

Democracy, the Council elections and Scotland's National Parks

Description

[Apologies, I made an error in my explanation of the law below and have updated this post. A full understanding of Board membership requires interpretation of the 2000 Parks Act, which is less than clear in this area, and incorporation of the separate designation orders and modification orders for the two Parks]

Under the National Parks (Scotland) Act 2000 at least a fifth of the membership of the national park boards must be directly elected by local residents and the rest are appointed by Scottish Ministers; half from people who has applied to become a board member and half after being nominated by the constituent local authorities.

As I have explained in my recent posts on the election process that is currently underway in the Loch Lomond and Trossachs National Park ([see here](#) and [here](#)), the provisions in the legislation for elected members are both unfit for purpose (the first past the post system) and out of date (the £100 limit on election expenses). Those democratic failures have been exacerbated as a result of the Loch Lomond and Trossachs National Park Authority (LLTNPA) trying to place limitations on who puts themselves up for election.

This post carries on the democratic theme and, in the light of the recent local authority elections, take a look at the processes by which people nominated to Scottish Ministers by local authorities are appointed to national park boards and the opportunities this now creates.

Local authority nominees and the impact of the council elections

Local authorities nominees to our national park boards are currently appointed by Scottish Ministers for five year terms, timed to end after the next round of local elections. All other board members serve four year terms.

The appointments of the majority of current local authority nominated members started on 1st October 2017 and are due to end on 30th September 2022. While there has been significant turnover of council nominees on the Loch Lomond and Trossachs National Park Authority (LLTNPA) board since 2017, the terms of the replacement nominees also end on 31st September.

This system enables the new administrations that come to power following council elections to have a say about who sits on the national park boards. At its best it should mean that local authority nominees on the boards have very close links with those who hold power in their councils and can ensure there is an effective joined up approach on the ground to matters like the provision of infrastructure for visitors. At its worst, it creates a system of patronage by which council administrations can reward councillors or put them out to grass in a well paid sinecure.

All of the current local authority nominated members of Scotland's two national parks are local councillors, six for the LLTNPA, seven for the Cairngorms National Park Authority (CNPA). Following the council elections, over half of these nominees are no longer councillors, either because they stood down or because they failed to be re-elected:

- Peter Argyle, Carolyn Caddick, Pippa Hadley and John Latham in the Cairngorms
- Bobby Good, Murray Lyle and Alastair Berrill in the Loch Lomond and Trossachs

This is likely to result in a significant change of council nominees on the national park boards. While the practice of the Scottish Government has been to allow people who are re-elected as councillors to serve two five year terms, whether the six councillors who were re-elected will be nominated by their new councils is not yet clear.

What the law actually says and how it is has been applied in practice

Schedule 1 of the National Parks (Scotland) Act 2000 ([see here](#)) sets out the provisions for electing and appointing board members, including those nominated by local authorities.

The one clear provision for local authority nominees is contained in para 6 (3) which states:

“A local authority must not nominate a person for appointment as a nominated member unless the person appears to the authority to have knowledge or experience relevant to the functions of the National Park authority or the National Park.”

Sadly, that has not always been applied. While there have been some very knowledgeable and committed councillors nominated to the National Park Boards, there have also been others who have simply regarded it as a source of additional income and don't even have a basic knowledge of the geography of the National Parks. When the LLTNPA was first created, staff enthusiastically proposed familiarisation tours but none of the nominated councillors took up the offer.

While attendance by councillors at board meetings has improved significantly since the National Park Authorities were created, the sinecure system remains. According to the last four LLTNPA annual reports Murray Lyle, former Tory leader of Perth and Kinross Council, attended 11 out of 15 possible main board meetings and eight out of twenty-five planning meetings.

While to the best of my knowledge councils have always nominated elected councillors to the boards, that is not a legal requirement: otherwise board members would have to stand down the moment they ceased to be councillors.

[The following section has been revised].

There is nothing in the Schedule which specifies whom local authorities can nominate or how the nomination and replacement process should work.

Unfortunately, poor legal drafting in subsection 3 (6) of the Schedule complicates matter further:

- (6) The Scottish Ministers may appoint a person as a local member only if—
 - (a) the person's sole or main residence is within the National Park, or
 - (b) the person is a councillor for an electoral ward, or a member of a community council, any part of whose area is within the National Park.
- (7) In this schedule—
 - "nominated member" means a member appointed on the nomination of a local authority,
 - "elected member" means a member elected in accordance with sub-paragraph (2),
 - "directly appointed member" means any other member.

Sub-paragraph 6 is about "local members" – a term that is not defined in sub-paragraph 7 below or anywhere else in the legislation that I can see! Its meaning is therefore very unclear.

The intention, however, appears to have been that a proportion of council nominees and Ministerial appointments should have a local connection. As an example the original Cairngorms National Park Authority designation order specified five of those appointed by Scottish Ministers should be "appointed as local members":

Constitution of the Authority

- 5.—(1) There shall be 25 members of the Authority.
- (2) Five members of the Authority are to be elected in a poll in accordance with paragraph 3(2) of Schedule 1 to the 2000 Act.
- (3) Five members of the Authority are to be appointed as local members.
- (4) The nominated members of the Authority shall be nominated as follows:—
 - (a) five members (including two local members) are to be nominated by Highland Council;
 - (b) three members (including one local member) are to be nominated by Aberdeenshire Council;
 - (c) one member is to be nominated by Moray Council; and
 - (d) one member is to be nominated by Angus Council.

Extract from Cairngorms National Park designation order 2003

Interpreted in that light, para (6) makes better sense. While not phrased as a definition, it effectively means that for a person to count as a "local member" they either need to be resident in the National Park or be a councillor or community councillor part of whose ward lies within the National Park.

The Designation Order for the CNPA, when amended in 2010, specified that one 'local member' has to be part of the nominees from Highland and Aberdeenshire Councils. What Scottish Ministers would then do IF there are insufficient people nominated by other local authorities or applying to be a Directly Appointed who satisfy the requirements of paragraph 3 (6) and the designation orders is not specified. Should Scottish Ministers re-advertise the direct appointments or ask councils to reconsider their nominations?

While the legislation gives no right to local authorities to retract their nominations, Scottish Ministers can remove anyone they appoint “if they believe they are unsuitable to continue as a member”. Where a council lost confidence in their nominee/s there would therefore be nothing to prevent them approaching Scottish Ministers to request they terminate the appointment.

The opportunity for reform

The current process for seeking council nominations to the national park boards is far from transparent and it is not clear what, if any, horsetrading takes place between Scottish Ministers and local authorities about nominations.

While it is not democratically desirable that Scottish Ministers try to limit council nominations in the way that the LLTNPA has been doing for locally elected members, they should at least be clarifying what the law actually means and reminding local authorities of their right to nominate people other than councillors to the boards.

But there would, I believe, be no harm in the new Scottish Minister responsible for National Parks, Green MSP Lorna Slater, informing councils that she would like Scotland’s National Parks to take a far greater lead in addressing the climate and nature emergencies and asking them to consider this when making their nominations. That might encourage local authorities to take nominations and our National Parks more seriously and seek nominations from people other than sitting councillors

With the first terms of five of the Scottish Government’s own nominated appointments to the LLTNPA Board (Chris Spray, Heather Reid, Claire Chapman Ronnie Erskine and Sarah Drummond) due to be reviewed by 31st October, Lorna Slater also has an opportunity to show she means business. Why for example would she re-appoint Sarah Drummond, who now appears to live in London and is the only Board Member not to sit on any committee?

So far none of these Scottish Government appointments have been advertised, leading to the suspicion that they will simply be re-appointed without any consideration of the LLTNPA’s miserable track record or what they have done to turn this around.

Imagine, however, a board which comprised local authority nominees and government nominees who were determined that Scotland’s national parks should play a lead role in tackling and climate and nature emergencies while furthering the interests of residents and visitors at the same time? Lorna Slater thus has a major opportunity to reform and re-invigorate Scotland’s two National Parks.

Such Ministerial action would be assisted if the internal governance arrangements in both our National Park encouraged active and committed board members. Generally the attendance and commitment of council nominees on the CNPA appears to have been significantly better than in the LLTNPA. That is not a coincidence. It is only a few years since the meeting in Callander where councillors on the LLTNPA Board, to their credit, suggested they should be abolished because there was nothing for them to do. Nothing much has changed since. By contrast, CNPA board members are not only involved in more committees and working groups, they are encouraged to have far more interaction with Park residents and to understanding what is happening on the ground; for example, up until Covid, it was normal practice for the CNPA to organise board visits to the sites of planning applications. In the LLTNPA, this only happens with the largest planning applications (Flamingo Land

and Cononish) and most planning applications are decided by staff.

Making council nominees on the national park boards more effective needs to be a two way process. Councils need to nominate people who respect and are committed to national parks but our national park authorities need to give those same council nominees some real say if they are to get the best out of them.

Category

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2. Loch Lomond and Trossachs
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Tags

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Date Created

May 26, 2022

Author

nickkempe

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