Agenda For Pioneering Open Government

A Common Weal contribution to the Open Government Programme

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COMMON WEAL is a think-and-do tank that advocates policies that put All of Us First. For more information on Common Weal Policy visit allofusfirst.org/policy or email ben@common.scot

This paper was made available as an open source document on Scottish social media site, Common Social, for comment and input. We thank all who contributed.

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Introduction

In 2011 the Open Government Partnership (OGP) was launched as an international project to bring government and civil society together in a partnership to improve participation and transparency, reduce corruption and protect privacy. It now involves 70 countries around the world, each of which must put forward action plans to improve openness which are agreed in partnership and reported upon independently.

The UK as the State takes the lead, and while Scotland, Northern Ireland and Wales contributed to the UK plan it is primarily a product of Westminster. However, in April this year Scotland was selected by OGP as a 'Pioneer'. This means it is one of 15 ‘sub-national’ governments from around the world which have been selected to ‘pioneer’ and show what a more innovative and radical open government agenda would look like.

Common Weal has been involved in the OGP in Scotland since this round began. It fits very closely with Common Weal's commitment to a pioneering participatory democracy in Scotland and the importance of openness and transparency in government. As well as being an active partner in the civic group working on Open Government, Common Weal has also held a number of open participatory events to gather the views of citizens on their hopes for open government. Pioneer status means that Scotland will develop, implement and report on its own action plan. The timetable for that is set by OGP and means the initial actions have to be developed over two months in late 2016, for publication in December. But the partners in this project see that only as the starting point; over the year of implementation of the plan, there is an opportunity for a much stronger and wider debate in Scotland about how the Open Government movement can effectively improve democracy and transparency for all of us.

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This short paper is drawn from Common Weal's previous policy work, from the citizen participation sessions that we held and from an online consultation process organised via social media. While we appreciate that the initial proposals for Scotland's action plan are likely to be some way short of the ideas in this paper, we hope that these can set an agenda for a much more forward-looking approach to participation and transparency over the months and years to come.

This paper is organised into three sections. Transparency is taken to mean the extent to which the public can find out information about what is being done in the public realm and with public finances. Accountability is taken to mean the ability of citizens to know how those who enact public policy have gone about it, that they should be able to assess whether democratic power has been wielded effectively and in the public interest, that decision-makers can be made to take responsibility for their actions and that in the event of bad practice there can be consequences. And Participation is taken to mean the ability of citizens not only to observe and respond more fully to what is being done in their name but actively to influence, shape and become involved in the 'doing'.
Transparency

Public data
Scotland is underserved by statistical data on its society and its economy. For example, lack of economic data in areas such as imports, balance of trade or company ownership make it difficult to assess the impact of public policy and lack of data on land ownership makes it difficult to judge the impact of land reform. Having much more data about Scotland would make it much easier to assess how well government is delivering change and improvement. An independent statistics agency might be an effective solution to this.

Freedom of Information
Scotland has reasonably strong legislation on Freedom of Information – but it contains far too many loopholes and exemptions. Increasing amounts of core public sector services are being delivered by private companies. These are exempt from FoI even though they are delivering core public services using public money. And we have seen that the use of ‘commercial confidentiality’ exemptions in areas like public procurement have resulted in scandals such as the Edinburgh schools debacle where lack of transparency meant that poor practices were disguised from the public. First, Freedom of Information legislation should be extended to cover any activity where public money is being spent, whether by public or private entities. Second, there should be an assumption against commercial confidentiality. Where there are good reasons for confidentiality (such as during tendering processes), these should only apply during the process and the information should be put in the public domain as soon as the process is completed.

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Beneficiary audit
Government actions and decisions have commercial benefit for private sector organisations, but identifying these benefits is not always easy. No public money should lead to private benefit occurring in secret. It should be a duty on government (and other parts of the public sector) proactively to publish a ‘beneficiary audit’ each time legislation is passed or spending decisions are made. This should make clear who benefits financially – directly from contracts awarded, directly as a result of changes in rules or indirectly as a result of the intention of government action. These individual audits should then be aggregated for an annual audit of who benefits from government. This should be traceable to the level of individual companies.

Mutual transparency
Mutual transparency should be established so that those organisations engaging with the Scottish Government are obliged to adopt an open way of working in turn. This will change the supplier landscape away from multinationals, who will reject openness in Scotland because of the impact on their customer expectations abroad, and favour Scottish businesses who are happy to adopt best practice, creating jobs and propagating openness and transparency out from the public sector into the private and third sectors.

Whistleblowing support
Whistleblowing in an Open government should be frequent and small scale, with whistleblowers recognised and championed. An example could be highlighting hiring processes with only one candidate, or instances of nepotism. Another example could be civil servants flagging where business processes are inadequate and counterproductive in order to force change and move away from ‘doing things the way they have always been done’.

Open source IT platforms
Public data and public systems are public property and should be open and used for the collective good. This is hampered by a patchwork of proprietary IT systems across the public sector, each purchased separately and not designed to integrate across agencies and branches of government. This harms access to information (and in particular comparison of information across different parts of
government) and stifles innovation in access to data for the public. The public sector should use open source platforms for IT which are better able to link up and provide more effective data sharing. There are many other benefits of moving to an open source solution, not least the economic development impact of allowing more developers to take innovative approaches to providing IT for the public.

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**App innovation**
While not everyone has access to computers, smart phones or other IT, nevertheless this is increasingly the means by which people source information. It is important to be aware that the best provision of services for citizens to access public data may not come from inside the public sector itself but from the development of ‘apps’ specifically designed to provide innovative information services directly to citizens. To encourage and support this a fund should be established to fund app development projects, with the explicit goal of making public information accessible. Regular Hackathons already take place across the nation and this model should be incorporated into service development. Opening up rich data sources is to the public is essential to this and illustrative of the way that Open Data can drive innovation.

**Accountability**

**Feedback and reporting**
That citizens and service users should always be able to feedback their views and experiences of public services and the democratic process and that there should be means of properly responding to feedback in all parts of the public realm.

**Citizen inquiries**
Both the processes of government and the process through which governments enable lessons to be learned from errors are controlled and (almost without exception) carried out by people drawn from what might be referred to as a ‘governing class’. It is far too easy for government to refuse to set up inquiries into errors, to do it internally and insufficiently, to set remits for inquiries which are designed to avoid examining fundamental issues, to hand-pick people to lead inquiries, to allow timescales so long that inquiries become historical curiosities and so on. It is like a justice system in which the accused can refuse to allow a trial and if they do, to decide on the charges brought against them and then pick their own judge and jury. Below it is proposed that a Citizen’s Assembly should be established as a ‘second chamber’ of the Scottish Parliament. That body should have the ability (including the resources) to establish inquiries run by independent citizens (selected to represent an accurate cross section of public opinion as described below) which can compel evidence and witnesses and which is free to produce reports containing conclusions, recommendations and – where appropriate – censures indicating that the conclusion is that practices and behaviours have been unacceptable.

**Ethics covenant**
Too often voters feel let down by elected representatives and this creates voter apathy. One way to address this would be to crowd-source a covenant for elected officials detailing minimum requirements for public engagement, such as attending events or activities. In turn, officials should provide an explicit description to voters of how they are going to use their time in office to empower communities.

**Lobby watchdog**
An Open Government watchdog should be created to monitor lobbying and the influence of money on government policy, including the lucrative contracts offered to public sector employees in the private sector following favourable legislation. Public registration of lobbyists, meeting times, and meeting duration should be mandatory, and not just published but promoted.
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Annual citizen influence audit
Similar to the proposed watchdog, there should be regular auditing of the results of citizen engagement and the impact on policy by a third party such as a Democracy Academy (see below). Community empowerment and participative democracy must be meaningful and not a gesture or a fig leaf for government. Where there has been no impact and the citizen voice has been ignored there could be a role for the watchdog in investigating, censuring, and improving Open practices.

Alt-media fund
The Media will play a significant role in enforcing government transparency. Public service broadcasting should be independent, not balanced, so that we are hearing an independent clear summary of the issues that affect us rather than two opposing political spins. This could be achieved by establishing a fund for alternative media, bypassing the need for clicks for survival.

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Democratic literacy
One of the most pervasive reasons that the public sector is not held accountable for error or poor practice is that the public as a whole has not been supported with education and public learning capacity such that we can become ‘democratically literate’. Our ability to understand what is acceptable behaviour and what is not, why things happen and how they should happen is crucial to our ability to draw accurate conclusions about the effectiveness of government. Below it is proposed that a 'Scottish National Democracy Academy' should be established to pioneer innovative approaches to democracy in Scotland. It should be tasked with developing a national plan for democratic literacy. The goal should be to ensure that no new generation is educated without that democratic literacy being a core part of their knowledge and that adults should have easy access to means of improving their own democratic literacy.

Participation

Democracy Academy
Western democracies have become complacent about the development of democracy in their own countries and it is notable that many of the best new practices in democracy come instead from other parts of the world (notably Latin America where practices like mini-publics and participatory budgeting have been developed). Democracy should never be seen as 'static' or 'achieved' but rather as a process of constant development and innovation where better ways to make decisions and run the public realm are constantly pursued. To drive that work in Scotland a Scottish National Democracy Academy should be established. This would be created jointly by academia, the public sector, civic society and citizens and could be staffed largely through secondments. It would be tasked with exploring new approaches to democracy in Scotland, advising the public sector and its institutions on best democratic practice, devising and piloting new practices and reviewing and commenting on the state of Scotland’s democracy. It would be an institution designed to ensure that Scotland is not only a genuinely pioneering nation but that it embeds this pioneering spirit permanently in the heart of its democratic life.

Mini-publics
Government constantly seeks advice. Sometimes this is just the civil servants devising policy or setting budgets seeking individual pieces of advice from experts in the field. But often it is more substantial than this – asking fundamental questions about how to solve problems or whether to change major government activities. In these cases government tends either to set up commissions, expert groups or advisory groups or they issue contracts to private sector consultants to do this work for them. However, extensive evidence now shows that not only are expert groups and groups appointed wholly by civil servants less likely to reflect wider public opinion, they actually make less good decisions because of the problem of 'group think'. Rather than making decisions via closed groups made up of
people with a narrow range of opinion, background and experience, government should instead use ‘mini-publics’. These are randomised groups of citizens balanced to ensure they are representative of the demographics of the population as a whole. They can then form ‘citizen's juries’ which will take evidence from experts, practitioners, those affected by decisions and anyone else they wish. They will then draw their own conclusions and provide advice on that basis. (There are other forms of mini-public which can be used). Government is then of course free to ignore or adapt that advice. There should be a strong presumption against ‘closed’ systems of advice and a strong assumption in favour of using mini-publics whenever advice is required.

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**Citizen Assembly**
Scotland has no second or revising chamber in its parliament, the role of which would be to scrutinise legislation with a ‘fresh eye’ and offer a second opinion on it as it passes through the legislative process. Scotland should remedy this by establishing a ‘Citizen's Assembly’. This would be selected in the same way as the mini-publics above – a group of citizens would be selected at random (though weighted to reflect the demographics of the population as a whole). The groups would be substantially larger than a citizens’ jury and would be kept together for substantially longer (perhaps six months). The assembly would then work full time monitoring and advising on legislation going through Parliament. It would have the right to call politicians, policy-makers, expert opinion and any other relevant voices to give evidence in informing its position on legislation and policy. It would produce a final report which would then be considered by the Scottish Parliament as part of the legislative process. The Assembly would also have the right to hold inquiries into any aspect of government or the public sector it wished (subject to capacity).

**Participatory budgeting**
Participatory budgeting is already fairly well established. It is a deliberative process in which citizens affected by spending decisions have a right to be involved in setting budgetary priorities but as part of a deliberative process that requires them to make those decisions in the context of the whole budget. Participatory budgeting can be limited to a proportion of a budget set aside for citizens to decide or it can be a consultative process on an entire budgeting process. The Democracy Academy should devise the best model of participatory budgeting for each budgeting process and citizens should have the right to be involved.

**Open consultation**
Consultation is crucial to good government but is now widely discredited in the eyes of both the public and those participating in consultations. The reason for this is that bad practice has routinely meant that consultations are run by those developing policy such that they do not really want the consultation to interfere with the policy and therefore hold it far too late in the process or give it such a narrow remit that it is essentially designed to get the answer policy-makers want. Open consultation would separate the process of consulting from the process of policy-making so that those developing the policy are not those controlling the consultation. A separate and independent consultation agency would then require that consultation be carried out at the earliest possible stage of the process and with the most open possible remit. The agency would also be required to produce the clearest possible feedback on how the views were or were not accepted by policy-makers.

**ELECTING PUBLIC FIGURES**
Far too many crucial roles in public life are still made via personal appointment. This means that major and influential positions are filled with no democratic mandate and these appointments are (with very few exceptions) drawn from a narrow ‘governing class’ – who in many cases can make a lucrative living in the process. It is clear that people who want public appointments will not help their case by being critical or by acting independently or in the interests of anyone other than those who appoint them. This is clearly a conflict of interests and reinforces both the perception and the reality that society is overly controlled by a narrow group of people and too often on the basis of personal contacts. Most of the public appointments in Scotland can be seen to govern decisions over a distinct group of people (arts practitioners, academics and students, disabled people, children’s interests etc.). There should be a strong assumption in favour of contested, democratic election of these public roles by the relevant group of people the role is serving.
Local democracy
Scotland has the least localised ‘local democracy’ in Europe. Our local authorities are enormous and the constituents served by each councillor are many times the number served by an average local politician. Public trust in local democracy is not good and fewer people participate in local democracy than in any identifiable comparator country. Scotland cannot claim to ‘pioneer’ open government and maintain the most centralised and centrally-controlled local democracy of any nation of its type. Scotland must act to solve this. One option would be to create a new layer of local government (at what used to be called the Burgh Council level) and bring itself in line with the ratios of elected politicians to constituents as most modern, complex democracies.

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Tings
Communities and individuals should have the ability to come together to discuss local, national and international issues without ‘permission’ from or instigation by elected government. ‘Altings’ or ‘tings’ were an ancient Norse model of local assemblies which were once common in parts of Scotland. They enabled those who were interested to get together and discuss any issue of collective concern. Bringing the model up to date they can serve two purposes. Firstly by creating the infrastructure and support at a local level, communities or any interested subgroup of a community could meet and discuss any issue they wanted to and produce any conclusions they want. In addition, Tings will provide a link between public services and people by providing neutral places for specific issues to be aired, using deliberative techniques to gather a broad range of perspectives and valuing all of the contributions. The outcomes would be directly linked back to the commissioning public service for action. Linked in to a national network of tings they could then share this thinking with others to see if they are sympathetic and feel the same way. If they do, issues can expand and generate support from citizens without external moderation. These can then set agendas via which citizens could develop innovative ideas to address issues. Tings could also be a means for allowing citizens to address local issues or to create networks of people interested in a particular issue. The Democracy Academy could be tasked to design and establish a network of tings across every part of Scotland.

Governance project
Scotland has many public institutions – and the governance of these institutions varies widely. There is certainly reason to believe that many of these public institutions are not governed in an open or democratic manner or that they do not use anything like best practice in open policy development, selection of governors, consultation with staff and those they serve and so on. There should be much better practice developed in how to govern an institution in the modern age and all public institutions should be required to reflect on their current practices and to reform them according to the best practice guidance. The Democracy Academy should develop those best practice guidelines and monitor institutions to assess whether they have been properly implemented.

Co-design of service
Participative democracy is not necessarily about citizen decision-making, but about using citizen voices to design policies and services around the needs of citizens, and this is one of the most important ways that Open Government would improve the ‘lived reality’ of the citizens experiencing the services and policies put in place. Citizens are not a burden to be carried by civil servants, but are instead a source of expertise on the challenges that policy making and public spending seeks to address.

Mirror for children
In all of the above suggestions on participation it is generally understood that ‘citizen’ refers to those of a voting age. However, clearly many citizens are not yet of voting age but are nonetheless full members of their society and affected every bit (if not more) by decision than those with a vote. Children should not be an afterthought in participatory democracy but should be included in decisions. Processes for children to participate, be consulted and be involved in deliberate process should be developed in parallel with all the above work.

ENDS