

A blueprint for a more effective Scottish Parliament

Murdo Fraser MSP

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About Murdo Fraser

Murdo Fraser has been MSP for Mid-Scotland & Fife since 2021, and is currently the longest-serving Conservative MSP in Holyrood. He is Scottish Conservative spokesman on Business, Economic Growth & Tourism, having previously held a number of roles in the Party, including that of Deputy Leader from 2005 to 2011. Murdo has served as Convenor of three Parliamentary Committees and as Deputy Convenor of a further three. Prior to entering politics he was a commercial lawyer in private practice.

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Foreword

Everyone involved in creating the new Scottish Parliament in 1999 determined that the parliament should signal a better style of politics, with more openness and transparency, greater cross-party and civic engagement and a willingness to be open to new ideas and solutions rather than the old arguments. Those who designed everything from the parliamentary chamber to the electoral system were well-intentioned, and this contributed to the initial excitement in the summer of 1999.

However, 25 years on, we would be doing a disservice to Scotland and future generations if we were not willing to reflect on the elements of that original plan that have not worked well in practice.

Over the past 25 years, the committee system has become ineffective in contributing to forward thinking and scrutiny. The strong whipping system used by parties has made most debates and even question sessions in the chamber predictable. Alternative voices within parties have been silenced, rather than encouraged in an open parliamentary system. The disregard for the principles of freedom of information and transparency stand in contrast to the early years.

The result of all this is poorer legislation, less accountability for ministers, a lack of confidence amongst the public and a wider lack of ambition and inspiration in our politics. Murdo Fraser and I have our differences. My solutions to these problems would not be exactly the same as those he outlines in his pamphlet. But Reform Scotland is here to encourage and stimulate debate and I welcome his willingness to address these issues and begin a debate with some concrete proposals.

This is the time for serious review of these original arrangements. Previous efforts have not gone far enough. I hope that this pamphlet does generate debate but also action to rebuild the Scottish Parliament into an institution that we can be proud of once again.

Lord Jack McConnell
Chair
Reform Scotland

Introduction

The 25th anniversary of the Scottish Parliament is upon us, and after a quarter of a century it is timely that we reflect on the impact of devolution, and the workings of Holyrood as an institution, to ensure it remains an effective legislature for Scotland. Much has changed since 1999. A very different political atmosphere permeates an institution that has also seen its powers increase following further devolution. I believe that reform of some of the Parliament's structure and processes is now necessary in order to produce a more agile and responsive legislature.

In essence, two major problems exist which my plans seek to address.

First, there is an imbalance between the legislative and executive branches of power in Scotland. The Scottish Parliament was meant to '*embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish executive*'. In recent years, the ability of the Parliament to scrutinise ministers has been weakened. The causes of that are varied but include excessive politicisation in both committees and the chamber, insufficient resources, and a dearth of expertise. This has led to a climate of 'hyper-partisanship' rather than collaborative consensus when it comes to the scrutiny of laws and the holding of Government to account.

Second, the quality of law-making leaves much to be desired. The current three-stage legislative process is often crude and simplistic and does not lend itself to the considered and nuanced production of laws for Scotland. By widening and extending the consultation process at the start, and by allowing for greater post-legislative revision at the end, I hope that a more rigorous legislative process will lead to better laws.

My motivation in presenting these reforms is an attempt to resolve such problems. Change is needed to ensure a robust Scottish Parliament has the capacity to legislate, scrutinise, and engage with people across Scotland in the 25th anniversary year of the institution.

I aim to approach reform on a non-partisan and cross-party approach. It should be in the interests of all political parties, whether in government or opposition, to work together to ensure that the legislature is functioning at maximum efficiency in its dual role of legislating for the people of Scotland and holding the government of the day to account.

Together, I hope that we as MSPs, and all other interested stakeholders, can engage in a debate on how best to achieve the right level of reform, so that in another 25 years, we can see with pride how our Parliament fully and truly operates in the name of the Scottish people. I welcome feedback and constructive criticism of the proposals set out here.

Finally, I would thank my former MSP colleague Donald Cameron, now Lord Cameron of Lochail, for all the work he did in preparation for a Member's Bill proposal on Parliamentary reform, which provides the foundation for this document. This is more

his work than mine. I would also acknowledge the work put in by Katherine Bailey in my office in the preparation of this paper, and thank Reform Scotland for publishing it. That said, all errors are entirely my own.

Murdo Fraser MSP
May 2024

Key Recommendations

- Giving Parliament the power to initiate judicial inquiries
- Establishing a 'Confirmation Committee' to approve Ministerial and public body appointments
- Election and remuneration of Committee conveners
- Creating a Post-Legislative Standing Committee.
- Creation of a five-stage legislative scrutiny process
- Granting MSPs the full rights of parliamentary privilege
- Reviewing/capping the number of Scottish Government Ministers
- Establishing consequences for breaking the Ministerial Code of Conduct
- Enhancing the role of the Presiding Officer

The context: why reform is necessary

The Scottish Parliament was once seen as a beacon of democracy, but now finds itself in a complex web of political polarisation and institutional stagnation. While the creation of the Parliament was marked by promises of accountability, accessibility, and responsiveness to the needs of the Scottish people, the reality is that the institution has fallen short of these ideals. In recent years, party politics has led to bitter divides dominating the discourse.

The ideals of consensus that once characterised the debates have been extinguished and, in their place, a toxic environment has formed which has hindered the Parliament's ability to fully fulfil its mandate effectively. Despite the various achievements throughout the Scottish Parliament's first quarter of a century, it now stands at a crossroads, grappling with a crisis of confidence and effectiveness. Reform is not only desirable but essential if the institution wants to continue its promise to serve the people.

Parliamentary discourse in Scotland has been driven by party political tribalism throughout the last decade, fuelled by division along the constitutional faultline. The vision when creating Parliament in the 1990s was to break away from the confrontational mould of the dual-party system that has dominated politics in Westminster throughout the majority of its history. The ambition to create a more European-style legislature which would encourage collaborative working and build consensus has not been fulfilled.

Instead, Holyrood now mirrors the Westminster confrontational dynamic. In place of a collective and cooperative approach to debates, whipped party positions dominate the discourse, diminishing the opportunity for personal dialogue and thoughts. Polarised debates often lead to a lack of cross-party collaboration which further exacerbates the party divide. On issues where broad agreements tend to exist, such as climate change, parties are reluctant to unite to find common solutions, leaving Holyrood as a fragmented front against the challenges facing Scotland. This lack of cohesion undermines Parliament's ability to effectively address the pressing needs of those in Scotland.

Parliamentary committees were meant to be a crucial component of the democratic processes within Scotland, intended not only to scrutinise legislation but also to hold Government to account, and initiate their own Bills and inquiries. However, committees have not fully shaped or realised their full potential as powerful entities within the Scottish Parliament. The initial hope when creating the Parliament was for these committees to be independent bodies that would be capable of scrutiny and policy development. Due to the sheer volume of legislation being created by the Government, this has meant that committees have not been able to fully fulfil their role. There has been a high turnover rate of committee members, hindering their ability to gain an in-depth understanding of issues and provide consistent oversight to the executive.

Moreover, the influence of party politics within committees has diluted their effectiveness, turning them into arenas for partisan debates and exchanges rather than a place of constructive communication and consensus-building beyond party lines. To strengthen the role of committees, the structure needs reviewing. The creation of separate bill committees to focus on legislation would allow subject committees to focus more on policy development. Furthermore, electing committee conveners directly rather than through party nominations would enhance committee independence and accountability, creating a more robust mechanism for parliamentary scrutiny and policy formulation.

The checks and balances system in Scottish Parliament has been seen to show multiple flaws, especially in the formation and scrutiny of legislation. Despite the scrutiny function of Parliamentary committees, we have too many examples of poor quality or defective laws. The Gender Reform Bill, which aimed to reform the gender recognition laws, and the Named Person policy, which aimed to assign a named person to every child, both faced legal challenges and were struck down by the UK's Supreme Court. The Offensive Behaviour at Football Act, heavily criticised by the judiciary, was in the end repealed.

Whilst some might argue for an entirely new revising Chamber, there is unlikely to be significant public support for a new tier of politicians in a country which many see as already over-governed. There is, however, an unanswerable case for a new process for legislation which provides for an additional set of checks and balances beyond the current 3-stage system. This a priority for reform to ensure more effective legislative scrutiny to better serve the interests of the Scottish people, and reduce the output of bad law.

Other reforms are proposed here to increase the ability of MSPs to hold Government to account and to improve the quality of debate in the Holyrood chamber. Those might well assist in attracting a broader range of experienced individuals to put themselves forward for election to the Parliament, which would be a welcome outcome.

The Scottish Parliament was meant to be a beacon of democratic promise but now, after 25 years, it stands at a critical juncture. Hindered by political polarisation, institutional stagnation, and a lack of effective checks and balances, it has struggled to fulfil its mandate. Reforms are necessary to restore confidence in Holyrood. Through greater cross-party working and strengthening scrutiny, Scotland can reclaim its vision of a representative, accountable and consensus-driven democracy.

Recommendations in Detail

Give Parliament the power to initiate judicial inquiries

This would give the Scottish Parliament the power to initiate judicial inquiries and quasi-judicial inquiries, independent of the Scottish Government. The Inquiries Act 2005 (UK legislation) gives Scottish Ministers the power to establish public inquiries and sets out a statutory framework. My proposal would be for the Scottish Parliament to have a similar power to establish a public inquiry, and to be responsible for the appointments, terms of reference, powers of investigation and taking of evidence.

Establishing a 'Confirmation Committee' to approve Ministerial and public body appointments

As soon as a new session starts, a "Confirmation Committee" should be established. The Presiding Officer would convene this, with two MSPs from each main party, and one MSP from minor parties. This committee will confirm all ministerial appointments and all senior public sector appointments at oral hearings prior to the approval vote in Parliament.

Election of committee convenors, and remuneration of convenors

Parliament should put in place procedures for the election of committee convenors from the start of the next session. Committee Convenors would be elected by secret ballot with each party to submit up to two candidates. Convenors would be paid a supplement to their MSP salary, to reflect the additional workload and with the rationale that it strengthens the status and position of the role of a convenor.

This would help reinforce the active role of a convenor in driving a committee's agenda and raising its status and profile. This issue is currently under active consideration by the Parliament's Standards, Procedures and Public Appointments Committee (SPPAC).

Creating a Post-Legislative Standing Committee and a Legislative Standards Body

A Post-Legislative Standing committee should be established, consisting of former MSPs, part-time appointees from the public sector, legal experts, and other relevant persons. This body would consider and scrutinise bills after stage 3 but before Royal Assent and recommend whether a bill needs to be returned to Parliament for further consideration if deemed to be defective in any way. It should not seek to undermine the will of Parliament as expressed in a Bill duly passed at stage 3, and nor should it engage in issues of legislative competence, but is a means by which legislative defects can be cured or amendments that have not been properly consulted upon can be properly considered.

To promote a better understanding of what constitutes good legislation across Scotland, the Parliament should establish a Legislative Standards Body.

Creation of a five-stage legislative scrutiny process

The current three-stage legislative process should be replaced with a five-stage process to include pre-legislative and post-legislative scrutiny. While the existing three-stage legislative scrutiny process would remain at its core, committees should include pre- and post-legislative scrutiny in their work programmes.

Scottish Ministers, backbench MSPs, or Committee Bill proposers should provide a short statement in the chamber or relevant committee every time a consultation on proposed legislation is launched, explaining the nature of their engagement with stakeholders. This could form a new stage 1 of the five-stage process.

In addition to the SPPAC recommendations regarding presentation of amendments at existing stages 2 and 3, and the creation of a pause mechanism at stage 3, the rules relating to the stage 3 referral back to the lead committee should be reviewed. In exceptional cases, a Bill could be referred back to the lead committee and the Delegated Powers and Law Reform Committee at stage 3.

Grant MSPs the full rights of Parliamentary Privilege

The rights of parliamentary privilege enjoyed at Westminster should be extended to Holyrood in full, including the “contempt of court” privilege. This would allow MSPs to fully hold the government to account in legislation, debates, and questions involving active legal cases.

Review/cap Scottish Government Minister numbers

The number of ministers should be regularly reviewed in proportion to the number of MSPs, with a view to introducing a cap in the case that the number of Ministers is above what the Parliament deems to be acceptable or necessary.

Establish consequences for breaking the Ministerial Code of Conduct

To strengthen the Ministerial Code of Conduct, new and binding sanctions would be introduced which would result in more robust punishments if the First Minister or Scottish Government ministers are found to have breached the Ministerial Code.

A new, independent adviser or adjudicator would be appointed to review potential breaches of the Code, advise Parliament of its findings, and advise on suitable sanctions.

Enhancing the role of the Presiding Officer

The Presiding Officer should play a stronger role in ruling on the conduct and content of parliamentary business, particularly oral questions & answers in the chamber, to ensure a better balance between political debate and scrutiny in parliamentary business.

The Presiding Officer should be given the right to initiate an emergency debate on their own instigation, or at the request of any MSP with the Presiding Officer's agreement. To increase the spontaneity of debate, the Presiding Officer should have greater flexibility when determining the length of speeches and calling speakers not on party lists.

Reviewing debate time limits

The existing restriction on backbench contributions during debates to six minutes, and sometimes less, is an undue restriction on the ability of MSPs to develop an argument and accept a number of interventions. Parliament should be a debating chamber, not a platform for the reading out of pre-prepared speeches which can bear little relation to the contributions which have gone before. The Presiding Officer, in conjunction with party business managers, should have the capacity to extend speaking times for those MSPs who request it, in order to improve the quality of debate and encourage more interactions.

Remit, role, and resourcing of committees

Parliament should review the dedicated resources available to committees to determine whether they are able to meet the future needs of parliamentary business and support more effective scrutiny. Consideration should be given to establishing more stand-alone Bill committees, particularly for complex or technical pieces of legislation.

Parliament should also review the range of mechanisms available to committees to benefit from expertise and experience other than through the formal appointment of an adviser.

Parliament should establish a Committee Engagement Unit, which would support and challenge committees to undertake more innovative and meaningful engagement. This would be a systematic review of how Parliament evaluates its engagement activities, and it should be undertaken with a view to developing a more sophisticated system, drawing on external expertise and skills where necessary.

Strengthening the role of the Chamber

The opening question of any MSP selected to ask a question at FMQs should no longer be published, to ensure parity of approach.

The focus of questions in the chamber should be on quality of scrutiny rather than the quantity of questions asked, therefore the number of portfolio questions selected and published in the Business Bulletin should be reduced.

Parliament should review the range of question times available, presently Portfolio and General Questions, with a view to ensuring each portfolio area is scrutinised more frequently.

The role of opposition frontbenchers should be strengthened and the relevant portfolio holder in each party should have the ability to ask the first question, and for it not to be published in advance.

New proposals for Parliament's programme of business

Each party or group represented on the Parliamentary Bureau should submit their proposals for the programme of business for the forthcoming weeks to the Presiding Officer before such proposals are then considered by the Bureau. This would replace the current practice where the Scottish Government proposes the programme of business for consideration by the Parliamentary Bureau.

Committees and Chamber business

Different committee and chamber meeting patterns should be considered over a session to enable the Parliament to address the changing requirements for additional committees or chamber scrutiny time.

Committees should be able to decide themselves whether to meet at the same time as the chamber.

Parliament should also consider using committee rooms to hold parallel debates as a way of providing additional opportunities for chamber business.

The use of the debating chamber in the morning should be investigated in order to allow for more Members' debates and "Westminster Hall" style debates, without motion or a vote.

Parliamentary Bureau procedures

The procedures of the Parliamentary Bureau should be reviewed.

It should ensure that the views of either individual MSPs not represented on the Parliamentary Bureau or groups of mixed-affiliation MSPs are considered, including a provision to allow them to have speaking rights at the Bureau and in the chamber.

Each party should be entitled to open and close debates but with the time allocated reflecting their party balance in Parliament, recognising that, for small parties, this may mean they have less speaking time than those in open debate.

A more detailed business motion should be established for the following three weeks of chamber business.

To foster a greater sense of ownership of the business programme, any member of the Parliamentary Bureau should be prepared to propose the business to the chamber and where necessary respond to questions on it. Time should therefore be provided in the chamber at the end of each week for questions on the forthcoming business programme.

Reform of Cross-Party Groups

There should be a full review of the number and scope of Cross-Party Groups to ensure they work efficiently and in the best interests of the Parliament.

At present, many groups do not meet regularly, or struggle to reach the required quoracy of two MSPs in attendance, and there is a practice of MSPs joining groups to keep them active, but without participating in them.

Give Parliament the power to compel ministers to appear

The Scottish Parliament should have the power to compel ministers and law officers to appear before committees and chamber, by specific power of the Presiding Officer.

Regular reviews of Standing Orders

The Standing Orders of the Parliament should be reviewed in their entirety towards the end of each session. This would utilise the knowledge and experiences of MSPs as the Parliament approaches dissolution, and it would enable a measured and holistic approach to any rule changes.

The Conveners' Group should take a more prominent role in developing a strategic approach to scrutiny across committees.

The Scottish Government, and/or other relevant public body should be required to provide the Parliament with a post-legislative statement. That would also be the point at which the Standing Committee would commence its operations. This would form a new Stage 5 of the process.

Funding for MSPs and political parties

The Presiding Officer and SPCB should establish a working group to consider the case for reviewing the level of resources for MSPs as part of a wider strategic review of funding for the different roles MSPs can undertake, such as the proposed reforms of committee conveners.

The review should include considering the number of MSPs, reflecting the fact that the Scottish Parliament possesses more powers than it did in 1999 and the increased work in committee and chamber level. This should also consider whether the cap on the number of Ministers referred to above would free up more backbench MSPs.

The working group should also consider the extent to which any additional funding or resources would support a more diverse range of MSPs.

As part of any strategic review, the working group should also consider whether the amount of funding, allowances, and payments available to party leaders and parties should be increased.

Ministerial accountability to the chamber

In response to losing a vote in the chamber, the relevant Minister should be required to return to the chamber to address any concerns raised in the debate within an appropriate timescale agreed by the Parliamentary Bureau.

An introduction of a Motion of Censure mechanism against Ministers should be considered. While this would fall short of a vote of no confidence, it could be used by MSPs to express dissatisfaction with performance of duties.

Establishing a backbench committee or group

The Parliament should establish a backbench committee or group to enhance the role of MSPs by providing them with a voice in how parliamentary business is determined.

Scottish Law Commission reports

The Parliament should provide a mechanism for ministers to announce to Parliament, either in committee or in chamber, when they receive Scottish Law Commission reports proposing law reform.

Commissioners' review

The Parliament should review the number, tenure, remit, scope and concept of commissioners appointed by the Scottish Government, with a vision on how they interact with devolved policy moving forward.

Providing quality feedback

The Parliament should develop a proportionate but personalised system of feedback to those who engage with it. Committees should provide meaningful feedback as an important part of the process of producing their final report.

ANNEXE: Implementation

It is considered that the following proposals would, or are likely to, require changes to the Scotland Acts at Westminster as they refer to matters presently reserved:

1. Power to initiate judicial inquiries
2. Establishing a Confirmation Committee
3. Creating a Post-Legislative Standing Committee
4. Creating a five-stage legislative process
5. Extending MSPs' rights of privilege
6. Capping number of Ministers
7. Adjusting number of MSPs
8. Power to compel Ministers & Law Officers to appear
9. Consequences for breaches of Ministerial Code

The following reforms could be implemented with changes to the Parliament's Standing Order and Practices:

10. Election and remuneration of Committee convenors
11. Enhance role of Presiding Officer
12. Reviewing debate time limits
13. Remit, role and resourcing of Committees
14. Strengthening the role of the Chamber
15. New proposals for Parliament's programme of business
16. Committees and Chamber Business
17. Parliamentary Bureau procedures
18. Reform of Cross-Party Groups
19. Regular reviews of Standing Orders
20. Funding for MSPs & political parties
21. Ministerial accountability to the Chamber
22. Establishing a backbench Committee or group
23. Scottish Law Commission reports
24. Commissioners' review
25. Providing quality feedback

