

ORKNEY MANIFESTO GROUP

Constitutional change and local governance in Orkney

Safeguarding our culture and well-being

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This discussion paper looks briefly at the options for Orkney's future governance in the light of the current discussions on Scottish independence, leading up to the 2014 referendum.

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The context

The referendum on independence for Scotland

In autumn 2014 Orkney will reach an important crossroads when Scotland votes in the independence referendum. Whatever the result, the event promises to be a driver of substantial if not seismic constitutional change.

In the context of this change Orkney must be well prepared and strongly assertive if it is to retain even a modicum of its present integrity as a governing unit.

It is important that much local effort from now until the referendum and beyond be directed at reinforcing and developing the current mechanisms which presently deliver services and support wellbeing in Orkney.

There is a threat – but also, however, an opportunity.

Our diminishing autonomy

Over the last three decades the way in which many public services are required to be delivered has completely changed. The environment in which local government has to operate has been completely altered.

Local authorities have much less control than they used to have in the determination and delivery of a wide range of local services, and are now expected to act primarily as facilitators and enablers. Where responsibility for delivering services is still nominally under local control there is in many cases a mandatory framework which limits freedom of action of the local authority.

It is useful to review these changes and examine what new factors are likely to affect the continuing delivery of locally-based services, especially in the light of future external change. It is important also to examine the issues which might affect the wellbeing of Orkney and its people and to re-define the future of Orkney Islands Council.

We believe that the historical diminution in local autonomy must be arrested and reversed.

Some historical background

Councils are and always have been creatures of statute. They are restricted to doing only what is specifically permitted by law. Over their relatively long history they have had increasingly burdensome duties and obligations placed upon them.

It is important to bear in mind that every council will continue to be regarded by the next tier of government up as primarily a vehicle for delivering its own political agenda. This will be true whether such a superior is based in Edinburgh - whether under the status quo or in the form of a newly independent government - or London - in the unlikely event of Scotland gaining independence, but with Orkney ending up as part of the rump of the UK.

This state of dependence will continue to apply as long as councils' budgets rely for 80% of their funding - and much more in some cases - on finance provided from Edinburgh and/or London.

The period from 1979 until the present time has seen considerable freeing in the way councils are allowed to operate. When one considers the extremely prescriptive approach applied in the mid 20th century, that of the present day appears much more flexible.

Two significant phases can be characterised:

1979-1997: the Westminster-centered Tory years

Public v private

The right wing had long had an instinctive fear of public spending "crowding out" private enterprise and this came to the political fore in the 1970s. Often the conflict had been represented as a straight fight between public spending on the one hand and private investment on the other. The old fear was now re-expressed in terms of an over-powerful state, together with all its agencies, dragging the economy back.

The Conservative Government under Thatcher which took power after the 1979 General Election soon placed the issue in the vanguard of its domestic policies and "private – good, public – bad" became a new mantra at Westminster which continued to be heard throughout the whole period of Conservative rule and beyond.

Compulsory competitive tendering

Tendering was seen by the Government as the main way of addressing its fear of the domination of public provision in the delivery of services. It legislated to require certain local authority services to be submitted to competitive tender under the Local Government Acts, first in 1988, and then through a further extension to more services (including certain white collar services) in 1992.

The legislation forced local authorities to relinquish many long-established practices and attitudes. Some local authorities found it more difficult than others to successfully adapt to the new regime, losing out in the direct delivery of certain services. All experienced reductions in directly-employed jobs and the removal of some restrictive practices.

1997-present day: New Labour and subsequent devolution

Modernising government agenda

The then-styled Scottish Executive (Labour/LibDem coalition) launched its Modernising Government Agenda in December 1999 under the banner of 21st Century Government for Scotland.

The key concepts of this agenda were summarized as accountability in dealing with the public; partnership working; promoting inclusivity; commitment delivery; satisfying the people's aspirations.

The Local Government in Scotland Act 2003

This fundamentally progressive act of the Scottish Parliament placed new duties, powers and obligations upon Scottish local authorities, challenging the way that councils had previously operated. It formalised with the force of law some of the more liberating practices which had developed under informal arrangements.

The main features are:

- Introduction of a Duty of Best Value
- Community Planning
- Power of Wellbeing

The provisions of this legislation are summarised in Appendix 1

OIC's influence in the last 30+ years

There is no doubt that there has been a diminution in the influence of the Islands Council since 1979.

Then the Council was responsible for all manner of services now the responsibility of other, often national, agencies. Examples of this are water and sewage, pollution control, policing and fire services. In addition, there has been a dilution of council authority in other fields such as housing, where legislation restricts the freedom of action of local authorities.

The imposition of an effective cap on Council Tax may be popular with voters but it also represents a loss of autonomy for the Scottish local authorities, including Orkney.

At the beginning of the period the Council, along with two other island authorities, enjoyed, equal status with the big regional councils such as Strathclyde and was able to benefit from their research and experience whilst being able to bring an island perspective to a wide range of forums dealing with matters such as future legislation, whilst pursuing the much wider range of duties and obligations of an all-purpose authority.

Often Orkney's particular problems and issues relating to matters being discussed were heard and paid attention to in a wide range of seminars and conferences. In this manner Orkney had been able to punch well above its weight.

Now of course all Scottish local authorities are on a par and whilst, no doubt, much sympathy may be evinced from other councils from time to time, specific Orcadian pleading has to take its turn with many other pleas.

Orkney's future governance

The case for greater autonomy

It may not be obvious that the case for greater autonomy for Orkney, and indeed the other island groups, is not based on mere sentiment or solely on the wish to preserve our unique culture, although these are significant drivers.

Because of the rural and insular nature of Orkney there are many service delivery requirements which differ from those of mainland Scotland, and in some cases from other island communities. Transport is an obvious example, but differences obtain pretty much across the board.

One size does not fit all. Specifically, solutions designed to meet the needs of urban Scotland do not generally suit Orkney. The creeping centralisation and loss of autonomy over the past thirty years has possibly had a greater adverse effect on Orkney and the other island groups, therefore, than on other parts of the UK.

There is provision for “island-proofing” Scottish legislation. In other words, clauses can be inserted in legislation to exempt the islands or make special provision – but this has hardly ever happened.

The risk is that in the melting pot of constitutional change Orkney ends up with even less control over its own affairs. That's why a bid must be made now for greater local autonomy.

A Single Public Authority

There has long been talk of some sort of islands grouping on a self-governing or semi-autonomous basis, such as applies to Faroe and the Isle of Man. The prospect of wider major constitutional change tempts us to revisit these ideas.

Appendix 2 lists a number of European islands and island groups which have special constitutional arrangements. The islands involved are of a widely disparate nature, but there is no obvious profile which matches that of Orkney. This suggests to us that in the case of Orkney we should design a solution from first principles, rather than using an existing template. We should first consider what powers it would be appropriate or necessary to have devolved to us, what sources of funding we can't afford to compromise - and then consider the kind of constitutional framework which would best support that level of devolution.

We believe that, in fact, a constitutional framework is already to hand and already in the process of development.

Mention has already been made of the liberating nature of the 2003 Local Government Act and the establishment of community planning. Considerable progress has been made locally in Orkney in developing this new layer of governance. The process is being led by the OIC. The local partners participating include NHS Orkney and Voluntary Action Orkney, together with local elements of Police Scotland and the Scottish Fire and Rescue Service. The Orkney Community Planning Partnership (OCP) has signed off with the Scottish Government a Single Outcome Agreement, which is a high level local strategy to work towards Scottish Government objectives. The aspiration is to evolve the OCP to a point where all public services are directed locally by a Single Public Authority in Orkney.

This is in line with the recommendations of the Christie Commission into the reform of public services. A Single Public Authority would be a very strong candidate to serve as the vehicle for exercising greater local autonomy. Christie's criteria are given at Appendix 3.

Leadership role of Orkney Islands Council

In order that matters can move ahead the Council must maintain its position as community leader and not compromise progress by taking individual short-term decisions which are incompatible with the broader vision.

The OIC has a strong claim for leadership of a Single Public Authority:

- it is the prime local democratically-elected body
- it has the legal powers to promote wellbeing by any means
- it is accountable to the electorate
- it already controls considerable assets and infrastructure
- it has highly-developed, broadly transparent administrative processes
- it has sophisticated and well-developed financial and accounting systems
- it is already well on the way to a satisfactory corporate management model and is developing corporate planning and performance management systems

The Council must take care that the shine on the above credentials is not tarnished or that the drive for further improvement slackened. There are many observers from near and far who would be quite content to see Orkney's vigour attenuated within a regional morass and its local identity diluted to quaint customs like the Ba' and a few folk groups!

In order that the Council be in a fit state to take on the undoubted challenges ahead it must maintain good relations with

- The people of Orkney by convincing them that the Council speaks for them and has their best interests at heart
- Its local partners by supporting and enabling the progress of common interests
- The Scottish Government by enthusiastically supporting those initiatives which accord with the Council's own aspirations

To do this the Council must establish the primacy of local solutions and resist any further erosion of its powers. It must defend existing core services and even in straightened times attempt to expand their provision when necessary. The Council must also act as a strong advocate for Orkney and its culture. The Council must always be ready to act as an enabler to others in enterprises which will advance the broad thrust towards the establishment of a Single Public Authority.

We believe that as a further pre-requisite to taking on further responsibility, the democratic credentials of the OIC must be enhanced. Greater political accountability is required.

Pitfalls to avoid

The Chef's Hat Syndrome

This is the root of complacency and is regularly found in bureaucratic organisations both public and private. Just as a cook wearing a tall hat is no guarantee of a good meal, relying on a range of plans that are signed off solemnly but acted upon badly or not at all or having policies which rest more on their existence rather than their execution invites derision by the public and the loss of partners' confidence. Examples of this can also be described as "shooting oneself in the foot"!

The Trojan Horse

Aligning with organisations whose culture, ethos and processes are incompatible as a result of which the Council's stability and credibility are threatened.

The Democratic Deficit

Loss of public confidence reflected in the ballot box.

The All Cats are Grey Fallacy

The state of being islands is not sufficient similarity for serious structural bonding. In no more than a general way are the culture, economy and needs of Orkney, Eilean Siar (Western Isles) and Shetland similar.

Development Surrender

A seemingly irresistible urge to put support and promotion of private economic or physical development before obvious threats to the environment, public opinion or public interest.

Negotiation opportunities

The focus so far in this paper has been on the framework for increased autonomy. However, it is at least as important to decide the target content of devolution - the powers we would wish to have devolved. We also need to develop a finance framework to inform decisions about which current sources of funding we can't afford to compromise.

The opportunity for negotiation with the Scottish and UK governments is now, when we have some leverage through our referendum votes. As well as an opportunity to negotiate a constitutional framework and powers to be devolved, we have a historic opportunity to address past grievances:

Why does Orkney continue to receive funding well below that of the other Scottish island groups?

Why is our internal ferry service not supported on an equitable basis with that of other Scottish island groups?

Why, when so much effort and resources are put into the encouragement and development of renewable energy, does Orkney remain top of the fuel poverty league?

Safeguarding our community's future wellbeing must also involve the constant probing of each of the Council's decisions and subsequent actions. The answer to some difficult questions may perhaps be already within the remit of the OIC. For example:

Why, when expenditure on care has never been higher, some vulnerable old people continue to be cared for across the Firth?

Conclusion

It is concluded that the interests of Orkney will be well served by the establishment of a Single Public Authority for Orkney. The OIC should take a leading role, probably itself evolving into an SPA. This organisation would be a leading candidate to take on the exercise of devolved powers.

In this context it is especially important that the OIC does everything possible to maintain its reputation and credentials, avoiding the many potential pitfalls ahead. Consistency, transparency, good governance, including the steadfast pursuit of already-stated goals will contribute to this.

Consequently a sensible strategy is for every Council decision and subsequent action to be rigorously examined and assessed in the light of the promotion of the establishment of a single authority. The performance of such a role will do a great service towards the general future wellbeing of Orkney and the future preservation of its culture and communities.

Appendix 1

The Local Government in Scotland Act 2003

The main features are:

Duty of Best Value

- Continuous improvement and review
- Community engagement
- Changes to restrictions on trading activities

Community Planning

- Duty on councils to facilitate the Community Planning process
- Requirement to include the local community and voluntary organisations in the process
- Requirement to encourage a range of other organisations to engage in the process

Power of Wellbeing

- Provides a general power for councils to promote and improve the wellbeing in their area
- Allows a council to do anything which it considers is likely to improve the wellbeing of its area and persons within that area. To do this a council is permitted to incur expenditure, give financial assistance and enter into arrangements or agreements with any person. It also allows, unlike previously, for councils to cooperate with, or facilitate or coordinate the activities of any person as well as being able to exercise on behalf of any person any function of that person. Councils are also allowed to provide staff, goods, services or accommodation to any person.
- Enables councils to act more flexibly and innovatively in promoting and improving the wellbeing of their area.
- Gives councils the necessary flexibility and scope to work in a genuine partnership with others to improve local services.

Appendix 2

Self-governing or semi-autonomous European islands

NAME	TYPE	NATION	POPULATION	
Aland	<i>Self-governing Islands Province</i>	Finland	25,008	
Canary Islands	<i>Island Provinces</i>	Spain	1,493,784	
Channel Islands	<i>Crown Dependency</i>	United Kingdom		
Alderney				2,297
Guernsey				64,300
Jersey				86,800
Sark	“	“	550	
Corsica	<i>Island Region</i>	France	252,102	
Crete	<i>Island Region</i>	Greece	536,980	
Faroe Islands	<i>Self-governing Island Region</i>	Denmark	47,000	
Greenland	<i>Self-governing Island Territory</i>	Denmark	58,000	
Madeira	<i>Self-governing Island Region</i>	Portugal	253,200	
Man, Isle of	<i>Crown Dependency</i>	United Kingdom	71,000	
Sardinia	<i>Island Region</i>	Italy	1,650,902	
Sicily	<i>Island Region</i>	Italy	4,997,705	

Island Unitary Authorities - United Kingdom

Eilan Siar	<i>Islands Council</i>	Scotland	26,080
Orkney	<i>Islands Council</i>	Scotland	20,160
Shetland	<i>Islands Council</i>	Scotland	22,210
Isle of Anglesey	<i>County Council</i>	Wales	68,592
Isle of Wight	<i>County Council</i>	England	140,500

Appendix 3

The Christie Commission's criteria for the reform of public services

Proposals for the reform of public services should:

- first and foremost, be shown to support the achievement of outcomes – real-life improvements in the social and economic wellbeing of the people and communities of Scotland;
- be affordable and sustainable within the budgets expected to be available to Scotland's public services
- include appropriate arrangements for services to account to the people and communities of Scotland, both directly and through their democratically elected representatives, so that public confidence in and support for the delivery of services can be maintained;
- ensure that services are built around the needs of people and communities, to increase individual and community capacity, resilience and autonomy;
- allow and encourage services to empower front-line staff and allow them to give of their best;
- support the local integration of service provision;
- encourage services to pursue preventative approaches; tackle inequality and promote equality;
- improve transparency over plans, expenditure and performance;
- contribute to the simplification and streamlining of the public sector landscape; and
- be consistent with and support the wider reform and improvement of Scotland's public services.