

# A Citizens' Assembly for the Scottish Parliament

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COMMON WEAL POLICY



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# Principal researcher

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# Executive Summary

Establishing a Citizens' Assembly as a second chamber to the Scottish Parliament would increase public trust in parliament and boost the confidence of legislators that there is broad public backing for their decisions. We propose selecting a random, representative sample of 73 members of the public to fulfil this role for at least one but preferably two-year terms (with a portion of them rotating out every six months). A two-year trial is proposed whereby the Citizens' Assembly is granted only advisory powers, after which a citizens' review would propose which future powers the Assembly should have, and suggest improvements to the processes outlined below. Creating a Citizens' Assembly in the Scottish Parliament would place Scotland at the forefront of democratic innovation and make it a global leader in citizen empowerment and engagement.

## Why a Citizens' Assembly?

Many people no longer trust politicians and the political process; the feeling (justified or not) that politicians make short-term decisions based largely on political calculations – irrespective of citizens' wishes – is undermining faith in democracy itself.

But how should parliament incorporate the public's voice? Opinion polls – measuring uncritical, off-the-cuff responses to complicated questions – are shallow at best, misleading at worst, and when amplified by the media and other sources can have a detrimental effect on policy making.

Instead of gathering citizens' *opinions*, political decisions should be made after garnering citizens' considered and informed *judgement*.

This is what a Citizens' Assembly will do.

If a representative, informed sample of citizens has the chance to deliberate on proposed legislation and decide together if they think it is in the best interests of Scotland, then we believe there would be several direct and observable benefits, including:

- A substantial increase in the public trust in legislative decisions;
- Increased confidence of members of parliament that they have broad public backing for their decisions;
- A convincing counter to critics (or opinion polls) that claim there is little or no public support for proposed legislation;
- An immeasurable boost to a legislative proposal if the Citizens' Assembly gave near unanimous support for it;
- A very public counterweight to the perceived capture of the political process by elites and other vested interests.

The overarching benefit of a Citizens' Assembly in the Scottish Parliament would be a profound increase in the legitimacy of Scottish laws by providing solid evidence of the considered endorsement by a representative sample of deliberating Scottish citizens.

## A Second Chamber in the Scottish Parliament

The Scottish Parliament is currently a unicameral legislature with 129 MSPs (Members of the Scottish Parliament) with elections occurring, in general, every four years. At the moment there is no 'House of Review' that scrutinises

legislation passing through the Scottish Parliament. The proposal here is to establish such a chamber in the form of a Citizens' Assembly (CA) which would be populated with a representative, randomly-selected group of Scottish citizens.

There are two principal aspects of this proposal addressed below:

1. What should be the powers of such a Citizens' Assembly?
2. How would it be implemented?

The first question is, in the authors' opinions, of far greater consequence than the second. The second question – although the details are important – could beneficially be instigated and then undergo regular review to fine-tune the precise details.

## Powers of a Citizens' Assembly

The precise powers of any CA in the Scottish Parliamentary system will present a significant political challenge to its acceptance and implementation by the existing parliament.

Irrespective of the powers granted to the CA with respect to proposed legislation (presented below with three options of increasing levels of empowerment) the CA should certainly have the power to hold independent inquiries.

### Right to establish inquiries

Irrespective of which option below is instituted, the CA should have the autonomous right to establish mandated inquiries. Two types of inquiry could be conducted:

- An inquiry into the causes of significant matters of public concern (e.g. financial crisis, failures of oversight, corruption); and
- Reviews on the quality and practices of specific instances of parliamentary democracy (e.g. inadequate consultation and debate, lack of due consideration given to petitions, etc.)

This right would be important in holding the government to account if, for political reasons, the government was unable or unwilling to investigate contentious issues of high public concern.

Other rights may include the ability to join parliamentary committees, and guaranteed, regular access to high-level civil servants.

Outlined below are three possible levels of empowerment that could be granted to the CA with regards to proposed legislation.

### A) Advisory chamber

This option would give the CA the least power. It would be mandatory for the first chamber to submit legislation at “stage 2” (detailed scrutiny) of the legislative process to the CA and take into account their advice. Every time a bill goes through this second stage the CA would be given adequate time and resources to scrutinise it.

The power of the CA in this case would be one of “public censure” and would rely largely on their standing with the media and other organisations to be effective agents for change.

### B) House of Review

This option envisions the CA to be somewhat comparable to the House of Lords. In this instance the CA would essentially have the power to amend or delay any bill, except money or supply bills. There would be a limit on how long they could delay a bill of (for example) one year.

This would increase the power of “public censure” mentioned above whilst affirming the CA as subordinate to the first chamber. By allowing the CA to amend or delay proposed legislation for some time it would force the first chamber to take the considered opinion of this representative chamber seriously.

There may be some concern that granting such powers to a CA would go against established ideas of legitimacy and accountability. However, democratic legitimacy and accountability do not stem only, or (arguably) even primarily from elections and the once-every-four-year act of voting. Accountability is strongly related (especially between elections) to the justifying of decisions and the governmental scrutiny conducted by a free press and active civil society. Legitimacy similarly stems from how close legislators approach the ideal of informed deliberation, taking into account diverse viewpoints and considering the long-term good of society. It is decisions made for personal, party political, or short-term electoral ends that can lack legitimacy. Randomly selected members of the CA could actually get closer to the ideals of legitimate and accountable decision-making – after all, it is how we populate juries and few people argue that the decisions of juries are illegitimate.

### C) Legislative Chamber

This most powerful of options envisions the CA to be a chamber much like the Australian Senate.

In this instance both chambers have the power to introduce legislation, and all bills must pass through both chambers to become law. Various restrictions could be placed on this power. For example, the CA would not be able to introduce or amend money or supply bills, and it may be limited to the introduction of a set number of laws in any single year (for example, ten).

A further possible proviso could allow for a bill that has been rejected twice by the CA to be considered at a full sitting of both chambers, where a simple majority would suffice for passage.

### Proposal: A Two-Year Trial and Regular Reviews

We propose that initially a two-year trial of the CA should be instigated with Option A powers (Advisory Chamber). This would enable the CA to establish its principles and processes, smooth out any teething issues, accommodate the public to the CA idea and allow the Scottish Parliament to adjust to working with the CA.

The newDemocracy Foundation (which has extensive experience with policy juries and citizens’ assemblies) is willing to commit to providing full operational support to the CA to establish this trial.

After this two year trial, an independent citizens’ review should be held into the CA effectiveness, its procedures, mechanisms and powers. We suggest a 100-person randomly-selected citizen panel that meets for one weekend every month over the course of a year (on the CA premises). The review panel should have extensive access to past and present CA members, politicians and civil servants. It should recommend improvements to the CA processes and structure and propose which level of empowerment (option A, B or C above) the CA should be given in the future. These recommendations should be implemented unless there is a super-majority in parliament that rejects them.

We further recommend that a citizens’ review panel become a regular occurrence, perhaps every five-to-seven years. Several years of experience with the CA would provide ample opportunity to refine the CA processes and for future governments to prepare for any progression towards a more empowered chamber.

Regular review will mean the CA will not only improve, but thrive.

## Implementation details of a Citizens’ Assembly

This section addresses the common questions of implementation. It is important to note that all of these are subject to debate and modification, and all of them should be reviewed after the trial period.

### How large would the Citizens’ Assembly be?

Our proposal is that there should be one member of the Citizen’s Assembly (CA) from every geographical constituency of the Scottish Parliament, i.e. there should be 73 members, and that this number should change whenever the number of constituencies change.

Note that this is smaller than the total number of MSPs (129) as it does not include the “additional members” allocated under the Scottish proportional electoral system.

A second chamber with 73 members would be large enough to be broadly representative of the population while being small enough so as not to pose too great a financial burden on the public purse.

Its smaller size would also establish a clear dominance of the first chamber.

One concern with this proposal is that CA members may start to consider themselves representatives of a specific area and begin propounding narrow local interests instead of considering what is best for all of Scotland. One way to avoid this would be to select multiple members from considerably larger geographical regions grouped, for example, by postcode (although always in proportion to population).

### For how long would a person serve on the Citizens' Assembly?

It is important to balance at least two aspects of this question:

- CA members must have the time necessary to come to terms with their role on the CA and understand the mechanisms and complex processes involved in exercising their function; and
- Membership of the CA should not cause unnecessary disruption to the life of the CA member.

Furthermore, we should be wary of the potential ‘institutionalisation’ of these members, whereby their position of power distances them from the views and opinions of the people that they are meant to represent.

**It is the proposal here that CA members serve for at least one year, and preferably two years.** In the details below two-year terms are assumed, although one year terms would lead to only minor changes.

A six-monthly, staggered system of appointment would be used so that the introduction of new members of the CA would not cause unnecessary disruption and the assembly would contain significant elements of continuity.

In this way, if we assume two-year terms, every six months approximately 18 members of the 73-member CA would be replaced.

Legislation establishing the CA would need to include clauses such as those in Statutory Maternal Leave legislation, whereby an employer would have to guarantee CA members an equivalent position and salary upon return to work after his or her term of office.

Furthermore:

- if a CA member was a tertiary student they should be able to suspend their studies with no penalty;
- if the CA member was self-employed or the owner of a small business, additional funds to compensate for his or her absence could be made available; and
- if the CA member was under 18 and attending secondary school he or she would take up the position after the completion of school.

### How often would they meet? What would they do when they are not sitting?

Initially the CA should sit whenever parliament is sitting. Currently this means typically from Tuesday-Thursday for approximately 35-37 weeks of the year. Outside of these times he or she would be expected to engage in research, consultation with members of the public, civil servants or civil society, and to progress the business of the CA in the manner that she or he sees fit.

However, to protect the CA members from allegations of undue influence by vested interests **we strongly recommend that all meetings should be publicly documented** and must be done in a transparent and accountable manner. These should always be conducted on the CA premises, and it **should be made specifically illegal for lobbyists etc. to meet or pursue CA members outside of the chamber offices.**

We should also be open to the consideration that a formalised meeting timetable may not be appropriate for the CA. Giving the CA itself the powers to decide on its own schedule, or reviewing the schedule every year may result in it rapidly establishing the most effective timetable and procedures.

### Privacy of CA members, votes and deliberations

There is a strong case to be made that since CA members are to be a microcosm of society then voting and in-depth deliberation should be done in private. This would enable the members to vote according to their conscience without fear of personal public backlash or media smear campaigns, allow them to avoid peer pressure from other CA members, and would potentially reduce the effectiveness of attempted corruption as the “buying” of votes could never be confirmed.

Similar arguments can be made for leaving the CA members to deliberate in private; television cameras and the like necessarily affect the way in which people interact and what they say. Potentially some sections of the CA process could be open to the public (such as expert interventions) but there should be a clear demarcation between public and private sessions.

However all final decisions and decision processes should be transparent and a matter of detailed public record, even if the voting record of individuals would not be kept. Balancing transparency and the privacy needs of individual members would be an ongoing discussion and there could be experiments and a regular review of the effects of open or closed voting and deliberation.

### How much would a member of the CA be paid?

A financial incentive to spend two years on the CA would be important. The proposal here is for members of the CA to be paid twice the median wage of a full-time Scottish employee (indexed annually). This would currently amount to approximately £55,000 per year, which is comparable to the base salary of MSPs of £53,000.

This would make participation in the CA a positively lucrative experience for the majority of Scottish people and would hopefully somewhat offset the disruption caused by a two-year interruption to a career. For the people (less than ten per cent of tax-payers) who earn more than this we are confident that a two-year stint on a reduced – but still relatively high – income should be possible.

CAs would also be entitled to claim all the expenses an MSP is allowed to claim, including for staff, travel, living away from home, disability, etc.

### How would the citizens be selected? Would it be compulsory? Would anybody be excluded from participating? What about reserved seats?

The citizens would be randomly selected from the electoral roll in a three-stage process:

1. Official invitations are sent to 5,000 randomly selected citizens inviting them to register their interest in becoming an assembly member, and giving them detailed information about the position, and further inviting them to a day of information and discussion about the CA (to be held over several weekends in differing locations across Scotland). Every encouragement (including travel, accommodation and other expenses) should be provided to the invitees.
2. After the information day, those that accept the invitation are requested to provide some socio-demographic details:
  - a. Gender;
  - b. Age;
  - c. Constituency (geographical location); and
  - d. Education level and/or average regular income.
3. The Electoral Commission, in collaboration with the Office of National Statistics, would then be responsible for randomly selecting 73 people from this group to rotate into the CA over the coming two years, such that the group continues to be a direct reflection of Scottish society (or at least its citizens). In practice this means the process is semi-random, as in all likelihood less people who are young or with lower educational

attainment will accept the initial invitation. The 'match' between the sample and society will be set within some tolerance limits, for example:

- a. Gender should be an almost exact match (i.e. within a tolerance of perhaps 1%);
- b. Constituency should be exact with one person from every geographical area (a tolerance of 0%);
- c. Age should be matched within brackets (16-25, 26-35, 36-45, etc.) within a tolerance of, say, 10-15% (and ensuring that any secondary students enter the CA after finishing school).
- d. Education/income level should also be matched within 10-15%.

In this way those selected can be a close representation of Scottish society – there will be someone in the CA with your age, someone from your area, and someone with your background.

Every two years this process would then be repeated. This means that some people would be selected but not be inducted into the CA until a later date. We see few problems with this and several benefits: it will allow people to better prepare for their absence, the replacements can more easily be selected to keep the CA continuously representative, and those not selected (and their employers etc.) will not have to live with the anxiety about the possible future disruption to their lives.

It should be noted that several significant benefits stem from drawing the positions from as large a pool of people as possible:

- The larger the pool the easier it is to make the CA a closer reflection of Scottish society; and
- A larger pool will increase the broader societal benefits as the information days will act in part like a school of democracy for participants; and
- If a CA member resigns or departs from the CA for whatever reason the closest match from the existing pool could fill the vacancy.

It can also be argued that, like jury duty, membership of the CA should be made compulsory, unless the person selected has a legitimate personal or professional excuse. In this case the pool of initial invitations could, in principle, be smaller.

In citizens' assemblies held elsewhere in the world there are typically some groups of people who are excluded from participation:

- Anyone who is in, or has held, political office.
- Anyone who has previously served on the CA.
- In some cases those who have stood for political office, or have been employed by politicians or by political parties, are also excluded.
- Those who are also excluded from jury duty, e.g. incarcerated prisoners.

It could also be argued that non-citizens (immigrants, refugees) should be eligible for selection, and that certain under-represented groups that are least likely to accept an invitation (e.g. those with a disability) should be allocated reserved seats.

For example, if three to five seats were to be reserved for people with disabilities, it would be a relatively simple matter to guarantee the selection of this number of disabled people from the pool of disabled people who accepted the original invitation.

### What would the physical structure of the CA be? Where would it be located? Who would staff the CA?

The CA should not be a debating chamber but a deliberating chamber.

The aim of the CA would be to provide a deliberative space where its members come to a moral understanding of the likely effects of legislation and, as such, it should not be structured along the usual adversarial lines of parliamentary chambers.

The importance of structure and process cannot be over-emphasised.

We recommend that the chamber be structured flexibly, although small-table (8-10 people) simultaneous and facilitated, networked discussion would guarantee that no single personality can dominate proceedings, and would give maximal chance for every member of the CA to express their opinion and respectfully listen to the opinions of others.

The CA would be a separate chamber with specialised and dedicated support staff to assist the CA members in pursuing their objectives, under the direction of CA members. It would be important that this bureaucracy is not under the direct control of a minister of government – it should be a mandated independent body whose specific purpose is to support the CA and be responsive to the needs and requests of CA members. We assume that the staff would not be taken from existing ministries, but drawn from experts in deliberation and engagement mechanisms, and provide a range of services, such as training (and potentially accreditation) to facilitators, research assistance, and whatever else is needed for the CA to function effectively, transparently and accountably.

CA members themselves should ultimately be in control. Collectively they should be able to direct support staff, and, for example, call into the chamber experts, politicians, civil servants and members of civil society: in fact anyone whom they deem fit to address the chamber. The most effective way to counteract the problem of expert bias is to induct the CA members in basic techniques of critical thinking and encourage them to recognise and highlight bias whenever they observe it. It will be important to allow CA members to interrogate experts and come to their own conclusions regarding reliability and impartiality. Where possible, presentations by experts should always be peer-reviewed, and experts could be made aware that they are expected to present findings in a balanced and impartial manner or to make their biases explicit.

The physical location of the CA could also be important and highly symbolic. There is a strong argument to be made that

it should not be in the same location as the first chamber, so as to reduce the potential influence of career politicians on CA members. Locating it in a social or culturally significant space where CA members can readily interact with a wide and diverse range of people could be important. By locating it in Glasgow it could be seen as a counterweight to Holyrood.

### Would expulsion of CA members ever occur?

All members of the CA could usefully undergo a period of induction prior to joining the assembly where procedural and ethical matters are addressed.

If a member was found guilty of corruption or any other serious criminal offence her or his membership of the CA should be terminated immediately, and a replacement member drawn from the established pool of citizens.

Less clear cut would be cases where a member is persistently disruptive, disrespectful, or continually disengaged or absent without reason. Establishing and regularly reviewing (every six months, when new members arrive) a code of conduct will be essential – CA members would agree in writing to follow this code. There would then be clear conditions and an established procedure for proposing a vote of no-confidence in a CA member. If a vote of non-confidence in any individual member was endorsed by three quarters of the assembly that person would be subsequently expelled (subject to appeal).

## Conclusion

The instigation of the world's first CA in a parliamentary setting would be a momentous decision and put Scotland at the forefront of democratic innovation and citizen empowerment and engagement. It will, by necessity, be an immense learning experience and governments around the world would all turn to Scotland to observe the outcome.

Such a Citizens' Assembly is not only feasible but an urgent necessity. It would increase public trust in legislative decisions and boost the confidence of MSPs that their propositions have broad, well-justified public support.

It would counter the perceived capture of the political process by elites and other vested interests by putting ordinary people's voices directly into the legislative process.

It would, indeed, be more than simply the insertion of people's views into the legislative process. If done well, what these deliberating members of society will deliver is more than mere public opinion: they will increase the legitimacy of the Scottish Parliament by producing informed public judgements.

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