliffe-Maud Commission which respectively enquired into local government in Scotland and in England in the 1960s.

A power of general competence would tie in with the first of the proposed aims of any review of local government - to safeguard and where possible increase local authority discretion.

The second aim, to ensure the acceptability of any proposed reforms, will also be welcome to local government which has just experienced a re-organisation which was imposed on it by the Conservative government without the consent of the people of Scotland, as the responses to the government's two consultation papers made clear. The Unit for the Study of Government in Scotland (USGS) analysed the responses to each of these consultation papers. These analyses reveal that only 27.4% of the respondents to the first document, **The Case for Change**, unequivocally supported the government's proposal to replace the two-tier structure of local government with a system of unitary authorities, while the most common response from the respondents to the second consultation paper, **Shaping the New Councils**, was to question the need for any kind of change at all.

Similarly a system of local government finance which sustains local accountability will be welcomed. Because of the unification of the business rate (that is, the removal from local government of the power to determine its level), the fiasco of the community charge and the switching of a large amount of local expenditure from local to general taxpayers by increasing VAT to 17.5% in 1991, the percentage of finance raised locally has fallen from around 50% in the 1970s to about 14% today. This dependence on central government funding severely limits the autonomy and local accountability of councils. The return of the business rate to local control would be a first step in redressing the balance.

WEAKENING OF LOCAL GOVERNMENT

Thus far, I have few problems with the Constitutional Convention's recommendations. The reference to a section in the Scotland Act securing and maintaining a strong and effective system of local government, embodying the principle of subsidiarity, does, however, give me pause for thought. No doubt these are intended as words of comfort to local government, but I suspect that the implications have not been thought through. If they mean what they say, I believe that they entail another reorganisation of Scottish local government, for the system we have now is neither strong nor effective. Since the Conservatives came to power in 1979, local government has been steadily stripped of its powers. The creation of Scottish Homes by the Housing (Scotland) Act 1988 diminished the district councils' role in housing provision. The establishment of Scottish Enterprise and local enterprise companies by the Enterprise and New Towns (Scotland) Act 1990 reduced the local authorities' role in economic development. Under the Further and Higher Education (Scotland) Act 1992 the duty to provide further education was transferred from the regional councils to the Secretary of State, with further education colleges being administered on his behalf by unelected boards of management. The local authorities' role in the provision of school education has been potentially diminished by the Self-Governing Schools etc. (Scotland) Act 1989 which allows schools to opt-out of local government control.

The re-organisation of local government in Scotland which came into effect on 1 April 1996 has further weakened local authorities because the unitary structure adopted has affected functions. The Local Government etc (Scotland) Act 1994 nationalised the children's reporter system by setting up the Scottish Children's Reporters Administration, transferred responsibility for all roads except local roads to the Scottish Office and, most controversially, removed the water and sewerage services from local authority control and placed them in the hands of three new water authorities whose members have been appointed by the Secretary of State.

The very structure which the government decided on has contributed to the weakening of local government. There are now 29 unitary authorities on mainland Scotland (plus the 3 islands authorities). The new councils range in population from Glasgow with 620,000 to Clackmannan with only 48,000. Nine of the new councils have populations under 100,000 and some of them are too small to run certain local government services. The 1994 Act explicitly recognises this by passing the administration of police and fire to joint boards and public transport in most of the areas of Strathclyde to a

Scottish Affairs

Passenger Transport Authority whose members are appointed by the relevant constituent councils. Property valuation for non-domestic rates and council tax purposes also has to be administered by joint boards. Structure planning cannot be sensibly dealt with by 32 separate local authorities and has passed to joint planning committees covering structure plan areas, 17 in number, which have been designated by the Secretary of State. It is also likely that some of the smallest councils will have to enter into joint arrangements or agency agreements with other councils to provide specialist services in, for example, education and social work. A general power to establish joint committees was available to councils under the Local Government (Scotland) Act 1973 and the 1994 Act adds to this by bestowing on councils a general power to establish joint boards which are distinct legal entities. The 1994 Act also gives the Secretary of State powers to take the initiative in establishing joint boards where he considers that functions should be discharged jointly and that satisfactory arrangements have not been made or have ceased to operate.

Joint committees and boards are not new. There was widespread use of them in Scotland before the introduction of the two-tier system in 1975, when there was a cumbersome structure of over 400 local authorities. Under the two-tier system, police and fire were administered by joint boards covering the Highlands and Islands and Lothian and Borders respectively. Joint arrangements, however, have their drawbacks and have been described as 'notoriously ineffective' and 'a poor second best' by respondents to the government's second consultation paper. (USGS 1993). The smaller councils feel dominated by their larger colleagues, the joint arrangements tend to be officer-led rather than member-led, and, since their members are appointed rather than directly-elected, they lack democratic legitimacy and direct accountability to the electorate. The 1994 Act has led directly to the creation of 23 joint boards and to an increasing number of joint committees. This gives us a two-tier system, but one which, in terms of accountability, is less satisfactory than the system which has been abolished.

Similarly the duty to prepare decentralisation schemes imposed by the 1994 Act (s.23) is a further tacit recognition by the government of the need for a two-tier system. Each council must prepare by 1 April 1997 a draft scheme of proposals for the administration of their functions which may include provisions for holding meetings in local areas, establishing area committees and setting up local offices and advice centres. Four of the councils established by the 1994 Act are geographically quite large and cover areas which were previously covered by regional councils, namely the Highlands, Fife, the Scottish Borders and Dumfries and Galloway councils. The

Local Government and a Scottish Parliament

Highlands council covers a land mass larger than that of Wales. In order to counter the criticism of size and remoteness which the government itself levelled at the regional councils in the two-tier system in their initial consultation document, **The Case for Change**, decentralisation measures were imposed on the new councils. It is likely that in several of them, the area offices and committees will be formed on a basis which corresponds closely to the areas of the district councils which were abolished on 31 March 1996. So in these areas there will be, in practice, a district tier of local government in operation working in tandem with the statutorily established 'all purpose' council - a two-tier system again.

A NEED FOR TWO TIERS?

It is interesting to read what the Wheatley Commission members said, in 1969, of single-tier local government. They believed it to be unworkable:

Different levels of administration seem to be required for large-scale services on the one hand and for local services on the other. In order to create all-purpose authorities an attempt has to be made to find a level that satisfactorily meets the needs of both types of service. Such a level is simply not to be found in Scotland. (Wheatley para. 677).

Despite the government's emphasis on the enabling role of local government, as opposed to that of service provision, the plethora of joint boards, joint committees and decentralisation arrangements which result from the 1994 Act suggests that Wheatley's view is as relevant today as it was nearly three decades ago.

No doubt Wheatley had never heard of the principle of subsidiarity which the Constitutional Convention wishes to have embodied in the Scotland Act as a guarantee of the importance of local government in service delivery, but the words quoted from the Wheatley Report seem to encapsulate what subsidiarity means today - that decisions should be taken as closely as possible to the citizen (Treaty on European Union, Article A).

All of this points to the desirability of a two-tier system of local government, at least in some parts of Scotland, if services are to be delivered effectively, efficiently and accountably.

The problem is compounded by concern about the growth of quangos whose members are appointed by the Secretary of State and accountable to him. As

Scottish Affairs

the Constitutional Convention points out, they hold sway over a number of key public policy areas, including health, housing, the environment, cultural and economic development and educational provision. Although it is probable that some quangos will be retained, particularly advisory committees such as the Scottish Law Commission and tribunals, there is undoubtedly a view in both the Labour Party and among the Liberal Democrats that the executive quangos such as Scottish Enterprise, Scottish Homes and the Water Authorities should be brought under democratic control. The John Wheatley Centre has established a commission to consider policy options for such quangos under a Scottish Parliament and hopes to report in the autumn of this year. It is likely that recommendations will include restoring or transferring some functions to local government. If these recommendations were acceptable to a Scottish Parliament, it is all the more important that there is a suitable local government structure in place.

WHAT THEN ARE THE OPTIONS?

One option would be to do nothing and maintain the structure imposed by the 1994 Act. Certainly the abolition of the two-tier system has removed the argument commonly heard in the 1970s that Scotland would be over-governed if a Scottish Assembly or Parliament were established. But I have serious doubts as to whether the new structure of local government will work. There are already concerns about the effectiveness and the accountability of the joint arrangements put in place to handle structure planning, fire and police. In the difficult budgeting exercise which the shadow councils had to carry out for the financial year 1996/97, there were concerns expressed at the level of finance sought from the constituent authorities by the joint police boards. There have been squabbles as to which council should be the lead authority and which should provide the convener of the board. The criticisms which were prevalent before the two-tier system are being heard anew.

A solution might be for the upper tier of local government to be the Scottish Parliament itself. The Wheatley Commission examined the possibility of a single elected council for Scotland, handling the major services, leaving the environmental and amenity services to a second tier which could be very local (paras 683-7). However this solution was rejected in that the whole of Scotland would be an unduly wide area for the administration of local government services and was inconsistent with the Commission's concept of local government. This solution has also implicitly been rejected by the Constitutional Convention in calling for a strong and effective system which embodies the principle of subsidiarity. At a recent conference, Canon Kenyon

Local Government and a Scottish Parliament

Wright, the Convener of the Convention's Executive Committee, maintained that the powers of the Scottish Parliament would be drawn, not from local government, but from Westminster. Many supporters of the concept of a Scottish Parliament would be horrified at the thought of Scotland's legislature also being Scotland's regional council. To suck up the powers of local authorities would turn subsidiarity on its head and be a blow to all those involved in local government who have argued strenuously against the centralising tendencies of Conservative governments since 1979.

I believe that there must be at least a partial reorganisation of local government once the Scottish Parliament is established.

All the political parties appear to have expressed a preference for single-tier local government, beguiled by the apparent simplicity of the structure. I think they are wrong. If, however, we are to have a single-tier structure, with no reduction of local authorities' functions, and the possibility of some functions of quangos being transferred to local government, then there will have to be a fairly small number of large councils. In the government's second consultation paper, **Shaping the New Councils**, one of the illustrative maps was a structure of 15 councils. This structure would have required very little in the way of joint arrangements. Although the government rejected the 15 unit structure, the number of structure plan areas which they produced was remarkably similar, namely 17. But a structure of this kind would give councils which were perceived to be too large and remote and, no doubt, decentralisation schemes would be produced, resulting in a two-tier system of a sort.

If the political parties are unwilling to accept the arguments in favour of a two-tier structure or are unable to grasp the nettle and recommend another wholesale reorganisation because of further disruption to public services and to local government staff, perhaps they might consider the areas of the Water Authorities as offering a partial short-term solution. The removal of water and sewerage from local government was the most controversial and the most unpopular aspect of the government's packages of measures. The Labour Party has stated that it will return water to local democratic control. This surely entails more than replacing the Secretary of State's appointees with, for example, COSLA appointees who happen to be councillors. There are three Water Authorities, covering the West, the East and the North of Scotland. Could these areas form a strategic tier, taking responsibility, in addition to water and sewerage, for economic and structure planning, transport, police and fire, valuation and further education? They might also take responsibility for strategic aspects of the health service and Scottish Homes.

Scottish Affairs

These strategic authorities could be an elected tier between the local councils which we have now under the 1994 Act and a Scottish Parliament. With the exceptions of East Dunbartonshire and North Lanarkshire which are served partly by the East and partly by the West Water Authority, and Perth and Kinross which is served partly by the West and partly by the North Water Authority, the Councils' boundaries are co-terminous with those of the Authorities. Thus there would be no need for a major reorganisation of boundaries.

The Labour Party has recognised that the establishment of a Scottish Parliament will have repercussions for local government and has announced its intention of establishing an independent commission which will report in detail to that parliament. I hope the remit given to the Commission will be wide enough to enable it to consider whether single-tier or two-tier local government is best for Scotland. I suspect that it might come to the same conclusions as its distinguished predecessor, the Wheatley Commission, in 1969.

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