Commission on Parliamentary Reform

Consultation response from
Fairshare Voting Reform
Scotland's Campaign for a Better Democracy

1. **Fairshare Voting Reform** welcomes this consultation by the Commission on Parliamentary Reform and is pleased to have the opportunity to comment on the issues in the Commission's remit, especially those that relate to enabling effective conduct of parliamentary business. Fairshare believes that the Commission should recommend significant changes to the way MSPs are elected with the aims of allowing the elected members to hold the Government of the day properly to account and of allowing the existing 'checks and balances' in the Parliamentary system to operate more effectively.

2. Fairshare has experience of engaging with the Parliament in a variety of ways, in particular, through making written submissions to committees and giving oral evidence at committee meetings. This submission is not, however, based primarily on that experience, but rather on observation of the working of the Parliament over all its years and over many subjects.

3. In preparing this submission, Fairshare has drawn extensively on the submissions Fairshare made to the Arbuthnott Commission in 2005 [1] and to the Calman Commission in 2008 [2] and in 2009 [3]. We make no apology for this because the underlying problems we identified in those submissions remain today and the most effective solution has not changed. In making this submission at this time, Fairshare has been able to review the papers prepared for the meetings of the Commission and the Written Views (CPR001 to CPR073) posted on the Commission's website.

The underlying problem
4. In its submissions to the Arbuthnott Commission and the Calman Commission, Fairshare noted that from quite early days of the Scottish Parliament, both individual electors and representatives of organised civic society had expressed their disappointment that MSPs had too often allowed their parties' interests to displace the interests of the voters. This imbalance of excessively partisan behaviour was seen to have had an adverse effect on the proper operation of the 'checks and balances' built into the Parliamentary system.

5. This has been a continuing problem because similar concerns are expressed in eleven of the Written Views published so far on the Commission's website. For example, in the paper (CPR/6/1 Annexe A) prepared in advance of his appearance at the Commission's meeting on 16 January 2017, the Rt. Hon. Lord Jack McConnell wrote:

> I believe that the balance between MSPs representing their constituents and being part of a collective party organisation has shifted too far in the direction of the party and is not strong enough in the connection with the constituents.

6. It is suggested in several of the Written Submissions that this has resulted in a lack of effective scrutiny of the Government by MSPs, both in the chamber and in the committees. It must be recognised that this is not a new problem although its effects may have been more obvious during periods of minority government. The excess of partisanship is certainly not confined to any particular political party.

7. It is Fairshare's view that the Additional Member System (AMS) currently used to elect MSPs to the Scottish Parliament is the underlying cause of the excessively partisan behaviour in the conduct of Parliamentary business that impedes the effective operation of the 'checks and balances' which is rightly of concern to the Commission.

8. A similar linkage between the effects of the AMS voting system and the behaviour of the elected members in the Parliament is made in several of the Written Views already published. For example, in the paper already quoted, Lord McConnell wrote:

> I believe this is partly an outcome of the mixed-member electoral system, but also partly an outcome of the way in which the parties have operated internally, and how the committees function.

9. It must be recognised that AMS is a party-based voting system designed to deliver proportional representation of the registered political parties that contest each election. The AMS voting system does not give MSPs sufficient incentive to place the electors at the centre of their concerns, but rather it reinforces their dependence on their respective parties for their election and re-election as MSPs. This is equally true for both Constituency MSPs and Regional MSPs.

10. It should, therefore, be no surprise that MSPs, nominated by political parties and elected by a voting system that entrenches the power of those political parties, should behave primarily as party politicians. This is the underlying cause of the excessively partisan behaviour in the conduct of Parliamentary business and the consequent lack of effective scrutiny of Government policy and actions.

Addressing the problem
11. The voting system used to elect the Scottish Parliament needs to be changed to redress the balance between the voters and the registered political parties and so make the MSPs more directly accountable to their constituents and less beholden to the party machines.

12. The Arbuthnott Commission recommended that a number of changes should be made to the AMS voting system to remedy the problems they had identified [4]. They were, in particular, concerned about the poor level

of understanding among electors of the relative importance of the two AMS votes. Far from being something "additional", it is the regional vote that determines the representation of the political parties in the Parliament. To make this clear, the Arbuthnott Commission recommended that the language used to describe the two AMS votes should be changed and that the regional vote should be given precedence by printing both ballot papers on one ballot sheet, with the regional ballot paper 'first', i.e. of the left hand side of the combined ballot sheet.

13. These two recommendations were implemented for the Scottish Parliament elections in May 2007, but the change from two separate ballot papers to one combined ballot sheet, with the regional vote first, had unforeseen but disastrous consequences. Far from having the clarifying effect the Arbuthnott Commission wished, the new layout of the ballot papers caused great confusion among voters and resulted in very high levels of the Scottish Parliament ballot papers being rejected, even in the six electoral regions where the ballot papers had been printed correctly. In consequence, there were widespread calls for a return to two separate AMS ballot papers for subsequent Scottish Parliament elections and this was implemented for the 2011 elections.

14. That response may be understandable, but the reversion to two separate ballot papers has simply returned us to the position that caused the Arbuthnott Commission such concern. The problem is that very large numbers of electors do not understand the real purpose of the two votes in AMS and do not understand how best to use the two votes to secure the representation they want. It is very difficult for electors in most electoral regions to determine how best to use their two AMS votes because of the amount of information they would need about voting intentions and likely outcomes in every constituency within their electoral region. Even where such information is available, the underlying problem of lack of understanding should not be underestimated.

15. For example, in a Lloyds TSB Scotland survey reported in The Scotsman on 21 January 2003, 68% of the 350 full-time farmers who took part said they would vote Conservative with their "first" (constituency) vote, but only 34% would vote Conservative with their "second" (regional) vote. However, it was then perfectly obvious from the results of the 1999 AMS elections that if the intention was to secure the election of Conservative MSPs, it was the Conservative Party's regional vote that should be maximised in every electoral region. The farmers' intentions were clear, but they mostly misunderstood how the AMS voting system really worked – the key problem identified more generally by the Arbuthnott Commission.

16. It has sometimes been suggested that AMS might be improved by the adoption of preferential voting in the single-member constituencies ("Alternative Vote") and by the use of "open lists" for the election of the additional members. The Electoral Reform Society has suggested that the regional seats should be allocated by the Saint-Laguë formula instead of

the present d'Hondt formula to remove a small bias that favours of the larger parties [5]. All three of these changes would give marginal improvements, but they would not address the underlying problems inherent in AMS, in particular, they would do little to increase the accountability of the MSPs to the voters and to lessen the dominance of the political parties.

17. Under AMS each elector can claim to be represented by eight MSPs, but only one of these eight has clear local ties. The voters have no opportunity to vote for regional candidates on a locality basis within their region and so cannot secure local representation in any real sense. As many regional MSPs also stand as constituency candidates, it is purely a matter of chance whether a constituency area within a region has one, two, three or even four locally-based MSPs. Over-representation of one locality within an electoral region can only be at the expense of the voters in other localities within that region. Proposals to limit the term for Regional MSPs or to force all candidates to choose between contesting a constituency and being included in their party's regional list would not address the underlying problem.

18. AMS allows the voters no choice among the candidates nominated by their preferred parties. In the constituency election the voter is presented with a party list of one candidate only. If the voter does not want to see that candidate elected as the local MSP, that voter must vote against his or her preferred party. In the regional election the voter is presented with a list of candidates by most parties, but the use of closed lists in that election prevents the voters from determining which candidates should take the seats allocated to the parties. No matter what procedure a party may use to order its list of candidates, the supporters of that party, those who vote for it, have no say whatsoever in deciding which of those candidates they will have as their representatives. Until the voters can choose freely among candidates of the same party as well as among parties, the electoral system will fall far short of the declared objective of representing the wishes of the voters as effectively as possible.

19. The overall effect of the present voting system has been to entrench confrontational party politics in the business and discourse of the Scottish Parliament. This in turn has entrenched the adversarial approach in the political cultures within the parties. But this is an inevitable consequence of a voting system that is centred on the parties. To change that political culture we must elect our MSPs by a voting system that is centred on the voters – a voting system that will enable the Scottish Parliament to serve the people of Scotland more effectively.

Redressing the balance between voters and registered political parties
20. **Fairshare** considers that the underlying problems identified above will best be resolved by adopting the Single Transferable Vote system of Proportional Representation (STV-PR) for future elections to the Scottish

Parliament. STV-PR is uniquely different from **all** other systems of PR: its objective is to secure PR of the views of the electors, not PR of the parties.

21. PR of the political parties will be the outcome of an STV election when that is what the voters want, but "party PR" is never the objective of STV-PR. Unlike the party PR voting systems (including AMS), STV is centred on the voters and the candidates as individuals. In contrast, party PR voting systems are centred on the registered parties. This difference determines the fundamental balance of power within the political system and can have a profound effect on the political culture. STV-PR puts power in the hands of the electorate, not only on the day of each election but throughout the year, by offering genuine choice, in which the voters not the party machines, decide.

22. With STV-PR each elected member is elected because he or she obtained the support of a personal constituency of voters. Those voters voted that member in and those voters can just as easily vote that member out at the next election *without having to vote against their preferred party*. That greatly increases the accountability of the elected members to their local electorates. By empowering the voters in this way, STV-PR creates stronger local links between elected members and their constituents than exist even within the present geographically defined single-member constituencies.

23. With STV-PR all MSPs would be elected on the same basis. This would remove at a stroke the problems of having two very different types of MSP. These problems can be particularly acute where a locally dominant party wins all or most of the constituency seats within an electoral region and the regional seats are then allocated to the other parties. This party difference exacerbates the difference between Constituency MSPs and Regional MSPs. Electing all MSPs on the same basis by STV-PR would also remove the perception that AMS allows the election of "constituency losers" through "the back door" of the regional lists. Having full equality among all MSPs can only be of benefit to Parliament and people alike.

24. Political parties that expected to win more than one seat within an STV constituency would nominate a team of candidates. That would give the voters choice among candidates of the same party as well as choice among all the parties. Such competition can only make the elected MSPs more attentive to the electors in the communities they are elected to serve. We note, however, that concern was expressed during recent discussions in the Scottish Parliament Local Government and Communities Committee about the "safety first" policy adopted by some parties in the STV-PR local government elections in Scotland that restricted the number of nominations to match the number of seats the party expected to win [6]. The solution to this problem is to fill casual vacancies by 'counting again' the ballot papers from the preceding general election instead of holding by-elections. The political parties would then have an incentive to

nominate more candidates than the number they expected to win seats at each general election. That would ensure voters had effective choices among candidates of the same party as well as among candidates of different parties. That in turn would increase the personal accountability of the elected MSPs to their constituents and so reduce the influence of the party machines.

Implementing STV-PR

25. The present PR system used to elect the Scottish Parliament operates through "PR constituencies" that return 15, 16 or 17 MSPs. While these large numbers appear to be acceptable with AMS, there is a general view that constituencies of these sizes would not be acceptable if STV-PR were adopted. Indeed, such large constituencies are not necessary with STV-PR to achieve similar levels of overall proportionality.

26. It is instructive to compare the results of recent sets of elections to the Scottish Parliament (elected by AMS) and with the results of recent elections to the Dáil Éireann and the Northern Ireland Assembly (both elected by STV-PR and both with smaller PR constituencies). These readily available results show that **both** voting systems:

- give broad proportionality of the political parties.
- give a very similar degree of party proportionality.
- allow small parties to win their fair shares of seats.
- allow independent (non-party) candidates to win seats.

27. STV-PR can be implemented flexibly, with constituencies returning differing numbers of MSPs. This will allow the design of a scheme of constituencies that will meet the requirements of the varied geography and population distribution across Scotland and at the same time respect the boundaries of existing social, political and economic communities.

28. **In summary, the adoption of STV-PR would:**

- maintain proportional representation of political parties;
- shift the balance of power from the political parties to the voters;
- elect all MSPs on the same basis, as constituency representatives, and make all MSPs more personally accountable to their constituents;
- allow electors to vote for the candidates of their choice without fear of wasting their votes;
- give voters an effective choice of representative;
- encourage participation by making elections more competitive;
- eliminate campaigning based on tactical voting;
- give PR within parties as well as PR between parties and give PR of other 'communities of interests';
- allow the implementation of constituency schemes that would sensitively reflect recognised communities and differences of geography and population distribution.

Fairshare Voting Reform

References

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FAIRSHARE - Scotland's Campaign for a Better Democracy
Fairshare Voting Reform is a cross-party and non-party organisation set up in February 2001 to campaign for the introduction of the Single Transferable Vote system of Proportional Representation (STV-PR) for local government elections in Scotland.

In January 2005 Fairshare extended its objectives to promote reform of the voting systems used for public elections in Scotland and specifically, to reform the voting system for elections to the Scottish Parliament through the adoption of STV-PR.

From 2001 to 2012 Fairshare was constituted as a not-for-profit company limited by guarantee and maintained a network of Registered Supporters. All the members of the Campaign Committee serve in a personal capacity.

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