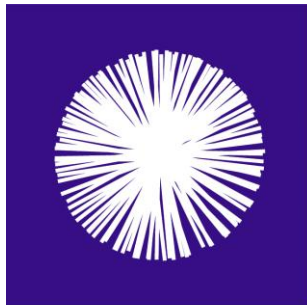


GOVERNANCE MATTERS

JOIN



THE

The voice of
Scotland's
environment
community

DEBATE

Scottish Environment LINK has been closely involved in policy development since the re-establishment of the Scottish Parliament in 1999, and in the preceding ten years.

After a decade and more of devolution, and in the context of current constitutional debate, LINK has reflected on what the Parliament and devolution have delivered for the environment and for Scotland's people, and what role they play in creating a truly sustainable Scotland. **This review has highlighted some issues LINK believes deserve further consideration.**

This booklet is derived from a much longer, and thoroughly argued, report *Governance Matters - The Environment and Governance in Scotland*, published by LINK in 2012. The purpose of this short document is to highlight some of the issues identified in that report, and to pose some of the questions it raises about the future of decision-making in Scotland. In the full report, these questions are framed as recommendations to the policy community. Here they are posed as questions for your consideration.

As a proud and active member of the Scottish policy community, LINK is responding to the current debate about further devolution and possible independence following the Calman Commission and the National Conversation, the Christie Commission report on the Future of Public Services and the Civil Courts review (the Gill Review).

LINK has undertaken its own review of how the systems and structures which underpin decision-making in Scotland are working. This looked at all dimensions of governance: law making and scrutiny by parliament, government, the role of the judiciary and the involvement of the wider policy community.

The full *Governance Matters* report naturally focuses on how environmental policy has been delivered since devolution, and notes the benefits of a more participative and open system of government, while identifying a number of failings. It raises some broad, cross-cutting issues which may chime with the experience of those working in other sectors.

LINK is keen to see whether the shortcomings it has identified in the current systems and methods of government and decision-making in Scotland resonate with other members of the policy community. **If so, LINK would like to explore whether there is scope for a broad-based national review of governance in Scotland.** This might, for example, involve the establishment of a Parliamentary Commission on Scottish Governance.

There is not scope here to go into detailed and nuanced arguments. Rather, we seek to outline the main areas LINK believes deserve further scrutiny and discussion; and invite others in the policy community to join us in seeking to open up that debate.

LAW MAKING AND THE FUNCTIONS OF PARLIAMENT

After more than ten years, LINK believes it is time to look again at how the structures and processes of Parliament are working in practice, to see whether they deliver proper accountability, full participation and sound decision-making.

More scrutiny needed?

LINK has observed that the balance of the work performed by the Scottish Parliament has been heavily weighted towards enacting new laws - many needed and welcome - but this has left less time for work on its other functions. In particular, our experience suggests that there has been little serious scrutiny of how policies are being delivered and laws applied in the environmental field. Furthermore, the Parliament has not scrutinised the substantial volume of secondary legislation and decision-making by government. The result is a lack of accountability for key decisions.

Q. Should Parliamentary committees spend more time on scrutiny compared to law-making, to ensure they are effective in holding the Government to account?

Weighing the evidence

LINK's experience has been that the Parliament is commendably accessible to the full range of stakeholders within Scotland. However, it has frequently sought to 'balance' the interests of these groups in a manner which does not always achieve the optimum outcome for Scotland.

Q. Does balancing the interests of 'stakeholders' result in the best course of action?

Q. Are there more effective ways of evaluating the evidence and arguments presented to Parliament?

More independent advice?

LINK's experience suggests that Parliament needs greater resources for expert advice and research, independent of government, to inform its decision-making. This applies to the Parliament's committees, in particular, and to the levels and breadth of independent advice available to them. We are interested to know whether this applies in other fields of policy.

Q. Would the Parliament benefit from more independent research and advice?

Committee remits

The Parliament's committees have been unable to achieve their full potential to cut across government departmental thinking. The promised shift from 'silos' to 'joined-up thinking' has failed to materialise - and the committees have been impeded in addressing this by their own structures and remits.

Q. Should the remits of committees be revisited, and the appointment of permanent specialist advisers to committees be considered?

GOVERNMENT, ITS PROCESSES AND STRUCTURES

The shape of government in Scotland has changed considerably since 1999, but the structures remain hierarchical and divided on traditional policy lines. The situation is further complicated by the number of agencies, pseudo-agencies and other “non-departmental” bodies involved. While many of these bodies perform essential functions, the division of responsibilities creates a significant barrier to achieving the kind of integrated, cross-sector thinking implied by sustainable development.

Towards integrated decision-making

Several attempts have been made towards integration, but the lack of a real leap forward impedes progress towards genuine sustainable development, where consideration of the environmental and social consequences of decisions lie at the heart of decision-making. Economic considerations continue to overshadow others.

Q. What further structural reforms are needed to achieve cross-cutting government, with better central policy co-ordination and genuine sustainable development?

The role of agencies

The complex structures of government and its multiple agencies too often fuse distinct functions. These functions range from the executive, regulatory and licensing, fiscal, policy formation and audit functions, to ombudsmen and commissioner, advisory and expert, Crown and quasi-judicial functions. It may be appropriate to combine some; others should be kept separate. Some ‘arms-length’ agencies, which are supposed to operate independently of ministerial controls, end up combining functions in ways which compromise their independence.

Q. Do we need a more consistent approach to how the different functions of government and its agencies are combined and separated?

Stakeholder involvement

LINK has had much and varied experience of participation in the development of policy and legislation since 1999. This has led us to question some of the ways in which those who wish to participate in the process are given opportunities to do so.

We are particularly concerned about the inconsistent approach to stakeholder groups - when such groups should be established, clarity around their remits, who is invited to take part, and how they participate in the process. Much of this seems to depend on ministerial whim.

Q. When are stakeholder forums a useful mechanism for involving wider interests in decision-making and how should they be appointed?

The value of consultations

LINK also has concerns about the usefulness of other processes designed to engage a wider range of interests in decision-making: such as the quality and quantity of government consultations, and formal arrangements for engaging with members of the policy community. There have been consultation papers aplenty - their sheer volume has led many to question their value. Their scope may be so narrow as to be of limited use. There is not enough consistency in how consultation responses are analysed and debated.

Q. Are the number, scope, openness and range of consultations appropriate and conducive to effective decision-making?

THE LEGAL SYSTEM AND ITS ROLE IN EFFECTIVE GOVERNMENT

Independent advice

LINK is concerned that government does not have adequate sources of independent advice, particularly with regard to scientific matters. Our experience in the environmental field, where government is dependent on the two principal agencies - SNH and SEPA - is that these agencies are burdened with many advisory, executive and expert scientific functions. As a result, while the integrity of their scientific advice is not in question, the nature of research undertaken, and the way it is presented, may well be affected by other considerations. This presents a significant challenge to the development of effective, evidence-based policy and law.

Q. Are there better means of ensuring that scientific and policy advice is genuinely independent?

Q. Might expert advisory groups be established by the Parliament rather than by the Government?

The judiciary is a crucial check and balance in any system of public administration. The judiciary in Scotland has been comparatively reluctant to intervene in public administration matters, and LINK's experience suggests that we have a considerable way to go before there is fair and proper access to justice in the Scottish courts for third parties.

The Scottish courts have begun to take on greater numbers of public administration cases but this had been stymied until their decision in 2010 to begin awarding Protected Expense Orders (PEOs) so that individuals and civic society organisations can afford the costs of taking test cases to law.

Recent decisions and recommendations suggest a growing recognition by senior judges that those with an interest may have standing to challenge the decisions of public bodies, irrespective of whether their specific rights have been infringed, and that such challenges should not be prohibitively expensive. This would be a positive outcome for those currently denied access to justice in Scotland.

In the environmental field, there are specific issues which LINK believes justify the creation of a Commission on Environmental Justice. There are other issues for those in wider civic society in Scotland, concerning the ability and willingness of the courts to intervene in public law matters.

Q. Should access to justice be widened?

Q. How can people in Scotland be assured that our laws, and the way they are implemented, are properly tested in the Courts?

PARTICIPATION IN DECISION-MAKING AND THE ROLE OF 'CIVIC SCOTLAND'

Besides the main branches of government (parliament, government and its agencies, and the judiciary) there are many others in the policy community, who have an interest in how Scotland is governed, and how decisions are taken.

LINK has identified the following sectors as having an influence over policy: politicians; the media; academics; bureaucrats; faith groups; financiers, businesses and corporates; trade unions; professions; hereditary power brokers and landowners; military; and the civic sector. These definitions and divisions are not exact, and the distribution of power and influence between them varies widely. Versions of this community can be seen in action in villages, cities, regions, nations, states, countries and at continental and global levels.

The 'civic sector' is, in historical terms, the newest player on the policy community block, and its legitimacy is still contested or dismissed by many of the established actors. In addition to this, the civic sector is, by its very nature, fragmented and disparate. It covers almost every interest that needs a voice, every activity that needs an organizer and every task that requires a volunteer – and it covers the whole amorphous mass of voluntary organisations, non-governmental organisations, social enterprises, civic societies, charities, pressure groups, single issue campaigns or whatever you want to call them.

So, how is this 'civic sector' organised to participate in decision-making, and could this be improved to Scotland's benefit?

LINK's experience suggests that, largely through financial controls, but also by controlling access, government places serious limitations on the independent voice of civic organisations.

This raises some challenging questions for 'civic society' in Scotland:

Q. Are non-governmental organisations independent enough of government? How can their independence be secured?

Q. Is the broad range of interests able to participate fully in civic life?

Q. Does Scotland need a forum for the entire policy community to openly discuss and debate issues affecting Scottish life?

WHY GOVERNANCE MATTERS

As Scotland enters a period when much political debate will be closely focussed on constitutional matters related to redefining borders and boundaries, LINK believes that there are major issues relating to our governance which need to be dealt with as well. As a community we do not have to wait for the settlement of the 'devolution versus independence' debate before dealing with governance matters. They are already largely within our control.

LINK and its members have found the experience of government being brought closer to the people, in the spirit of true subsidiarity, a positive and beneficial development for Scotland's environment. The Scotland Act 1998 has brought a major increase and improvement of the breadth and depth of involvement of environmental non-governmental organisations in Scottish governance. This has fulfilled the aspirations expressed through the Scottish Constitutional Convention and the Consultative Steering Group. Scotland chose a participative form of government and greater participation has resulted. However, this process is far from complete.

LINK recently carried out a review of the effectiveness of environmental legislation in the Scottish Parliament - **Scotland's environmental laws since devolution – from rhetoric to reality (2011)**. We also contributed to the debate on the reductions in the Scottish Budget – **Protecting the Environment in a Time of Cuts (2011)**.

The findings in these reports, as well as in the full *Governance Matters* report, highlighted for Scotland's environmental movement that the effective protection of our precious environment, and the goal of achieving sustainable development, are being impeded by deficiencies in the current governance structures and processes.

That is why Scotland's environmental organisations have raised these issues. We hope that where others share our concerns, they will join us in seeking to have these addressed.

We will welcome your views by 30th September ahead of a conference planned for the autumn. See contact details overleaf.

To download the full report

Governance Matters
The Environment and Governance in Scotland

go to www.scotlink.org

If you would like to take part in the Governance Matters debate, please contact:

Email: GovernanceMatters@scotlink.org
Tel: 0131 225 4345
Post: The Parliamentary Office
Scottish Environment LINK
3rd Floor, Gladstone's Land
483 Lawnmarket
Edinburgh
EH1 2NT

Scottish Environment LINK is the forum for Scotland's voluntary environmental community, over 30 organisations, with a collective membership of half a million people who care about how we manage and value our environment.

For more information about LINK see www.scotlink.org

LINK is a Scottish charity (No SC000296) and a company limited by guarantee (No SC250899) funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government, the Esmée Fairbairn Foundation and other charitable sources.