Local Government Committee

30th Meeting, 2002

Tuesday 26 November 2002

The Committee will meet at 2.00 pm in Committee Room 2

1. **Item in private**: The Committee will consider whether to take item 4 in private.

2. **Local Government in Scotland Bill**: The Committee will consider the Bill at Stage 2 (day 4).

3. **Proportional Representation (Local Government Elections) (Scotland) Bill**: The Committee will take evidence on the general principles of the Bill at Stage 1 from—
   
   Peter Peacock, MSP, Deputy Minister for Finance and Public Services;
   Sarah Morrell, Head of Branch, Local Government Constitution and Governance Division;
   Gillian Russell, Office of the Solicitor, Scottish Executive;

   Professor Bill Miller, “Edward Caird” Professor of Politics, University of Glasgow;

   Tricia Marwick, MSP
   Alyn Smith, Parliamentary Researcher to Richard Lochhead, MSP.

4. **Dog Fouling (Scotland) Bill**: The Committee will consider a draft Stage 1 report.

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The following papers are attached for this meeting:

**Agenda item 2**

Local Government in Scotland Bill: Briefing paper from the adviser [PRIVATE] LG/02/30/1

**Agenda item 3**

Memorandum from the Scottish Executive LG/02/30/2

Submission from Professor Bill Miller LG/02/30/3

**Agenda item 4**

Dog Fouling (Scotland) Bill: Draft Stage 1 report [PRIVATE] LG/02/30/4
PROPORTIONAL REPRESENTATION (LOCAL GOVERNMENT ELECTIONS)  
(SCOTLAND) BILL  

MEMORANDUM BY THE SCOTTISH EXECUTIVE TO THE LOCAL  
GOVERNMENT COMMITTEE OF THE SCOTTISH PARLIAMENT  

October 2002
PROPORTIONAL REPRESENTATION (LOCAL GOVERNMENT ELECTIONS) (SCOTLAND) BILL

Introduction

1. This memorandum has been prepared by the Scottish Executive to assist the Local Government Committee (as the lead committee) in its consideration of the Proportional Representation (Local Government Elections) (Scotland) Bill which was introduced by Tricia Marwick MSP on 26 June 2002. The memorandum reiterates the Executive’s commitment to making progress on electoral reform for local government and sets out the Executive’s plans for taking this forward.

Background

2. In June 1999, the Commission on Local Government and the Scottish Parliament (the McIntosh Commission) recommended that ‘Proportional Representation should be introduced for local government elections. A review should be set up immediately, to identify the most appropriate voting system for Scottish local government.’ The Executive established the Renewing Local Democracy Working Group (known as the Kerley Group) in July 1999 to take forward this review. The Group reported in June 2000 and recommended the introduction of a new electoral system, the Single Transferable Vote (STV).

3. The Executive subsequently established the Cabinet Sub-Committee on Renewing Local Democracy to take forward consideration of the issues arising from the Kerley recommendations. The work of this Committee led to the publication earlier this year of the Local Government White Paper ‘Renewing Local Democracy: The Next Steps’.

4. The White Paper looked at a number of issues relating to local government, including electoral reform. Responses to the consultation on the White Paper showed a significant majority in favour of the Single Transferable Vote (STV) system. The Executive therefore confirmed on 24 September that it will publish a Local Governance Bill before the end of the Parliamentary session. The Bill will include STV as the alternative choice to the First Past the Post system for local authority elections. The published Bill will then be available for decision by the new Executive following the May 2003 Scottish parliamentary elections.

Summary of the Private Member’s Bill

7. The purpose of the Proportional Representation (Local Government Elections) (Scotland) Bill is to introduce STV for local government elections. Section 1 of the Bill amends section 42 of the Representation of the People Act 1983 which deals with the conduct of local government elections in Scotland and provides that the current system of voting be replaced by STV. The wording of Section 1 appears to reflect that used in the legislation used to bring in STV for local government elections in Northern Ireland.

8. Section 2 provides Scottish Ministers with order-making powers which would enable them to establish new multi-member electoral wards for local authorities. The section also requires Ministers to consult on any draft instrument proposed under these powers and that such an order could only be made following an affirmative resolution by the Scottish Parliament. Section 4 also gives Scottish Ministers further order-making powers in respect of any incidental, consequential, transitional or supplementary provisions they consider
necessary in connection with the Act. A statutory instrument made under these powers would need an affirmative resolution of the Parliament if it amended or repealed legislation and a negative resolution if it dealt with other matters.

The Executive’s view

9. The Executive has emphasised its commitment to making progress on electoral reform in line with the principles of the Kerley Group’s report. The Executive’s position was set out in the Local Government White Paper published in March this year and in the statement made on 24 September. The Executive’s main concerns about the proposals contained in the Bill are the following:

9.1 **The Bill cuts across the work which is already in hand on the issue of electoral reform:** The Executive has already consulted on options for electoral reform, as part of the wider modernising government agenda and has announced that it will publish a Local Governance Bill, which will include STV, before the end of this Parliamentary session.

9.2 **Lack of policy context or consultation:** The supporting documents for the Bill do not appear to include a context for the policy behind the Bill, its objectives, the other options considered, or the reason for introducing STV. There does not appear to have been any consultation to help inform the principle or content of the Bill. Nor is there any indication of a timetable for introduction and the processes that would need to be in place to allow a new system to operate.

9.3 **Financial and resource implications:** There is no indication in the Financial Memorandum of the likely financial or resource costs of introducing a new electoral system, although the Presiding Officer has indicated that a financial resolution would be required for this Bill.

9.3.1 **Implications for the Executive:** The Financial Memorandum recognises that publicising any new electoral system will have resource implications for the Executive. It is not possible from the documentation to determine the likely cost of such a publicity exercise and of a training package for elections staff.

9.3.2 **Implications for local government:** The Financial Memorandum indicates that there will be no resource implications for local government. In fact, the cost of administering local government elections falls to local authorities and is met from within their existing budgets. The administration of a new electoral system would result in increased expenditure for local authorities and discussions would need to be held to determine the extent of the additional costs resulting.

9.3.3 **Implications for the LGBCS:** The Memorandum recognises that the Local Government Boundary Commission for Scotland (LGBCS) will require to make recommendations in relation to new electoral wards if STV is introduced, but advises that the Commission is scheduled to conduct a review of electoral arrangements in 2004 and that any additional expense will therefore be minimal. In fact the Commission is scheduled to undertake an
administrative review of boundaries, not an electoral review. The White Paper made clear, however, that Ministers do not envisage a review of council boundaries or the number of councils in the foreseeable future. Consequently, Ministers are likely to issue a Direction to the LGBCS postponing the administrative review which they are statutorily required to undertake between 2004 and 2008.

In terms of costs for the LGBCS, the introduction of STV would require additional funding as the Commission would be required to draw up revised electoral boundaries and consult upon them before submitting their recommendations to Scottish Ministers.

10. The Executive is therefore opposed to this Bill.

Scottish Executive
October 2002
Scottish Parliament: Local Government Committee
Proportional Representation (LG elections) (Scotland) Bill

Submission from Professor Bill Miller, “Edward Cairn” Professor of Politics, University of Glasgow

An overwhelming reason for change?

The standard work on electoral systems advises against changing the electoral system unless there are very pressing reasons: ‘Familiarity breeds stability. Political forces learn to live with the system and devise appropriate strategies’ (Taagepera & Shugart: Seats and Votes 1989, p.218). Too many changes – or too many simultaneous systems – merely confuse both parties and electors.

In the present case, there must be a suspicion that there are just two overwhelming reasons for change:

- The Scottish Parliament has the power to determine the Local Government Electoral System – unlike many other important matters over which it has no power.
- The Liberal price for a coalition bargain with Labour to control the Scottish Parliament included PR for local government elections.

The argument for change seems to proceed from that coalition bargain rather than from any awareness of a pressing problem for which STV-PR has been identified as the best and most appropriate solution.

Aims and Objectives

Democracy requires, and the public wants, a system of government that is:

- representative
- efficient
- responsible/accountable

Unfortunately, as the Jenkins Commission noted these criteria are ‘not entirely compatible’ – though, it continued, fortunately ‘none of them are absolute’. [I attach diagrams showing how these aims & objectives might be translated into systems of governance.]

There is no groundswell of intense public demand for PR. The public responses to Renewing Local Democracy are overwhelmingly in favour of PR but do not reflect public opinion – over three-quarters were ‘received as part of a pre-printed postcard campaign’ and no doubt some that were not on pre-printed cards were also stimulated by that same campaign. In fact polling evidence suggests that the public would like proportional representation combined with efficient and decisive (but
nonetheless responsive) single-party government i.e. they like the abstract principle of proportionality but do not like its practical consequences.

So I foresee the possibility that a switch to a more proportionate system of local governance might soon be balanced or negated by the introduction of the most disproportionate ‘winner-takes-all’ mechanisms in order to provide decisive and accountable governance – perhaps by introducing elected Executive Mayors/Provosts.

**When should the priority be representation?**

In any particular circumstances, it is important to determine whether these circumstances require increasing emphasis on one of the three criteria (representative, efficient or responsible/accountable government) – at the almost inevitable expense of the other two.

A switch from a majoritarian to a PR system would make the government more representative, but less clearly accountable and probably less efficient. An entrenched coalition could be more difficult for the electorate to dismiss than a single-party government. Key decisions would be transferred from the electorate to obscure back-room bargain-makers. Nonetheless all of that would be a price worth paying if there were a pressing need for a more representative system.

Such a pressing need might arise if there were some permanent minority, permanently excluded from decision-making under a majoritarian system. Typically that occurs where there are important ethnic or religious divisions in society. Northern Ireland is a good current example. (The Scottish Education Authority Elections 1909-28 provide a Scottish yet almost forgotten example). But, as in Northern Ireland, electoral PR is an inadequate solution by itself – since electoral proportionality leaves the minority in the electorate as a minority in the elected body. So electoral proportionality has to be supplemented by proportional allocation of office, and perhaps by systems of concurrent majorities (majorities within both ethnic/religious groups) on key issues.

Direct representation of the poor, by the poor, has been abandoned as an objective by all parties including Labour – in part because of the hope that poverty is not permanent.

But Gender is also permanent. So there is a case for systems that guarantee gender proportionality. The Scottish Parliament has done well on gender representation (and badly on ethnic minority representation) – though by party-based action rather than legal changes.

But party is not permanent in the same way as religion/ethnicity or gender. Individuals switch in large numbers between parties at successive elections. Even if the levels of support for minority parties remain fairly constant, the composition of that support may change rapidly. (The usual analogy is of a bath with the plug out but the taps running at full.) Consequently although minority party leaders may feel they are permanently locked out of power, their voters do not – because so many of their voters are merely ‘transient visitors’. So the case for party-PR is less strong than for gender or ethnic/religious-PR.
Can proportionate mean disproportionate?

The Jenkins Commission also pointed to one serious problem caused by party-PR, namely the ‘substitution of one distortion for another’ by giving a minority a ‘permanent hold of hinge power’. This is particularly problematic in a system with two large parties. Where a party-PR electoral system results in two major parties coming just short of a majority, a small minority party – or even a rag-bag of unattached and unprincipled elected members – might be able to sell their support to whichever of the two major parties would pay the higher price. That price might be cash-under-the-table, special subsidies for special interests, or simply high office.

At the level of British government the Jenkins Commission was particularly sensitive to the possibility that the Liberal Party, by gaining seats in proportion to its votes, would gain permanent access to office and thus gain power out of all proportion to its votes. In the short life of the Scottish Parliament the leader of the fourth largest party has twice acted as First Minister. At the level of Scottish Local Government the details might be different, but hung councils would give disproportionate power to those councillors who – whether for ideological or personal reasons – were most willing to trade their support with two major parties.

The burden of proof

None of this means that STV-PR is necessarily a bad system in all circumstances, nor that it would be disastrous even if it were bad. The impact of electoral systems on politics and society tends to be over-estimated by the enthusiasts for particular electoral schemes. (The findings of the Scottish Executive SRU 1999 p.36 confirm this.) But it does mean that all systems come with their own problems and pathologies. And that no system is a remedy for all problems.

Moreover, recalling Taagepera and Shugart’s considered advice about tampering with electoral systems, the burden of proof is on those who advocate changing the electoral system to show that its solves some important problems without causing others – to show that it will do much more good than harm. I do not see that proof in this case.

An example: maximising turnout

For example, one problem that has been identified is low turnout in local government elections. What is the evidence that STV-PR would solve this problem?

Professor Curtice chose his words carefully in his evidence to the LG Committee: ‘It would be difficult to argue that we should not introduce either STV or AMS to Scottish Local Government on the ground that the complexity will put off voters’ (21st May 2002). Exactly! He was also careful to note that although the academic evidence from cross-national studies indicated higher turnouts in places with PR ‘some of the evidence shows a difference that is not particularly large’.

In short, turnout effects would not rule out a switch to PR. But at the same time, it is clear that they do not provide sufficient case for PR – or even much of a case at all.

The latest cross-national analysis of turnout (Franklin in LeDuc, Niemi and Norris, Comparing Democracies 2, 2002, pp.148-68) indicates that six factors have a significant impact on turnout: (i) proportionality (which varies within PR systems and within majoritarian systems – as well as between them); (ii) compulsory voting; (iii)
postal voting; (iv) weekend voting; (v) the competitiveness of the party system /
closeness of the race; and above all (vi) the salience or importance of the electoral
contest.

According to Franklin, proportionality has an impact roughly on a par with each of the
other electoral-system factors [(ii)-(iv)] and much less than the political factors [(v)-
(vi)]. Overall therefore its impact is comparatively slight.

Remarkably, Renewing Local Democracy: The Next Steps (March 2002) makes the
same point without apparently noticing that it is doing so. Para.35 states that ‘many
people feel that the use of FPTP means that their votes do not count and [therefore]
do not vote’. But para.37 then notes that ‘the Scottish electorate is already familiar
with two forms of PR…elections to the Scottish Parliament are conducted on the
basis of AMS and elections to the European Parliament are conducted on the basis
of a closed party list.’ The turnout for the Scottish Parliament Election under AMS
was 58% (well below every FPTP Westminster Election except 2001), and for the
European Parliament under list-PR turnout was a mere 25%. This evidence from
Scotland confirms the conclusion of the cross-national research that the impact of
proportionality (by itself) is insignificant compared to the political salience of the
election. Local Government elections attract low turnouts – though not nearly so low
as European Parliament elections – because they have low salience, not because
they have FPTP rather than STV-PR.

I believe that low turnout is a problem, but that there are more appropriate and
effective ways of dealing with this problem than by introducing PR.

Fiddling the system

According to that veteran and mild-spoken commentator David Butler, all election
systems are fiddled to a greater or lesser degree. (For a range of fiddling techniques
see Harrop & Miller Elections and Voters, 1987, pp.60-68.) The Scottish Parliament
system, for example, gives 50% excess representation to the Highlands & Islands
(coincidentally an area of Liberal strength) above the level these areas would have
under strictly ‘equal apportionment’. Malapportionment is a standard technique for
fiddling constituency based systems whether FPTP or PR.

In addition however, PR systems can be fiddled by adjusting the number of seats per
constituency. (A famous example is the Irish ‘Tullymander’.) A PR system becomes
more proportionate as the number of seats per constituency increases – up to
maximum proportionality when the entire country is treated as one constituency
containing all the seats. Thus the larger parties in the Czech Parliament recently
agreed to have more constituencies (and fewer seats per constituency) which would
benefit them at the expense of the smaller parties. Conversely a full-country
constituency containing all the seats (and without a percentage ‘threshold’) is
notorious for giving representation – and thus a voice – to extremists.

Professor Curtice recommended a moderate choice of 8 seats per constituency –
roughly equivalent to a ten percent threshold. The Bill’s proposals go beyond the
Irish example (between 5 and 3 seats per constituency) and have constituencies
ranging from 5 seats (somewhat proportional) down to a mere 2 seats (scarcely
proportional – almost majoritarian).

The essence of the Tullymander fiddle is to have constituencies with few seats per
constituency in areas where your party is strong (hoping to convert a strong vote into
complete 100% victory) and more seats per constituency where your party is weak (hoping to salvage something in terms of seats even though your vote is weak).

So whenever the number of seats per constituency correlates with a party's areas of strength there is a conscious or unconscious Tullymander. The Bill's proposal to have an almost majoritarian system in rural areas combined with a much more proportionate system in densely-packed urban areas therefore should ring alarm bells.

END TEXT: DIAGRAMS FOLLOW
Aims and Objectives

Representation

Accountability

Good governance (efficient & honest)

Legitimacy / public acceptability
How to get from ‘fairness’ to ‘PR’


‘Fairness’ = equal weight to each voter’s aims

Representation

Accountability

Good governance

- of party pref
- of policy pref
- of area:
- of age
- of class
- of race / ethnicity
- of gender

= voters’ votes
- irrespective of whether:
  - tactical or forced
  - truly express prefs

= voters’ party prefs
(& only a minority vote)

= electors’ party prefs

proportional to:
- seats on council
- probability of being in govt / proportion of time in govt
- influence over policy

within whole district
within local ward

district-wide PR
ward-level PR
Aims and Objectives

Representation
- Best:
  - Gallup poll
  - public consultation

- Poor 2nd best:
  - FPTP
  - PR for parties

- Worst:
  - directly elected Mayors
  - winner-takes-all ‘slates’

Accountability

- Best:
  - internal checking mechanisms...
    - peer-group evaluation
    - good 2-way communication with voters (ie responsive and inspiring)

- Worst:
  - no peer-group evaluation (Mayors)

Good governance
- efficient and honest

- Best:
  - voters elect a ‘government ‘ e.g...
    - executive Mayor
    - majority party
    - stable pre-election coalition

- Poor 2nd best:
  - unstable post-election coalition

- Worst:
  - no ‘second term’ possible for Mayor
  - no clear ‘govt’
  - no ‘opposition’ / no alternative ‘govt’
  - total, permanent domination – either by one party or coalition