

# Chapter Two: Who Runs Elections and How They Are Run

## 1. The Electoral Landscape

### Background

#### The Scottish Parliament

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>

#### The Scottish Government

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.

#### The Electoral Commission

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 Deputies) 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**

### Extending the role of the Electoral Management Board for Scotland (EMB) to Scottish Parliament elections

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](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<sup>4</sup>.

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.<sup>5</sup> 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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<sup>4</sup> 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.

<sup>5</sup> As amended by *The Scottish Local Government Elections Amendment (No. 2) Order 2016*.

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.**

<b>ANDERSON</b> Hans 57 Easter Road, Anytown <b>Rowan Party</b>		<input type="checkbox"/>
<b>CRANSTON</b> Helen 912 Main Street, Anytown <b>Beech Party</b>		<input type="checkbox"/>
<b>FLEMING</b> Douglas Martin 112 South Street, Anytown <b>Independent</b>		<input type="checkbox"/>
<b>HAMILTON</b> Flora		<input type="checkbox"/>

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<sup>6</sup> 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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<sup>6</sup> '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.

<b>Ballot Paper: Version 1</b>	<b>Ballot Paper: Version 2</b>	<b>Ballot Paper: Version 3</b>	<b>Ballot Paper: Version 4</b>	<b>Ballot Paper: Version 5</b>
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.

<b>Ballot Paper: Version 1</b>	<b>Ballot Paper: Version 2</b>
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 counting technology by providing voters with ways of voting 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:
  - 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.
  - People with visual impairments can utilise voice-activated interfaces, making it potentially easier to vote than on paper.
  - People whose first or preferred language is not English could choose to have voting instructions presented electronically in another language, including British Sign Language.
  - 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 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?