Inverclyde council

Report To:	**Inverclyde Council**	**Date:**	**22 February 2018**
Report By:	**Head of Legal & Property Services**	**Report No:**	**GM/LP/025/18**
Contact Officer:	**Gerard Malone**	**Contact No:**	**01475 712710**
Subject:	**Consultation Paper on Electoral Reform: Scottish Government**		

1.0 PURPOSE

1.1 This report advises the Council of the Scottish Government's consultation on Electoral Reform.

2.0 SUMMARY

2.1 The Scottish Government has launched a consultation on Electoral Reform in the light of the new powers and responsibilities in terms of the Scotland Act 2016 relative to elections to the Scottish Parliament. These new powers complement existing responsibilities for local government elections and it is the proposal that control over both sets of elections opens up possibilities for democratic renewal and putting the voter first.

2.2 The consultation paper issued by the Scottish Government is the first step towards these reforms and the results of the consultation will be used to develop policy proposals that may be taken forward in future legislation.

2.3 By the nature of the consultation, involving potentially diverse views across a whole range of important areas of Electoral Reform, it would be difficult to provide an agreed collective view on the consultation paper's questions. The responses referred to within the following report are derived from the perspective of administering the polls and from the experiences of delivering key electoral events. Nevertheless, it is entirely feasible, and indeed welcomed, for any person or groups to submit their own representations on any aspect of the consultation paper and the contents of this report seek only to provide a possible collective response on behalf of the Council which is derived from the experience of administering the polls, as above.

3.0 RECOMMENDATION

It is recommended that:

3.1 The Council considers the terms of this report and agree the form of any collective response; and

3.2 The Council notes that any individual Elected Member or group may submit individual responses, as accords.

Gerard Malone
Head of Legal & Property Services

4.0 BACKGROUND

4.1 The Scottish Government has launched a consultation on Electoral Reform in the light of the new powers and responsibilities in terms of the Scotland Act 2016 relative to elections to the Scottish Parliament. These new powers complement existing responsibilities for local government elections and it is the proposal that control over both sets of elections opens up possibilities for democratic renewal and putting the voter first.

4.2 The consultation period closes on 12 March 2018 and this report highlights the key areas within the scope of the consultation paper and suggests responses. It is appreciated that given the diverse range of areas encompassed within the consultation paper, it is difficult to suggest a collective response as many divergent views could reasonably be held in relation to the questions posed. Nevertheless, the draft responses are suggested as a possible representation from the Council and are provided from the experience and perspective of administering the polls.

4.3 If approved, the Council's formal response will be submitted by the deadline date. It is noted that any other responses from individual Elected Members or political groups are also welcomed in response to the consultation process.

4.4 The consultation paper is provided in full in **Appendix 1**. The consultation paper is also available at:- http://www.gov.scot/Resource/0052/00529431.pdf.

4.5 There is an online consultation paper for completion by accessing the Scottish Government's website.

4.6 For purposes of this report, the key areas of consultation are outlined in the separate headings, below, and a consultation response is proposed for each of the relevant questions. The consultation paper contains the full basis for the proposals and should be referred to for their details.

5.0 CONSULTATION PAPER: SUGGESTED COUNCIL RESPONSE

5.1 The consultation paper covers the following four main areas:

- how often elections should be held;
- who runs elections and how they are run;
- who can register and vote; and
- accessibility of voting and elected office.

5.2 **How often elections should be held**

It is an established position that clashes in election dates should be avoided, if at all possible. To prevent this, the consultation paper suggests that it might be sensible to have elections on five year cycles to ensure that scheduled elections do not fall on the same date. The consultation paper also asks opinions on the most appropriate length of terms for the Scottish Parliament and for local government in the light of wider objectives, primarily that of increasing democratic participation. It is pointed out that supporters of shorter terms argue these provide more opportunity for the electorate to hold governments to account. Longer parliamentary terms have, however, been regarded as helping to facilitate longer term policy planning and greater consultation.

Question 1: Do you think the term length for the Scottish parliament and local government should be:

- 4 years?
- 5 years?
- Other length (please specify)?

Question 2: Do you have any other comments or suggestions on term lengths?

Response: This Council supports the objective of avoiding the holding of more than one poll on the same date. A co-ordinated cycle of terms is of assistance in meeting that objective. Terms of 5 years provide a suitable balance of length of term and democratic accountability.

5.3 **Who runs elections and how they are run**

The Scottish Parliament has the power to legislate on the running of Scottish Parliament and Scottish local government elections. The Scottish Government's role is to bring forward proposals for Parliament's consideration.

The Electoral Commission is the independent body that oversees elections and regulates political finance in the UK and promotes public confidence in the democratic process. The Commission was established in 2000 and reports to the UK and Scottish Parliaments.

The Electoral Management Board for Scotland (EMB) was formally created by the Local Electoral Administration (Scotland) Act 2011 which gave the Board "the general function of co-ordinating the administration of local government elections in Scotland".

Returning Officers – every local authority in Scotland is required to appoint an officer of the authority to be the Returning Officer (RO) for that local area. The Returning Officer has the personal responsibility for the organisation and running of elections in the local authority area.

Electoral Registration Officers – a local authority is required to appoint an officer of the authority for the area to be the Electoral Registration Officer (ERO) for its area. The ERO's role is to prepare and maintain a Register of Electors. Within Inverclyde, the local Assessor, who is appointed by the Renfrewshire Valuation Joint Board, is the ERO. Electoral registration is a continuous task.

Proposal – it is proposed that the role of the EMB be extended to Scottish Parliament elections. The EMB's existing statutory remit includes the operational detail of planning the delivery of local government elections at a national level, promoting best practice by providing advice and guidance, and providing strategic consideration of legislation and policy. The proposal is to enhance the existing non-statutory role of the EMB by giving it statutory functions to assist Returning Officers and EROs in relation to Scottish Parliament elections.

Question 3: Do you agree that the Electoral Management Board and the Board's Convener should be given the same functions in relation to Scottish Parliament elections as they already have for local government elections?

Question 4: Do you have any other views on the future role of the Electoral Management Board?

Response: From the Returning Officer's perspective, the EMB has worked well in assisting a consistent approach within local government elections. If there is an enhancement of the EMB role, it requires to be resourced with clear divisions of responsibility relative to the roles of Returning Officers and EROs and also the Electoral Commission.

5.4 **Role of Returning Officers at Scottish Parliament elections**

In terms of existing legislation, the ROs for Scottish Parliament elections are appointed by the local authorities for the local government elections and this removes any direct influence that Scottish Ministers or Parliament may have in the appointment of those individuals who will be running the election. The RO appointment is on a personal basis and given this independence and intermittent nature of elections, a RO is paid a fee for running a poll at each election. The fee is calculated on the basis of the number of electors in their area. There is a high level of personal liability and personal responsibility placed on ROs during election periods.

Question 5: Should the Returning Officer appointment for Scottish Parliament elections continue to be on an appointment on a personal basis, independent from Scottish Government and local authority control?

Question 6: Should the role of the Returning Officer become part of the job description of local authority Chief Executive? (This is not currently the case and would require renegotiation of terms and conditions).

Question 7: Do you have any other comments or suggestions about who should have the role of Retuning Officer or how Returning Officers should be paid?

Response: The RO appointment needs to be kept independent and on a personal basis. The role of the RO should not become part of the job description of the local authority Chief Executive as it is a separate and personal role involving personal liabilities and responsibilities during the election period.
It is critical that the Returning Officer is independent and is seen to be independent from both the local authority and Scottish Government. This independence is a central element of the integrity of elections. Any compromise of this independence could result in significant organisational complexities around liabilities and risks involved at elections which could compromise the proper administration of the process. Any compromise of this RO independence would equally be transmitted to the whole other election staff supporting the Returning Officer during elections.
The remuneration of ROs is a separate issue and its consideration should be dealt with as such.

5.5 <u>Local government election ballot papers: candidates' addresses</u>

In local government elections there is a requirement that the candidates' name and address appear on the face of the ballot paper. This situation does not arise with ballot papers used for elections to the Scottish Parliament as addresses were removed from these following concerns about the size of the ballot paper. It is proposed for reasons of security for candidates and their families that it is better not to make private addresses available.

Question 8: Do you agree that candidates' addresses should not be required to appear on ballot papers for local government elections?

Question 9: Do you have any other comments to make on this issue?

Response: There is an important issue to recognise in terms of transparency in relation to the ordinary voter's knowledge of a candidate. It is understood that there are divergent practices in relation to local government (candidate's name and address); the Scottish Parliament (where candidates' addresses are not shown on the ballot paper) and in the UK general election (there had been a requirement for candidates' addresses to appear on ballot papers but this requirement was removed in 2009 following concerns about candidates' security and it is necessary only to specify that there is an address within the constituency). Irrespective of views as to the level of necessary transparency and voter knowledge of a candidate's address, there is a clear issue to ensure consistency of approach in all elections and it would be sufficient that candidates' addresses should not appear on ballot papers or other electoral notices provided that the RO remains responsible for ensuring that candidates meet the requirements for having an address within the local authority area within the relevant nomination papers.

5.6 <u>List order of candidates' names</u>

This issue concerns the order in which candidates' names appear on the ballot papers at local government elections. There is no suggestion of making changes to the ballot papers used in Scottish Parliament elections.

At present, electoral regulations throughout the UK require that the names of candidates are listed on the ballot paper alphabetically, by surname. It has been suggested that alphabetical listing discriminates against those candidates with surnames starting with letters towards the end of the alphabet. Several options have been put forward to address this possible list order effect and the consultation paper makes proposals for a rotational candidate ordering system.

Question 10: The Scottish Government would welcome views on this issue.

- Do you agree that, in order to counteract the list order effect, a change should be made to the way in which candidates are listed on election ballot papers?

- If so, what form of new system would you favour: rotation; randomisation; alphabetical-reverse alphabetical? Any other?

Question 11: Do you have any other comments to make on this issue?

Response: The introduction of rotational ordering will have difficulties in relation to print costs, vote counting and, possibly, voter confusion. If there is to be any change to the current alphabetical ordering, this would require detailed research and support with evidence both in relation to any adverse impacts that exist at present and also in relation to the benefits that will be achieved for voters.

5.7 **Electronic voting**

The Scottish Government plans to trial innovative electronic voting methods and welcomes views on the methods to be considered either by (a) electronic voting machines; or, (b) internet and mobile phone voting.

Question 12: Voting Machines

- Would you be happy to use an electronic voting machine in a polling place instead of a traditional ballot paper?

- Would you like voting to be possible on more than one day?

- Would you like to be able to vote at any polling place in Scotland?

- Do you have any other comments?

Question 13: Internet and Mobile Phone Voting

- If internet or mobile phone voting was available, would you choose to use that rather than vote at a polling place or by post

- If internet or mobile phone voting was available, would you be more likely to vote?

- Would you like voting to be possible on more than one day?

- Do you have any other comments?

Response: These innovations can be supported in full. It is important to put the voter first and any arrangements for electronic voting must be secure, transparent and accessible.

5.8 **Boundary reviews**

Periodic reviews of the boundaries of Scottish Parliament constituencies and local government ward boundaries and Councillor numbers are carried out by the Local Government Boundary Commission for Scotland. The proposal is that there are rolling reviews of local government electoral arrangements. Reviews of Council electoral arrangements currently take place every 8 to 12 years with all Council areas being reviewed at the same time. It is suggested within the consultation paper that there could be advantages if, rather than reviewing all areas at the same time, a number of Council areas could be reviewed each year or period of years. Additionally, under the existing rules for local government electoral arrangements, Scottish Ministers have the power to implement, with or without changes, or not to implement, the LGBCS recommendations. The Scottish Parliament has no substantive role in that process. In the case of Scottish Parliament boundaries, Scottish Ministers have no power to amend the LGBCS recommendations and the Parliament has either to accept or reject (but cannot modify) those recommendations).

In terms of the Local Governance (Scotland) Act 2004, each Council ward must have 3 or 4 Councillors and it is proposed that Council wards should, in exceptional circumstances, be able to have 2 or 5 members.

Question 14: Do you think that we should move to a rolling programme of reviews of local government electoral arrangements?

Question 15: Independence of boundary reviews

- Should Scottish Ministers be able to change the recommendations of the Local Government Boundary Commission for Scotland on Scottish Parliament constituencies and Council wards?

- Should the Scottish Parliament be able to challenge the recommendations of the Boundary Commission on Scottish Parliament constituencies and Council wards?

- Should the recommendations of the Commission be implemented without change?

- Please comment on your answer.

Question 16: Should the Local Government Boundary Commission for Scotland be allowed the flexibility to recommend wards which have been 2 and 5 Councillors, instead of 3 or 4 Councillors as at present?

Response: Any changes to constituencies or wards should have a clear, evidenced methodology upon which any changes are based. This methodology should be transparent and objective. It is preferable to have changes implemented on a collective basis. Any introduction of a rolling programme could give rise to different outcomes on ward or constituency level that would give rise to voter dissatisfaction and confusion. Any changes in the democratic process require voter confidence and understanding and a rolling programme which might give rise to different outcomes in different localities would not support the objectives of consistency and clarity.

The exceptional circumstances for 2 Member or 5 Member wards do not apply within this area but it is understood that there may be reasons for support in islands communities. The rationale for this proposal seeks to address the needs of islands or remote communities.

5.9 **Extending the franchise**

The Scottish Government proposes to extend the franchise in the Scottish Parliament and local government elections. Additionally, it is proposed to make changes to the anonymous electoral registration scheme to ensure that reforms balance the access to anonymous registration for those who need it yet provide clarity and certainty for electoral administrators about who is eligible for anonymous registration. Any reform must provide assurance for the maintenance of the integrity of the electoral register.

The Scottish Government has also proposed to address public concerns about the potential for owners of second homes to register and vote twice, for their main residence address and for their second home address. Current legislation on local elections allows for an individual to register and vote in more than one local Council area but it is against the law to do so at any other election or referendum.

Question 17: Do you agree that the franchise should be extended to include everyone legally resident in Scotland?

Question 18: Do you have any views on how long should someone be resident in Scotland before they become eligible to vote?

Question 19: Do you have any other comments to make on this issue?

Question 20: Do you think that we should make it easier for individuals who may be at risk from any form of abuse to register anonymously, whilst maintaining the integrity of the

electoral register?

If this is an area in which you are particularly interested, we would welcome your views on our more detailed proposals. These proposals can be found in the supporting document on anonymous registration.

Question 21: Should a voter be allowed to register in more than one local authority area?

Question 22: Do you agree that a voter should only be allowed to vote once in local government elections in Scotland?

Response: There is no issue to raise in relation to the above questions as these measures would not cause any substantial changes in delivering the poll.

5.10 **Accessibility of voting and elected office**

The Scottish Government is seeking to address issues to increase the representation of under-represented groups and making voting more accessible. Steps to remove barriers have been taken involving the introduction of the Access to Elected Office Fund for Disabled People and there are also specific actions within the Scottish Government's British Sign Language National Plan and in the Race Equality Framework with a view to increasing participation and representation of minority groups at local and national levels.

Question 23: What other action could the Scottish Government take to widen access to and remove barriers to voting and elected office?

Question 24: As well as the above arrangements, is there anything else that could be done to increase the accessibility of elections?

Question 25: How can the Scottish Government best support gender balance in those elected as MSPs or local Councillors?

Response: The Council is committed to promoting and implementing all steps to promote equalities within the Inverclyde community and any actions to support this at any level, national or local, are welcomed.

6.0 IMPLICATIONS

Finance

6.1 Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Legal

6.2 There are no legal implications arising directly from this report.

Human Resources

6.3 There are no HR implications.

Equalities and Diversity

6.4 There is no effect upon equalities.

Repopulation

6.5 There are no direct effects upon repopulation.

7.0 CONCLUSION

7.1 The Scottish Government has issued a wide ranging consultation paper on electoral reform and the Council is asked to consider if it wishes to submit a collective response to the questions. It remains the position that individual Elected Members or groups can submit their own responses, as they may choose.

8.0 BACKGROUND PAPERS

8.1 None.

Consultation Paper
on Electoral Reform

Scottish Government
Riaghaltas na h-Alba
gov.scot

CONSULTATION PAPER ON ELECTORAL REFORM

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**How to Respond**

Ministerial Foreword

I am delighted to be able to launch the Scottish Government's consultation on Electoral Reform. The Scottish Parliament recently gained new powers over the conduct of Scottish Parliamentary elections and electoral registration, alongside its existing devolved responsibility for local government elections. These new powers create new opportunities and so this is the ideal time to find out what kind of electoral reforms the people of Scotland would like to see. We want to know what you think about all aspects of your elections.

The Scottish Government is committed to ensuring access to democratic participation for all citizens. Scotland has led the way internationally by lowering the voting age to 16. We now seek to extend the opportunity to vote to all who are legally resident in Scotland. It seems only fair that those who have the right to live here, whether from EU countries or elsewhere, have the right to vote. Read our proposals and let us know if you agree.

Much of the way we vote in elections has remained unchanged for over 100 years. Modernisation takes place across all aspects of society and now is a good time to think about the kinds of innovation people in Scotland would like to see in elections. We already have electronic counting for local government elections. Is it the time to think about going one step further and introducing electronic voting? Could a new approach make voting more inclusive and increase turnout? How do we best increase voter registration? We are seeking your views.

Next year will be the centenary of women's suffrage, yet currently only 35% of MSPs and 29% of councillors are women. It is fair to say that elected representatives do not reflect the true make-up of Scottish society. We introduced the Access to Elected Office Fund for disabled people for the local government elections held in May 2017. This was highly successful. Fifteen candidates from a wide range of parties and from across Scotland were elected. We are committed to running this Fund in the future, but there is much more that could be done. We want to hear about new ways to break down the barriers to standing for election which clearly exist.

I invite you to contribute your views to the consultation to help secure Scotland's democratic future for the benefit of all.
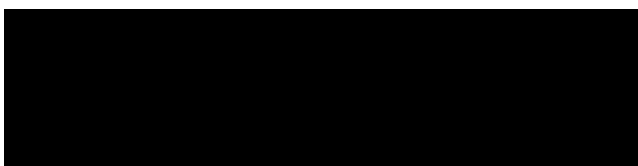
Introduction

The Scottish Government is committed to increasing participation in elections both in terms of voter turnout and encouraging citizens to stand for election. Democratic participation challenges the inequalities of power and influence that exist in society. We need an electoral system that supports and empowers the engagement of the Scottish people in their own elections. Many organisations, including the Electoral Commission, the Electoral Management Board, political parties and local authorities have important roles to play in realising this aim of full engagement. The Scottish Government and Parliament have a specific role to play to ensure that electoral law supports increased participation and removes barriers to voter empowerment.

Under the Scotland Act 2016 the Scottish Parliament and Government have new powers and responsibilities relating to elections to the Scottish Parliament. These complement their existing responsibilities for local government elections. Control over both sets of elections opens up new possibilities for democratic renewal and putting the voter first.

This consultation paper is the first step towards these reforms. It includes a number of suggestions as to how the new powers could be used. The Scottish Government will use the results of this consultation process to develop policy proposals that may be taken forward in future legislation.

It should be noted that there has been a call for the reform of electoral law from the Law Commissions of Scotland, England, Wales and Northern Ireland. In 2015 they jointly ran a consultation during which many respondents agreed with their view that 'electoral law in the UK has grown to be complex, voluminous and fragmented'. A joint interim report was published on 4 February 2016. A summary is also available.[1] That report highlights a number of areas where the Law Commissions consider that reform is desirable. Their report covers some of the topics featured in this consultation.

This consultation is directed at the whole electorate and at young people who will be the voters of the future, so it covers a wide range of topics. Reforms to the electoral system affect the experience of all voters, and the Scottish Government hopes that a broad range of respondents from all over Scotland will contribute their thoughts on the proposals in this consultation.

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[1] https://www.lawcom.gov.uk/project/electoral-law/

Chapter One: How Often Elections Should be Held

1. Term Lengths

Background

Clash of elections

In Scotland, local government (i.e. council) elections and Scottish Parliament elections are usually held every four years. The rules on term length for the Scottish Parliament are set out in the Scotland Act 1998. The rules on term length for local government are set out in section 5 of the Local Government etc. (Scotland) Act 1994.

The Scottish Elections (Dates) Act 2016 moved the dates of the 2020 Scottish Parliament election and the 2021 local government elections. This was to avoid a clash between the Scottish Parliament election and the UK Parliament General Election, which were both due to take place in 2020. The Local government election then had to be moved to avoid a clash with the revised date for the Scottish Parliament elections.

The idea that electoral "clashes" should be avoided is well established. The Scottish Parliament legislated to extend the term of the local authorities elected in 2007 to five years to avoid a clash with the Scottish Parliament elections in 2011. This followed the experience of the 2007 Scottish Parliament and local government elections taking place on the same date, when there was an unusually high number of rejected ballot papers[2]. In 2004 the Smith Commission recommended that the Scottish Parliament general elections should not be held on the same day as UK Parliament general elections, European Parliament elections, or ordinary local government elections.[3]

As things stand, the next scheduled UK general election will fall on the same day as the May 2022 local government elections. The Scottish Government is aware of this potential clash and will, if necessary, seek Parliament's agreement for appropriate action.

It may be sensible to move all elections onto a 5-year cycle (as has already been done in Wales and Northern Ireland) as this would mean that scheduled elections would not fall on the same day. However, there is always the risk of an early general election changing the scheduling, which would re-introduce clashes.

The Conservative Party manifesto for the recent UK general election included a commitment to repeal the Fixed Term Parliament Act that sets Westminster terms at 5 years, but the UK Government's current intentions are not clear. If that Act were repealed, it would remove the 5-year fixed term at UK level and further complicate any prediction of clashes between UK and Scottish elections.

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[2] Electoral Commission: Scottish elections 2007: The independent review of the Scottish Parliamentary and local government elections 3 May 2007
[3] http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/

<u>What term length is best?</u>

Although there is a need to take UK parliamentary term lengths into account, there are other reasons to consider term lengths. During the parliamentary process for the Scottish Elections (Dates) Act 2016 there was some discussion about the issue of finding a permanent solution to term lengths, with a number of interesting potential solutions raised. It was agreed that there should be a debate about what the appropriate term length for Scottish elections should be. This consultation provides an opportunity to:

    a. plan an election cycle for Scottish Parliament and local government elections that is both coherent and durable; and

    b. consider the most appropriate term length for the Scottish Parliament and local government in light of wider objectives, such as increasing democratic participation.

<u>What should our term length be?</u>

The vast majority of parliaments around the world, both national and sub-national, have term lengths of four or five years.

The Northern Ireland Assembly, the Welsh Assembly and the UK Parliament (for the time being) have all moved to 5-year terms. Doing likewise could be an obvious solution for the Scottish Parliament. Longer parliamentary terms have been regarded as helping to facilitate longer term policy planning and greater consultation.

There are also other factors to take into account. Supporters of shorter terms argue that they provide more opportunities for the electorate to hold the government to account.

Changing term lengths may have implications for the review timetables of the Local Government Boundary Commission for Scotland, including the current requirement to complete the next review of the Scottish parliament boundaries by 2022.

QUESTION 1: Do you think the term length for the Scottish Parliament and local government should be:

        - 4 years?
        - 5 years?
        - Other length (please specify)?

QUESTION 2: Do you have any other comments or suggestions on term lengths?

Chapter Two: Who Runs Elections and How They Are Run

1. The Electoral Landscape

Background

<u>The Scottish Parliament</u>

The Scottish Parliament has the power to legislate on the running of Scottish Parliament and Scottish local government elections. The normal process is that the Scottish Government will bring forward proposals for parliamentary consideration and approval. These proposals can be in the form of either primary legislation (bills which become Acts of Parliament when passed) or subordinate legislation (regulations). Primary legislation is normally used for more significant policy issues, such as who can vote, the voting system or giving Government Ministers (or another authorised person) the power to make subordinate legislation.

All bills are subject to Parliamentary scrutiny, mostly in committees, with one committee taking the lead. However, it is the full Parliament that has the final say and decides whether or not a bill should become law. During the passage of a bill, members of Parliament have the right to question the proposals and suggest amendments which can be either accepted or rejected by the Parliament.

Subordinate legislation is subject to Parliamentary scrutiny. It is extremely rare for the Parliament to have any scope to amend or change subordinate legislation. It is normally restricted to either approving or rejecting it.

Further information on Scottish Parliament legislation can be found at: http://www.parliament.scot/visitandlearn/100530.aspx

<u>The Scottish Government</u>

The Scottish Government's role is to bring forward proposals for Parliament's consideration. The Government's proposals will normally have been the subject of a consultation exercise, the size of which will vary depending on the scope of the proposals. For example, where changes will have an effect on voters in Scotland, such as the proposals in this consultation document, a full public consultation will take place. However, where the changes relate to mainly procedural issues with minimal impact on the public, the consultation may be restricted to electoral administrators and political parties. Any proposals for change brought forward by the Scottish Government are subject to the normal Parliamentary approval process.

<u>The Electoral Commission</u>

The Electoral Commission is the independent body that oversees elections and regulates political finance in the UK. The Commission works to promote public confidence in the democratic process and ensure its integrity by:

- enabling the delivery of free and fair elections and referendums, focusing on the needs of electors and addressing the changing environment to ensure every vote remains secure and accessible;
- regulating political finance – taking proactive steps to increase transparency, ensure compliance and pursue breaches;
- using its expertise to make and advocate for changes to our democracy, aiming to improve fairness, transparency and efficiency.

The Commission was set up in 2000 and reports to the UK and Scottish Parliaments.

The Electoral Management Board

The Electoral Management Board for Scotland (EMB) was formally created by the Local Electoral Administration (Scotland) Act 2011, which gave the Board "the general function of co-ordinating the administration of local government elections in Scotland." This involves two specific roles:

- assisting local authorities and other persons in carrying out their functions in relation to local government elections; and
- promoting best practice in local government elections by providing information, advice or training (or otherwise).

The Board is composed of eight members. Five are Returning Officers (or their Deputes) and three are Electoral Registration Officers. These are appointed by a Convener, who is in turn appointed by Scottish Ministers following a process of open competition. Advisers from the professional associations working in electoral administration – the Society of Local Authority Lawyers and Administrators (SOLAR) and the Association of Electoral Administrators (AEA) – also attend the Board meetings. Representatives from the Electoral Commission, the Scottish Government, Scotland Office and COSLA also attend meetings to provide support and advice.

Returning Officers

Every local authority in Scotland is required to appoint an officer of the authority to be the Returning Officer for that local authority area. The Returning Officer has responsibility for the organisation and running of elections in the local authority area. Most, but not all, local authorities appoint their Chief Executives. To reflect the independence and intermittent nature of elections, a Returning Officer is paid a fee for running the poll at each election.

Electoral Registration Officers

A local authority is required to appoint an officer of the authority for their area to be the Electoral Registration Officer (ERO) for its area. The Electoral Registration Officer's role is to prepare and maintain the Register of Electors. In Scotland (with the exception of the City of Dundee and Fife) councils have appointed the local Assessor, who is appointed by the local Valuation Joint Board, as ERO. Electoral registration is a continuous task and therefore, Registration Officers' duties in relation to electoral registration form part of their job description and are

remunerated as part of their normal pay arrangements, rather than per election like Returning Officers.

Proposal

<u>Extending the role of the Electoral Management Board for Scotland (EMB) to Scottish Parliament elections</u>

The EMB was originally established in November 2008 as an advisory body, but it was the Local Electoral Administration (Scotland) Act 2011 which formalised its role on a statutory basis. The May 2012 local government elections was the first occasion that the EMB had a statutory role for an election in Scotland. The EMB's statutory remit includes:

- the operational detail of planning the delivery of the local government elections at the national level;
- promoting best practice by providing advice, guidance and information; and
- providing strategic consideration of legislation and policy.

While individual Returning Officers are responsible for managing the elections in their local areas, and are ultimately accountable to the courts for their actions, the EMB and its Convener provide a central focus of practitioner advice.

The EMB's prime focus is ensuring that the interests of the voter are kept at the centre of all elections planning and administration. Much use is made of the close community of electoral professionals in Scotland and the EMB seeks to operate by consensus rather than formal direction, wherever possible. However, the Convener does have a power to issue directions to Returning Officers and Electoral Registration Officers in relation to their duties for local government elections if required. The Convener tends to use the power of direction in order to ensure consistency and co-ordination across elections in Scotland. Areas which have been the subject of directions include: the colour of the ballot paper; the design of the official mark; when postal ballot packs should be issued; the timing of the count; and performance management monitoring.

The Electoral Commission has expressed a view that the statutory remit of the Electoral Management Board (EMB) should be extended to cover Scottish Parliament elections. Whilst the Scottish Government has always supported the Commission's view that the EMB should be given a statutory role in Scottish Parliament elections, until sections 3 to 12 of the Scotland Act 2016 were commenced in May 2017, it was beyond the legislative competence of the Scottish Parliament to extend the remit of the Board.

The Scottish Government is therefore minded to propose enhancement of the existing non-statutory role of the EMB by giving it the statutory functions of:

- assisting Returning Officers and Electoral Registration Officers, and other relevant persons, in carrying out their duties in relation to Scottish Parliament elections; and

- promoting best practice in Scottish Parliament elections by providing information, advice and training.

This would mean that the Electoral Management Board would have the same statutory functions for all devolved elections.

In addition, the Convener of the EMB would be given the power to give directions to Returning Officers and Electoral Registration Officers about how they carry out their functions in relation to Scottish Parliament elections.

These statutory functions and the power of direction mirror the equivalent functions that the EMB and convener already have in relation to local government elections.

QUESTION 3: Do you agree that the Electoral Management Board and the Board's Convener should be given the same functions in relation to Scottish Parliament elections as they already have for local government elections?

QUESTION 4: Do you have any other views on the future role of the Electoral Management Board?

2. Role of Returning Officers at Scottish Parliament Elections

Background

Under the existing legislation, as set out in the [Scottish Parliament (Elections etc.) Order 2015](#), the Returning Officers (ROs) for Scottish Parliament elections are the ROs appointed by local authorities for local government elections.

The reason for this is that it removes any direct influence that Scottish Ministers or the Parliament may have in the appointment of those individuals who will be running the election. Since the RO appointment is on a personal basis and is additional to their council employment, past practice has been to pay each RO a fee which is calculated on the basis of the number of electors in their area.

This payment reflects the contribution of ROs in running elections and their personal liability. If things go wrong, the RO could be charged with breach of official duty and would be personally liable for a significant fine. Similarly if there were to be an election petition (an appeal against an election result), the RO, if found to have not followed the appropriate procedures, would be personally liable for the costs of the case and for any remedial action.

For the above reasons, past practice has been that ROs are recompensed for their time and the risk they take in accepting the role of RO. There is no statutory requirement for any individual to accept the role of RO. Legislation allows for a local authority to appoint an officer of the authority as RO, but does not otherwise restrict who may be appointed.

The Scottish Parliament's Local Government and Communities Committee published a report in January 2017 on payments to ROs. That report recognised the high level

of personal responsibility placed on ROs during an election period and acknowledged the hard work and commitment shown by them. The Committee also acknowledged the need to retain a system of direct personal responsibility to ensure appropriate levels of accountability. However, the Committee also felt that whilst "all staff involved in elections should be remunerated appropriately", the "current system of payments to ROs should end".

The Committee's full report can be found at:

http://www.parliament.scot/S5_Local_Gov/Reports/LGCS052017R01.pdf

QUESTION 5: Should the Returning Officer appointment for Scottish Parliament elections continue to be on an appointment on a personal basis, independent from Scottish Government and local authority control?

QUESTION 6: Should the role of the Returning Officer become part of the job description of local authority Chief Executives? (This is not currently the case and would require renegotiation of terms and conditions.)

QUESTION 7: Do you have any other comments or suggestions about who should have the role of Returning Officer or how Returning Officers should be paid?

3. Local Government Election Ballot Papers: Candidates' Addresses

Background

In Scotland, local government elections are held every four years. There are 32 councils in Scotland and each is divided into a number of wards. Each ward is represented by either 3 or 4 councillors[4].

The rules that apply to the conduct of council elections are set down in legislation. The most recent example is the Scottish Local Government Elections Order 2011.[5] Section 14 of the Order sets out the format of the ballot paper to be used in elections. It requires that candidates' names and addresses appear on the face of the ballot paper, as illustrated in the diagram.

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[4] It should be noted that the *Islands (Scotland) Bill* which is currently going through Parliament will, if passed, allow for electoral wards of 1 or 2 councillors to be created covering populated islands. Similarly, elsewhere in this Consultation paper we are seeking views on the option for allowing wards of 5 councillors.

[5] As amended by *The Scottish Local Government Elections Amendment (No. 2) Order 2016.*

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                        BALLOT PAPER
                     Front of ballot paper

                 (NAME OF COUNCIL) - (NAME OF WARD)

   (Number to be elected) of the candidates listed below will be elected.
   You can make as many or as few choices as you wish.

   Put the number 1 in the voting box next to your first choice.
   Put the number 2 in the voting box next to your second choice.
   Put the number 3 in the voting box next to your third choice. And so on.

   ┌──────────────────────────────────────────────────────────────┐
   │ ANDERSON Hans                                                  │
   │ 57 Easter Road, Anytown              ☆           [      ]      │
   │ Rowan Party                                                    │
   ├──────────────────────────────────────────────────────────────┤
   │ CRANSTON Helen                                                 │
   │ 912 Main Street, Anytown             ★           [      ]      │
   │ Beech Party                                                    │
   ├──────────────────────────────────────────────────────────────┤
   │ FLEMING Douglas Martin                                         │
   │ 112 South Street, Anytown                        [      ]      │
   │ Independent                                                    │
   ├──────────────────────────────────────────────────────────────┤
   │ HAMILTON Flora                                    [      ]      │
   └──────────────────────────────────────────────────────────────┘
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In recent years there has been some discussion about the requirement for candidates' addresses to appear on ballot papers. Some people consider that, for reasons of security (both of candidates and their families), it would be better not to make private addresses available in this way. The argument has been made that, at a time of increasing concerns about security concerns, it could leave electoral candidates open to an unnecessary degree of risk.

This situation does not arise with ballot papers used for elections to the Scottish Parliament as candidate's addresses are not shown on the ballot papers. Addresses were removed from the Scottish Parliament ballot paper following concerns about the size of the paper. While there had been a long-standing requirement for candidates' addresses to appear on ballot papers in Westminster General Elections, this requirement was removed by the Political Parties and Elections Act 2009, following concerns about candidates' security.

We therefore propose that for future local government elections, candidates' addresses should not appear on the ballot papers or other electoral notices. A Returning Officer will be responsible for ensuring that a candidate meets the requirement for having an address within a local authority area on the nomination paper. They will then be required to publish a statement to that effect. This is in line with practice for Scottish Parliament elections and will provide improved security for candidates and consistency across both sets of elections.

QUESTION 8: Do you agree that candidates' addresses should not be required to appear on ballot papers for local government elections?

QUESTION 9: Do you have any other comments to make on this issue?

4. Local Government Election Ballot Papers: List Order of Candidates' Names

Background

This issue concerns the order in which candidates' names appear on the ballot papers at local government elections. The Scottish Government would like to consider whether a different system of ordering candidates' names might improve fairness. (Please note that the following proposals apply only to local government elections. There is no suggestion of making changes to the ballot papers used in Scottish Parliament elections).

At present, electoral regulations throughout the UK require that the names of candidates are listed on the ballot paper alphabetically, by surname. This practice is also widely used in elections overseas. However, it has been suggested that alphabetical listing discriminates against those candidates with surnames starting with letters towards the end of the alphabet. It is argued that being further down the paper puts candidates at an immediate disadvantage.

This is often referred to as the 'list order effect' and it is particularly noticeable in elections which use the STV[6] voting system, as is the case with Scotland's local government elections. Under STV, instead of just being asked to put an 'X' against one candidate, voters are invited to number the candidates in order of preference (1, 2, 3, 4 etc.). If two or more candidates from one political party are on the same ballot paper, it is often the case that the one higher up the list is more likely to get a '1' (first preference) than their own party colleagues whose names appear lower down the ballot paper. This is likely to be because voters look down the ballot paper for the party they wish to support and then number those candidates in the order they find them. Therefore, a candidate named 'Aardvark' is likely to receive more first preference votes than one named 'Zebra'.

For this reason, many candidates feel that their chances of being elected are adversely affected by the alphabetical ordering system. Several ideas have been put forward to try and mitigate the list order effect, including the following:

a) Grouping candidates on the ballot paper by party.

b) Random ordering, e.g. where candidates have their position on the ballot paper determined by lottery.

c) A combination of a) and b) with candidates grouped by party and where there is more than one party candidate on the ballot paper, the party group position is determined by lottery.

d) Candidate name rotation. This involves printing multiple versions of each ward ballot paper, with candidates' names ordered differently on each version.

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[6] 'Single Transferable Vote'

Proposals

There are different forms of candidate name rotation. For example, under the system known as 'Robson Rotation', the number of versions of each ward ballot paper is equal to the number of candidates in the contest.

The table below gives an example of a rotational candidate ordering system. In this example, there are 5 candidates (A to E) standing in this ward.

Ballot Paper: Version 1	Ballot Paper: Version 2	Ballot Paper: Version 3	Ballot Paper: Version 4	Ballot Paper: Version 5
Candidate A	Candidate E	Candidate D	Candidate C	Candidate B
Candidate B	Candidate A	Candidate E	Candidate D	Candidate C
Candidate C	Candidate B	Candidate A	Candidate E	Candidate D
Candidate D	Candidate C	Candidate B	Candidate A	Candidate E
Candidate E	Candidate D	Candidate C	Candidate B	Candidate A

Under the traditional, alphabetical ordering system, a single ballot paper would need to be produced showing the 5 candidates in alphabetical order (as in Version 1, above). However, in this example of a rotational system, 5 different versions of the ballot paper are produced. The essential element is that each candidate's name appears an equal number of times in each position on the ballot paper.

While a system of rotation has its attractions, some commentators have pointed to possible difficulties with having multiple versions of each ballot paper. There would be a number of potential difficulties, including the following:

- Print Costs – multiple versions of ballot papers would give rise to higher print costs and more time would be needed for ballot paper proofing work. Some of this effort could be reduced if electronic voting machines were used in polling places (see next section: Innovative voting methods for local government elections).

- Vote counting – the electronic vote-counting system used in council elections would require new software and a lot of testing. This would have a significant cost in terms of time, money and other resources.

  Voter Confusion – most importantly, any proposed change to the electoral system must be assessed in terms of how it impacts on voters. There are concerns that moving away from alphabetical ordering may also lead to additional difficulties for those who have difficulty reading, due to visual impairment or for other reasons.

Alternatively, candidates can be ordered in a random fashion on ballot papers and there are different ways to do that. A simple alternative to the current system is to have two versions of each ballot paper, one in which names are in alphabetic order (A-Z) and the other in which names are ordered in reverse alphabetic order (Z-A). The example below shows how an example of this would work.

Ballot Paper: Version 1	Ballot Paper: Version 2
Candidate A	Candidate E
Candidate B	Candidate D
Candidate C	Candidate C
Candidate D	Candidate B
Candidate E	Candidate A

Half of the ballot papers issued would be Version 1, and half would be Version 2. These simpler systems of rotation would have fewer of the difficulties set out above. They would be easier to explain to voters and would have less risk of voter confusion. In this way, they could be a more proportionate response to the list order effect.

QUESTION 10: The Scottish Government would welcome views on this issue.

- Do you agree that, in order to counteract the list order effect, a change should be made to the way in which candidates are listed on election ballot papers?

- If so, what form of new system would you favour: rotation; randomisation; alphabetical-reverse alphabetical? Any other?

QUESTION 11: Do you have any other comments to make on this issue?

5. Electronic voting

Background

The Scottish Government is committed to improving its online services and as part of the Digital Strategy for Scotland has undertaken to explore and trial the potential of electronic voting solutions to:

- increase voter participation;
- provide voters with choice and flexibility over how they vote;
- reduce the costs of elections;

- support the rotation of candidates' names on ballot papers; and
- reduce the number of rejected ballot papers.

The way in which people vote – on paper and mainly in local polling stations – has remained largely unchanged for over 100 years. In contrast, the way that citizens interact with both private and public organisations in other aspects of their lives is increasingly based on digital technologies. For example:

- internet shopping and banking;
- mobile phone applications for travel on buses or as aircraft boarding passes;
- touchscreens at supermarket automated checkouts and for travel tickets.

The Scottish Government would like to explore options for introducing innovative voting methods.

The local government elections held in May 2017 had a turnout of 46.9% across Scotland. 73% of votes were cast in polling stations and 27% were postal votes. Returning Officers for each local authority have to review any doubtful votes and across Scotland almost 2% of votes were rejected because the voters had not completed their ballot papers correctly. For example, a voter might have placed "X" against 3 candidates instead of marking a preference 1, 2, 3 against the three candidates they wished to vote for.

Since the introduction of STV in 2007, votes cast at the Scotland-wide local government elections have been counted electronically due to the complexity of the STV system and the length of time and amount of manpower it would take to count manually. Electronic counting involves scanning all ballot papers, manual review of ballot papers the electronic system cannot process, and calculation of the election results. There is potential to build on the established electronic <u>counting</u> technology by providing voters with ways of <u>voting</u> electronically. This could have a range of benefits:

- Electronic voting mechanisms may assist groups of people who might find voting in STV elections challenging. For example:

     o Electronic voting can include checks to prevent voters accidentally filling in their ballot papers in a way that makes them invalid. This could have helped to ensure that the 2% of voters whose votes were not counted in the 2017 elections would be assisted to ensure their votes were cast correctly.

     o People with visual impairments can utilise voice-activated interfaces, making it potentially easier to vote than on paper.

     o People whose first or preferred language is not English could choose to have voting instructions presented electronically in another language, including British Sign Language.

     o Armed forces personnel stationed abroad might find this a more practical way to vote than by postal or proxy vote.

- The need to print and transport over 4.5 million paper ballots could be substantially reduced, saving money and reducing both carbon emissions and waste.

- Councils would need fewer staff to support local government elections, particularly at counting centres.

- Electronic voting might reduce or avoid the need to close schools on polling day.

- It may be possible to save money in the overall costs of setting up and running electronic counts by reducing the need to scan and review ballot papers.

- If rotation of candidates' names on ballot papers is introduced (see earlier section: Local government election ballot papers – list order of candidates' names) the use of electronic voting machines in polling places would help mitigate the additional proofing and printing work.

Electronic voting is already used widely internationally, for example in India, the USA, Canada, and Australia. In Europe, Estonia and Belgium use electronic voting routinely and many other countries, including the Netherlands, Switzerland, Spain, France and Norway have trialled it or are considering doing so.

Electronic voting in polling places using voting machines is the most widely used method and a large number of countries worldwide use this for local and national elections. These have mostly been successful, with countries such as India now using voting machines nationally and adoption continues to rise.

Internet/online (or "remote") voting, remains relatively uncommon for local or national government elections, with Estonia being one of very few countries that offers remote voting as an option for its elections. A number of countries including Australia, Switzerland and Romania as well as a few US States provide remote voting facilities for military personnel stationed abroad or for voters with disabilities. Remote voting is being considered or piloted by a large number of countries for local elections and is already in use in the UK for some community council elections. However, concerns about the security of online voting systems and the potential for voters being coerced have so far limited its adoption.

Proposals

The Scottish Government plans to trial innovative electronic voting methods and would welcome views on what means of electronic voting might be considered. At this early stage, the Scottish Government wishes to explore whether voters might be offered a choice of voting method, which may still include an element of paper based voting, i.e. postal voting, as well as electronic voting.

There are two main ways in which votes could be cast electronically:

Electronic voting machines

- Voting machines are touchscreen devices, similar to ticket machines at railway stations or supermarket automated checkouts.
- This type of electronic voting is increasingly common worldwide, including in the USA, India and Belgium.
- Voters are asked to present some form of identification or one-use voting "token" at the voting machine – perhaps their poll cards – and are then presented with an electronic (on screen) ballot papers. A voter then selects votes for by simply touching a box (or boxes) alongside a candidate's name. When the voter is happy with their selection(s) they touch a confirm button to submit their vote.
- Some voting machines can print a paper receipt that confirms that the vote has been received.
- Voting machines can be voice-activated for visually impaired people.
- They can also include options to have voting instructions presented in a different language, including British Sign Language.
- Voting machines could be made available in a wide range of locations and would not necessarily need located in traditional premises such as schools.
- It might be possible for voters to cast their votes at any voting machine rather than having to go to a designated polling place in their council area.

Internet and mobile phone voting

- Internet or online voting would mean voters could cast their vote from a PC, laptop or mobile phone.
- This type of voting is used in Scotland already for some community council and other elections, e.g. trade unions and boards of various bodies.
- However, worldwide it is still relatively uncommon for local or national government elections, though around 15 countries worldwide have, or have trialled, internet voting. The most successful example is Estonia.
- Typically, internet voting systems require voters to register in advance in order to be able to vote online. In addition, for security reasons, the voter might be asked to specify the device e.g. PC, laptop or mobile phone they will use for voting. It would be possible for the voter to change this.
- Typically, once polls are open, the voter receives a message inviting them to vote using a special secure link and security information they were provided with on registration.
- Internet voting could be more convenient for many voters and would potentially allow polls to be "open" for a longer period. Countries such as Estonia allow voters to cast their votes over a period of 7 days, though internet polls close 4 days prior to Election Day.
- Ensuring the security of internet voting and public confidence in it would be extremely important.

QUESTION 12: Voting Machines

- Would you be happy to use an electronic voting machine in a polling place instead of a traditional ballot paper?

- Would you like voting to be possible on more than one day?

- Would you like to be able to vote at any polling place in Scotland?

- Do you have any other comments?

QUESTION 13: Internet and Mobile Phone Voting

- If internet or mobile phone voting was available, would you choose to use that rather than vote at a polling place or by post?

- If internet or mobile phone voting was available, would you be more likely to vote?

- Would you like voting to be possible on more than one day?

- Do you have any other comments?

6. Boundary Reviews

Background

Elections to the Scottish Parliament are run on the basis of constituencies and regions, while elections to local government are run on the basis of wards. Periodic reviews of the boundaries of Scottish Parliament constituencies and regions, and of and local government electoral arrangements (ward boundaries and councillor numbers), are carried out by the independent Local Government Boundary Commission for Scotland. Whilst the Commissioners are appointed by Scottish Ministers, the Scottish Government does not have any direct involvement in the day-to-day running of the Commission or in how the Commission's work is carried out.

More information about the Commission and its work can be found on its website at:

http://www.lgbc-scotland.gov.uk/.

The Commission is also responsible for carrying out periodic reviews and boundaries of council areas, as well as ad hoc ("administrative") reviews of council area boundaries and electoral arrangements where the Commission thinks appropriate, or in response to requests from Ministers or stakeholders. This consultation does not cover such reviews, and only seeks views in respect of periodic reviews of Scottish Parliament constituencies and regions and of local government electoral arrangements.

Council electoral arrangements

The Local Government Boundary Commission for Scotland has been responsible for reviewing council boundaries and electoral arrangements in Scotland since it was established by the Local Government (Scotland) Act 1973. It is an independent, non-political, body which is responsible for reviewing and making recommendations for:

- the overall number of councillors in each council and number of councillors in each ward;
- the number of wards for council elections and their boundaries; and
- the extent of council areas.

The Commission is required to review the electoral arrangements of each council area at intervals of between 8 to 12 years. There have been 5 Scotland-wide council reviews since 1974, the most recent of which was completed in 2016. These reviews are substantial pieces of work and typically take around 2 years to carry out.

When reviewing electoral arrangements, the Commission is required to make decisions in the interests of effective and convenient local government, and to take account of the following factors:

- within each council, each councillor should represent the same number of electors as nearly as may be (known as parity, this is the over-riding factor);
- local ties which would be broken by making a particular boundary;
- the desirability of fixing boundaries that are easily identifiable; and
- special geographical considerations.

Scottish Parliament constituency and regional boundaries

The Local Government Boundary Commission for Scotland is also responsible for reviewing the constituencies and regions of the Scottish Parliament and making recommendations to the Scottish Ministers. This responsibility was only recently transferred to it from the Boundary Commission for Scotland under the provisions in the Scotland Act 2016. The Boundary Commission for Scotland, which shares the same secretariat as the Local Government Boundary Commission, remains responsible for recommending UK Parliament constituency boundaries.

The Scottish Parliament electoral system requires that there should be 73 constituencies for the election of constituency MSPs and 8 regions for the election of 56 regional MSPs, with each region comprising a number of whole constituencies.

The Commission is required to conduct electoral reviews of Scottish Parliament boundaries at intervals of between 8 to 12 years. When the Scottish Parliament was formed in 1999, the constituency boundaries were the same as those used at that time for UK Parliament elections. However, that link was broken following the Fifth Periodical Review of UK Parliamentary Constituencies, which reported in 2004, when the number of UK Parliamentary constituencies in Scotland was reduced to 59. There has only been one Scotland-wide review of Scottish Parliament constituencies. That reported in 2010.

When reviewing Scottish Parliament constituency boundaries, the Commission is required to take account of the following factors:

- the boundaries of council areas;
- the electorate of a constituency, which must be as near parity as is practicable;
- any special geographical considerations that may apply to a particular area; and
- inconveniences arising from alterations to constituencies, and local ties that would be broken by such alterations.

For regional boundaries, the Commission is required to take account of the following factors

- that each constituency is contained within a single region; and
- that the size of the electorate of each region must be as near to that of the other regions as is practicable, while having regard to special geographical considerations.

Proposal

Rolling reviews of local government electoral arrangements

Reviews of council electoral arrangements currently take place every 8 to 12 years with all council areas being reviewed at the same time. It has been suggested that there could be advantages if, rather than reviewing all areas at the same time, a number of council areas could be reviewed each year or period of years.

This would allow for the ward boundaries and councillor numbers within a number of council areas to be reviewed in a planned process. For example, rather than having a single review of all 32 council areas in Scotland every 8-12 years, reviews would start and finish at different times, perhaps 2 or 3 a year, with the aim of reviewing all 32 local council areas within a set period.

Conducting reviews in this way could help deliver a more locally-focussed approach than the existing system of nation-wide reviews and so, for example, secure greater involvement by community interests in the reviews process. Rolling reviews may also help facilitate the work programme of the Commission. A possible disadvantage of rolling reviews is that it may be more difficult to control the number of councillors at the national level, as there would be less opportunity to consider councillor numbers in the round.

Another possible disadvantage would be that there would no longer be the same approach taken across the whole of Scotland at the same time, although the framework would be the same.

We are seeking views on the principle of moving to a rolling programme, rather than the detail of how the reviews should be scheduled.

We are not proposing moving to rolling reviews for Scottish Parliament boundaries as any change to a Scottish Parliament constituency will impact on those around it. Therefore a rolling review process is not feasible. A rolling system is possible for

council wards because any changes are restricted to within a single council area, with no impact on other council areas.

QUESTION 14: Do you think that we should move to a rolling programme of reviews of local government electoral arrangements?

Independence of boundary reviews

Background

Due to the way that the boundary review procedures have developed over the years, there are significant differences in the role of Scottish Ministers in the different processes. In particular, the review process for council electoral arrangements, which was established by the Local Government (Scotland) Act 1973, allows for significantly more Ministerial involvement than the Scottish Parliament process, which was only established in 1999, and updated in 2004.

The Scottish Parliament's Local Government and Communities Committee, in its report on the Commission's Fifth Periodic Reviews of local government electoral arrangements, said that it made sense to look afresh at the parliamentary procedures for implementing changes. It also recommended that the Scottish Government and the Commission should work together with a view to undertaking a more fundamental review of the processes.

Where the Commission has reviewed the electoral arrangements for a council area, it is required to submit to the Scottish Ministers proposals for change or a notification that no changes for that area are proposed.

The Scottish Ministers may reject the Commission's proposals, accept them in full or accept them with changes. Once the Scottish Ministers have made their decision and laid the necessary legislation in Parliament, there is no opportunity for the Parliament to amend or reject the proposals.

As with reviews of council electoral arrangements, the Commission is required to submit a report to the Scottish Ministers following a review of Scottish Parliament boundaries. However, Ministers have no choice but to accept the review recommendations and are not allowed to amend them. Instead, Ministers must lay draft legislation giving effect to the Commission's report in the Parliament. The Parliament then has the opportunity to debate and either accept or reject the draft Order.

Proposal

To summarise, under the existing rules for reviewing local government electoral arrangements, Scottish Ministers have the power to implement, with or without changes, or not to implement, the Commission's recommendations. The Parliament has no substantive role in that process. In the case of Scottish Parliament boundaries, the Scottish Ministers have no power to amend the Commission's recommendations and Parliament has either to accept or reject (but cannot modify) those recommendations.

There are advantages and disadvantages to both systems and, in practice, both systems have generally worked well. The council procedure does have the advantage that Ministers can take into account a wider range of considerations when making their decisions than those that the Commission is required to apply in terms of the legislation. For example, when making its most recent recommendations on local government electoral arrangements, the Commission was not able to take into account that the Scottish Government was about to bring forward an Islands Bill for the Parliament's consideration which would allow for 1 or 2 member wards covering populated islands in Scotland. To allow for greater flexibility in the representation for islands communities, Ministers decided not to implement the Commission's recommendations for those council areas to be covered by the Bill. Instead it is expected that the Commission will be asked to undertake further reviews of council areas that include inhabited islands should the Islands Bill be passed. This will allow the Commission to make use of the flexibility which the Islands Bill is expected to give it.

If Scottish Ministers had not had the option of deciding against implementing the Commission's recommendations for council areas that include islands, the Commission's proposed changes for those areas would have had to be implemented in the full knowledge that further changes were likely to be made in the near future.

In response to representations from local communities, Ministers also decided against implementing the Commission's most recent recommendations in a small number of council areas. Without the flexibility provided by the current system those representations would not have been successful.

On the other hand it could be argued that the current process is lacking in transparency since the Parliament does not have an opportunity to consider proposed changes to council ward boundaries before they are implemented.

The advantage of the Scottish Parliament review procedure is that there is no opportunity for Scottish Ministers to amend the Commission's proposals but the Parliament can also reject the recommendations, if it is minded to do so. The disadvantage is that there is no opportunity to take into account any additional factors which might not have been known by the Commission when it was carrying out its review.

The Scottish Government is of the view that the same process should be used for Scottish Parliament constituencies and local council wards and is therefore seeking views on the procedures that should be adopted.

QUESTION 15: Independence of boundary reviews

- Should Scottish Ministers be able to change the recommendations of the Local Government Boundary Commission for Scotland on Scottish Parliament constituencies and council wards?

- Should the Scottish Parliament be able to challenge the recommendations of the Boundary Commission on Scottish Parliament constituencies and council wards?

- Should the recommendations of the Commission be implemented without change?

- Please comment on your answer.

How many councillors should wards have?

Background

At present the Local Governance (Scotland) Act 2004 requires that each council ward must have 3 or 4 councillors. This has been the position since the introduction of the Single Transferable Vote system for local government elections in 2007.

The Scottish Government's Islands Bill, which is currently being considered by the Scottish Parliament, will if passed allow the Commission to recommend the creation of 1 or 2 member wards in council areas that include inhabited islands. The purpose of this change is to enable the Commission to take better account of islands communities when formulating recommendations, and to reflect islands' special geographical circumstances. However, this would not change the requirement for wards in council areas without inhabited islands to have 3 or 4 councillors; nor would it allow wards in any council area to have 5 councillors.

Proposal

It has been suggested that council wards should, in exceptional circumstances, be able to have 2 or 5 members, rather than the current requirement of either 3 or 4 members. This would apply to all council areas and would be in addition to the provision in the Islands Bill. The argument is that this would give the Commission greater flexibility to take account of community ties and local geography when reviewing ward boundaries.

This issue was raised last year when the Scottish Parliament's Local Government and Communities Committee was considering the Commission's Fifth Periodic Reviews of local government electoral arrangements and in the Scottish Government's response to those Reviews. This followed Ministers having decided not to accept the Commission's recommendations for changes to some council areas, in part because of concerns that some of the recommendations would cut across strong and long-standing local community ties. The Committee's Report noted (at paragraph 40) that it had heard evidence that the legislative requirement for 3 or 4-member wards made the process inflexible and more difficult to achieve electoral parity.

QUESTION 16: Should the Local Government Boundary Commission for Scotland be allowed the flexibility to recommend wards which have between 2 and 5 councillors, instead of 3 or 4 councillors as at present?

Chapter Three: Who Can Register and Vote

1. Extending the Franchise

Background

We are seeking views on extending the franchise (i.e. those permitted to vote) for Scottish Parliament and local government elections.

As is the case elsewhere, the franchise in Scotland is largely based on residence. Someone who lives in Scotland can vote in Scottish Parliament and in local government elections if they are over 16 years old and are:

- a British citizen; or
- a qualifying Commonwealth citizen[7]; or
- a citizen of the Irish Republic or European Union.

What this means is that there are other groups of overseas citizens resident in Scotland who are excluded from the franchise - namely, people who are not EU or Commonwealth citizens. So someone from, for example, Canada or Germany can vote in Scottish elections but someone from America or from Japan cannot. However, to a certain extent, this reflects the reciprocal agreements which we have with the EU and Commonwealth countries – in other words, their citizens can vote in our elections and our citizens can vote in theirs[8].

However, now that the Scottish Government has the power over the administration of Scottish Parliament and local government elections[9], some people feel that the franchise arrangements should be amended. There is a view that the current rules do not properly reflect contemporary circumstances and that linking citizenship with the right to vote is undemocratic. As citizens from a very wide range of countries come to live and work in Scotland, it can be considered discriminatory to deny the right to vote to resident immigrants who are neither EU nor Commonwealth citizens.

It can be argued that that it is undemocratic to give voting rights to some legal immigrants but not to others. It seems only just that everyone legally resident in Scotland should have voting rights, allowing them to influence government and parliamentary decision-making. Anyone who has the right to reside in Scotland and who might be paying taxes, who may own or rent a home and access the education, health and other public services should be entitled to vote in Scotland's elections.

As part of the process of looking at the franchise for Scottish Parliament and local government elections, the Scottish Government is aware that the Scottish Parliament's Equalities and Human Rights Committee is currently taking evidence on

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[7] Those Commonwealth citizens who have the right to enter and remain in the UK.

[8] The 1992 Maastricht Treaty imposed reciprocity inside the European Union concerning voting rights in local elections. This already existed for European elections.

[9] Arrangements for elections to the Scottish Parliament were devolved to the Scottish Parliament and Ministers by the Scotland Act 2016.

the issue of prisoner voting. This is in relation to Scottish Parliament elections and evidence is being taken from a wide range of witnesses with expertise in justice and elections. We will respond in due course to any recommendations the Committee makes and on the UK Government's proposals to resolve the 2005 Hirst case, which were supported by the Committee of Ministers in December 2017.[10]

Proposals

Equality of treatment among the people of Scotland should be the underlying principle in all that we do. Therefore the Scottish Government proposes to extend the franchise in Scottish Parliament and local government elections.

We would welcome all views on this subject.

QUESTION 17: Do you agree that the franchise should be extended to include everyone legally resident in Scotland?

QUESTION 18: Do you have any views on how long should someone be resident in Scotland before they become eligible to vote?

QUESTION 19: Do you have any other comments to make on this issue?

2. Anonymous Registration

Background

There are two versions of the electoral register, the 'open register' and the full version. The open register is made available to anyone who wants to buy a copy whilst access to the full register is restricted and it is only used for:

• elections;
• preventing and detecting crime; or
• checking applications for loans or credit.

Individual electors can opt out of appearing on the open register (by contacting their local Electoral Registration Office). If you opt out of appearing on the open register, your name and address will still appear on the full register and it does not affect your right to vote.

Whilst access to the full electoral register is restricted, it is still available for public inspection, often in libraries or other public buildings in the local community. The register lists everyone who is registered to vote in the local area and public access allows individuals to question any entries on the register. However, in some cases, the availability of an individual's name and address could put them in danger and therefore there is the option of anonymous registration available to those who can demonstrate that they are at risk.

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[10] Details of the Committee of Ministers' decision can be found at:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d59d

The ability to register to vote anonymously has been available for over 10 years. The scheme is intended to protect those whose safety might be at risk if their name and address appeared in the electoral register, such as victims of harassment, stalking or domestic abuse. However, we are aware that some survivors of abuse have encountered difficulties with providing the required evidence or having access to the people who could attest about the risk to their safety.

The Scottish Government will therefore be placing before the Scottish Parliament proposals to make a number of changes to the anonymous electoral registration scheme. These changes are basically to allow lower ranked police officers to attest applications, to add additional professionals to the list of those that can attest applications, and to add some new court orders to the list of documentary information that can be used to support an application. The UK Government will be bringing forward similar legislation.

However, in addition to those proposed changes, the Scottish Government believes that everyone who is eligible to vote should have the opportunity to vote and that this opportunity must not be constrained by any genuine concerns that they might be open to abuse if their names and addresses were available on the electoral register. The Scottish Government is committed to a democracy where everyone has the right to be heard and to have their say on how they are governed.

We have worked closely organisations concerned about domestic abuse to take forward the implementation of Equally Safe, Scotland's strategy on violence against women and girls. However, victims of abuse also need continuing protection to reduce the risk of abuse re-occurring. Therefore, as part of our policy on reducing the risk of abuse to everyone, no matter in what form, we are considering how to increase the protection around the identity of electors who may be at risk of abuse.

We are keen to ensure that any reforms balance:

- access to anonymous registration for those who need it;
- clarity and certainty for electoral administrators about who is eligible for anonymous registration;
- assurance for those who might be asked to attest to the risk to an individual's safety that they will not be subject to inappropriate administrative burdens; and
- the need to maintain the integrity of the electoral register.

The Scottish Parliament has legislative competence for electoral registration in relation to the register of electors for Scottish Parliament and local government elections in Scotland. However, responsibility for electoral registration for UK Parliamentary elections in Scotland will remain with the UK Government and Parliament. We will therefore work with the UK Government and other devolved administrations to ensure that we can together deliver reforms to anonymous registration that properly reflect and respect the differences in law and practice in Scotland and the rest of UK.

QUESTION 20: Do you think that we should make it easier for individuals who may be at risk from any form of abuse to register anonymously, whilst maintaining the integrity of the electoral register?

If this is an area in which you are particularly interested, we would welcome your views on our more detailed proposals. These proposals can be found in the supporting document on anonymous registration.

3. Should Electors be able to Vote More Than Once at Local Government Elections?

Background

The Scottish Government has, over time, received correspondence from members of the public raising concerns about the potential for owners of second homes to register and vote twice, for their main residence address and their second home address.

Current legislation on local elections allows for an individual to register and vote in more than one local council area, but it is against the law to do so at any other election or referendum. However, there is always the risk that someone will vote twice in other types of elections if they are registered in two places.

The Electoral Commission's recent report "Electoral registration at the June 2017 UK general election" also identified this concern and recommended that options to reduce the risk of double voting should be explored.

Residency

Decisions on residency are made on an individual basis, with the final decision as to who is eligible to register at an address resting with the Electoral Registration Officer for the particular area.

Under the existing electoral registration rules, an individual can register to vote at two, or more, different addresses if they are resident at multiple addresses and spend a significant amount of time at each. For example, second home owners can register at more than one address as long as they meet the residency requirement.

That said, an individual cannot register to vote at a dwelling that has been identified as a holiday home for council tax purposes.

The ability to register at more than one address has been the subject of court cases, including in the Scottish courts, which have confirmed that under the existing law an individual can be registered at more than one address and that the main determinant of residency should be where an individual's 'main business of life' is conducted. This means that an individual who has two different "lives" - such as a worker who works Monday to Friday in one place and returns "home" at the weekend - may be able to register at both their weekday and weekend addresses. The reasoning is that

since they pay Council Tax at both addresses they have an interest in the services provided in both locations.

All applications for new registration, or change of registration, are subject to comparison against other government databases to confirm the identities of the individuals. In addition, the registration officer will also carry out any necessary checks including, if necessary, requesting documentary evidence in order to confirm that an applicant is resident at the address they have given and are not an absent owner. If such proof is not available, then the individual may be asked to attend a meeting with the registration officer before a decision is reached.

QUESTION 21: Should a voter be allowed to register in more than one local authority area?

Voting

No matter how many times an individual's name appears on an electoral register, it is an offence to vote twice in the same national election, such as at a Scottish Parliament election. However, you can vote in two, or more, local council elections, as the vote in each local council election is treated as a separate election.

The main reason for allowing registration and voting at more than one local council election is that, whilst an individual may not be resident at a property for the whole year, a property owner or tenant will still have an interest in a variety of local services which are funded through the council tax, which is payable on second homes.

It is proposed that local government elections should be the same as Scottish Parliament elections, in that each voter should only be able to vote once.

QUESTION 22: Do you agree that a voter should only be allowed vote once in local government elections in Scotland?

Chapter Four: Accessibility of Voting and Elected Office

1. Increasing the Representation of Under-Represented Groups and Making Voting More Accessible

Background

We know that, at both local and national levels, the diversity of Scotland's population is not properly reflected in structures of governance. For example:

- there are one million disabled people in Scotland (19% of the population) but this proportion is often not represented, particularly at local government level, in elected representation; and

- in spite of ethnic minorities making up 4% of Scotland's total population, minority ethnic communities have proportionately lower levels of representation throughout Scotland's political, governance and decision-making structures. In 2012, only 0.8% of local councillors came from a visible ethnic minority population.

The Scottish Government believes that fair, proportionate representation at both local and national levels is essential to achieving equality. It is important that those individuals and communities who are at greatest risk of lower representation are enabled to contribute to decision-making, in order to reach relevant solutions and build capacity and wellbeing.

In order to remove barriers to elected office, the Scottish Government has taken a number of actions. Our Access to Elected Office Fund was introduced in February 2016 and provides grant funding to disabled people who are standing for selection and election in Scottish Parliament and local government elections. The funding is intended to help cover additional costs, for example for accessible transport or communications support.

The legislation for the Scottish Parliament and local government elections was also updated to ensure that any funding received from the Fund would not count towards the maximum amount a candidate can claim as part of their spending limits. We will carry out an evaluation of the Fund and make any necessary improvements. In looking ahead to the next Scottish Parliament elections, our aim is to ensure that the Fund continues to work for disabled people who wish to participate in the governance of the nation.

There are also specific actions within the Scottish Government's British Sign Language (BSL) National Plan, 2017-2023. The National Plan sets out the Scottish Government's long-term goals for BSL in ten key areas including Democracy. It describes actions to help make progress towards these goals over the next six years.

In our Race Equality Framework, published in March 2016, the Scottish Government set a key goal of increasing participation and representation of minority ethnic individuals in governance and influence in decision-making at local and national

level. It included an aim of working with stakeholders and communities to put together a plan of action to increase diversity in elected office.

The Scottish Government has published a Race Equality Action Plan, which can be found at http://www.gov.scot/Resource/0052/00528746.pdf, outlining the actions we will take over the lifetime of this Parliament to realise the ambitions set out in the Race Equality Framework for Scotland.

QUESTION 23: What other action could the Scottish Government take to widen access to and remove barriers to voting and elected office?

Accessibility

On polling day, not everyone is able to attend their polling station to cast their vote. Proxy and postal voting help ensure that those who are entitled to vote are able to do so.

In addition, setting up a polling station in a way that manages the flow of voters well and helps make the voting process accessible to all is key to ensuring a positive voter experience. When setting up polling stations, electoral administrators are fully aware of the importance of having appropriate signage, parking provision and low-level polling booths and ballot boxes.

It is a legal requirement to provide a tactile voting device at every polling station. The tactile template is a device that allows someone who is blind or partially sighted to mark the ballot paper themselves once the details on the ballot paper have been read out, either by their companion or by the Presiding Officer.

Providing a good service to voters is a very important part of the job of the polling station staff and staff are on hand to offer any assistance required.

QUESTION 24: As well as the above arrangements, is there anything else that could be done to increase the accessibility of elections?

2. Improving Gender Balance in Elected Office

Background

Many campaigns have taken place to highlight the need for more women to take up elected office. Women make up 51% of Scotland's population, yet fewer than 35% of MSPs are women.

As things stand, it is of course the role of each of the political parties in Scotland to select the people they want to stand for election for their party. Each party will have its preferred selection process and it is up to it what methods it uses to select the candidates it wishes to support. Although neither political parties nor candidates are subject in themselves to the Equality Act 2010, they are encouraged to play a voluntary role in promoting equality.

Gender Balance

In the Scottish Parliament election in May 2016, 45 women MSPs (34.9%) were elected, the exact same proportion as in 2011. Therefore, despite optimistic predictions of improvement, the 2003 Scottish Parliament elections remain the high point of women's representation in Scotland at all political levels (at 39.5%).

Meanwhile, some progress has been made at local government level. At the elections held in May 2017, the proportion of female candidates increased to 30.5% from 22.8% in 2012 and 29% of councillors elected were women, compared to 24% in 2012. However, no council in Scotland achieved equal representation overall and 103 of the council wards across Scotland (29% of all council wards) returned no women councillors at all.

Some political parties have used gender quotas with the use of All Women Shortlists (AWS) in certain constituency areas (where an existing member was retiring, for example). This led to an increase in female candidates standing for election in the 2016 Scottish Parliament election. If all political parties were to take up this approach significant change would be achieved.

50/50 by 2020

The Partnership for Change *50/50 by 2020* campaign was launched by the First Minister Nicola Sturgeon in June 2015. The aim of the campaign is to encourage public, private and voluntary sector organisations to sign up to a voluntary commitment to work towards 50/50 gender balance on their boards by 2020.

The Gender Representation on Public Boards (Scotland) Bill, which was recently introduced to Parliament, sets an objective for listed public authorities that their boards should have 50% of non-executive members who are women. The bill covers certain public bodies, colleges and higher education institutions. The *Women 50/50* campaign advocated for at least 50% representation of women in Parliament, councils and on public boards and is supported by the First Minister and other party leaders, as well as other political figures.

QUESTION 25: How can the Scottish Government best support gender balance in those elected as MSPs or local councillors?

How to Respond

We are inviting responses to this consultation by 12 March 2018

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at
https://consult.scotland.gov.uk/

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted

before the closing date of 12 March 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

> Electoral Reform Consultation
> Elections Team
> Area 2 West
> St Andrew's House
> Regent Road
> Edinburgh EH1 3DG

Handling your response

If you respond using Citizen Space (http://consult.scotland.gov.uk/), you will be directed to the Respondent Information Form. Please indicate how you wish your
response to be handled and, in particular, whether you are happy for your response to published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.