Agenda item	14
Report no	HC/6/18

THE HIGHLAND COUNCIL

Date: 8 March 2018

Report title: Electoral Reform in Scotland - Public Consultation

Report by: The Chief Executive

Purpose/Executive Summary

The purpose of this Report is to advise the Council of the Scottish Government's consultation for Electoral Reform for Scottish Elections. The consultation was opened on 19th December and closes on 12th March 2018. The report invites Council to agree the terms of a draft response to the 25 questions that are set out in the consultation paper.

1.   **Recommendation**

1.1   Council is invited to:

- Consider and review the answers to the 25 questions posed by the Scottish Government.
- Agree the Council's response and delegate the Election Manager to complete the online response tool.

2. Background

2.1   Over the past few years there have been a number of studies and reports into electoral reform carried out by bodies such as the Electoral Commission (EC), The Association of Electoral Administrators (AEA), as well as the Scottish Parliament. The Law Commissions of Scotland, England, Wales and Northern Ireland also undertook a joint consultation in 2015.

2.2   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. The Scottish Government believes that having control over both sets of elections opens up new possibilities for a democratic renewal.

2.3   The Consultation is broken down into four chapters.

- How Often Elections Should Be Held
- Who Runs Elections And How They Are Run
- Who Can Register And Vote
- Accessibility of Voting And Elected Office.

The consultation poses a number of questions regarding length of both local government and Scottish Parliament terms but goes much further with questions about the role of the Elections Management Board (EMB), on the methods of voting, ballot papers, Boundary Commission reviews and the number of councillors per ward.

2.4   The Scottish Government has identified a number of specific proposals within the consultation and seeks views upon these proposals.

2.5   The Election Manager met with Group Leaders to consider the Consultation and invited all Groups to submit detailed comments. The draft response at Appendix One incorporates a number of these additional comments.

In addition Ward Managers have circulated the link to the consultation to Community Councils. Individuals are also invited to respond if they wish.

3. How Often Elections Should be Held

3.1   In Scotland local government elections and Scottish Parliament elections are usually held every four years. 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.

3.2   It is well established that electoral clashes should be avoided. In 2007 there was an unusually high number of rejected ballot papers when the Scottish Parliament and local government elections were held on the same day. Following the UK Parliament General Election in June 2017 there is now a potential clash of local government and UK General Elections in May 2022. The Scottish Government is aware of the potential clash and has indicated that it will, if necessary, seek Parliament's agreement for appropriate action.

3.3   The Scottish Parliament has had discussion around finding a permanent solution to term lengths and with the consultation the Scottish Government is seeking to take the opportunity to plan a coherent and durable election cycle and consider the most appropriate term lengths in light of wider objectives such as increasing participation.

3.4   In the first section views are sought on the length of terms for the Scottish Parliament and local government. The consultation offers two options of four years and five years. It is considered appropriate that both institutions enjoy the same term length. In their response COSLA have indicated that a five year term would avoid electoral clashes in the future and would help to establish clarity and continuity for the electorate. It is proposed that the Council express a preference for a five year term.

4.   Who Runs Elections and How They are Run

4.1   The first section seeks views on extending the role of the Electoral Management Board and the Board's Convener to cover Scottish Parliament elections.

4.2   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." The May 2012 Local Government elections were 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.

   The Council has benefitted from the consistency and guidance offered by the EMB in planning and conducting local government elections. The Council is invited to welcome their involvement in Scottish Parliament elections.

4.3   The second section considers the role of Returning Officers (RO) at Scottish Parliament elections. Under existing legislation the Returning Officers for Scottish Parliament elections are the respective Returning Officers appointed by local authorities for local government elections.

4.4   The reason for this approach is to ensure that neither Scottish Ministers nor the Parliament can have any direct influence in the appointment. As the appointment is on a personal basis and additional to their Council duties the practice has been to pay each RO a fee. The fee is a reflection not only of the personal contribution made by the RO but also recognition of the potential personal liability the RO may face if things were to go wrong.

4.5   The Consultation seeks views on three questions:-

   i) Should the Returning Officer's appointment for Scottish Parliament elections continue to be an appointment on a personal basis, independent from Scottish Government and local authority control?

   In their consideration both COSLA and the Association of Electoral Administrators have identified the need to ensure the independence of the RO from both the Scottish Government and the local authority. It is considered key that the RO continues to have sole legal responsibility for the conduct of the election and to be free from

influence, either direct or indirect, of political parties and/or elected representatives. Council is invited to endorse this view.

4.6 ii) Should the role of the Returning Officer become part of the job description of local authority Chief Executives?

The approach taken in Highland has been to appoint the Chief Executive as Returning Officer through the Council's Scheme of Delegation. In view of the need to maintain the independence of the RO it is not considered appropriate that the role become part of the job description of a local authority Chief Executive. COSLA have identified that the removal of the independence of the RO and making them an employee of the local authority has the potential to create significant legal complexities around issues of risk and liability. It is also recognised that in some authorities the role of Returning Officer is one undertaken by a Director or Head of Service.

4.7 iii) Do you have any other comments or suggestions about who should have the role of Returning Officer or how Returning Officers should be paid?

This issue has attracted significant press coverage and was the subject of consideration by the Parliament's Local Government and Communities Committee. The Committee's report recognised the high level of personal responsibility placed on ROs and acknowledged the hard work and commitment shown by them. The role of RO is a high profile, demanding and complex one. In acknowledging the need to retain a system of direct responsibility to ensure accountability the Committee recommended that 'all staff involved in elections should be remunerated appropriately' but the 'current system of payments to ROs should end. COSLA has identified that 'a more transparent system (should be) established to address current concerns regarding the system of payments for RO duties. The Council is invited to agree that if payments are to continue a more transparent system is established.

4.8 In the third section the consultation considers issues in respect of ballot papers. The consultation seeks views on candidates' addresses no longer being required to appear on local government ballot papers. Such a measure would bring local government elections into line with Scottish and UK Parliamentary elections.

4.9 It appears that such a change is likely to find favour with other consultees as it will address any potential security concerns and create consistency across elections. However in discussion with Group Leaders a clear preference was stated for candidates to have the option of including their address on the ballot paper. The approach is perhaps a reflection of the situation in the Highlands which continues to see a significant number of candidates standing for election under an independent banner.

4.10 In the next question views are sought on the order in which candidates' names appear on the ballot paper. The Government believes that the current alphabetical list has the potential to discriminate against those candidates with surnames starting towards the end of the alphabet. This is described as the 'list order' effect and is considered to be most noticeable in elections which use the single transferable vote system such as local government elections..

4.11 The Government seeks views on the need to change the manner in which candidates are listed in order to counteract any list order effect. It should be recognised that the use of an alphabetical list of candidates is well established and has been the

convention across all elections for many years. It is important that if a review is undertaken it is across all election processes and not just local government elections. It is imperative that any proposal to move from the alphabetical list must avoid creating confusion on the part of the voter

4.12   The consultation seeks views on consultees' preferred new system and identifies options such as rotation, randomisation, alphabetical-reverse alphabetical. It does appear premature to invite preferences to be stated at this time. All of the suggested approaches have the potential to create issues in printing, deliverability, increased possibility of error and counting. It is imperative that all options are tested, evaluated and analysed.

4.13   It is proposed to trial electronic voting and the Scottish Government is seeking views on what methods should be considered for such a trial. The potential advantages offered by electronic voting include improving voter turnout, increasing accessibility and reducing the number of unintentional errors. Ultimately such a means of voting creates the prospect of reducing overheads for authorities such as Highland in the printing and distribution of ballot papers, number of polling stations and in undertaking the count. However work on such options is at a very early stage and it is critical that issues such as the integrity and security of the voting machines, voter identification and maintenance of the secrecy of the ballot are fully investigated and tested before any trial is undertaken.

4.14   Currently council ward boundaries and electoral arrangements are reviewed by the Local Government Boundary Commission for Scotland every 8-12 years. This means that all Councils' boundaries are reviewed at the same time. The Government is proposing to establish a programme of continuous, rolling reviews where a small number of Councils are reviewed each year with all 32 authorities being completed within a set period. The most recent work undertaken by the Boundary Commission led to concerns being expressed about its consultation process and methodology and that its conclusions needed to better reflect the local evidence that had been presented. A more locally sensitive process of review which took into consideration the full range of local circumstances would be welcomed.

4.15   Scottish Ministers currently have the power to implement, with or without changes, proposals for local government but currently have no powers to amend the Boundary Commission's proposals for the Scottish Parliament. The proposal from the Scottish Government is that the same process should be adopted for both set of reviews

4.16   One aspect of particular interest to Highland is the consultation's proposal that the Boundary Commission be allowed the flexibility to recommend wards which have between 2 and 5 councillors. A more flexible approach to the composition of wards is welcomed particularly in areas of super sparsity such as parts of the Highlands. It is important that the freedom to move away from the one size fits all solution is available where appropriate and Council is invited to welcome this proposal.

5.   Chapter Three - Who Can Register and Vote

5.1   The Scottish Government proposes to extend the franchise in Scottish Parliament and local government elections to include all legal residents of Scotland, including those who are neither EU nor Commonwealth citizens.

5.2   There are two versions of the electoral register, the 'open register' and the full version. Individual electors can opt out of appearing on the open register. In some cases the availability of an individual's name and address may put them in danger and in such circumstances they have the option of anonymous registration. At present applications require to be supported by senior police officers. The Scottish Government intends to bring forward legislation make changes to the scheme which will add lower ranked police officers and identified professionals to the list of those who may attest applications and to add some new court orders to the list of documentary information that can be used to support an application. In the consultation the Scottish Government affirms its position that everyone who is eligible to vote should have the opportunity to vote and that this opportunity must not be constrained by any genuine concern that they might be open to abuse if their details were to appear on the register. The Scottish Government is therefore proposing to increase the protection offered to electors who may be at risk of abuse and allow anyone who considers they need anonymous registration to keep themselves safe to be afforded this right.

5.3   Currently and peculiar to local government elections an individual is allowed to register and vote in more than one council area. It would be against the law to vote more than once in any other election or referendum. This is a potential issue for second home owners and students studying away from home. The consultation invites comments on restricting individuals to registration and in turn voting in only one local government election.

6.   Accessibility of Voting and Elected Office

In the final chapter the consultation seeks comments on additional steps that might be taken to widen access to voting and elected office, increase the accessibility of elections and best support gender balance in those elected as MSPs and local councillors.

7.   Response

7.1   The Council's draft response is set out in Appendix One.

Date: 22 February 2018

Author: David Sutherland Elections Manager

Background Papers:

Consultation on Electoral Reform: http://www.gov.scot/Resource/0052/00529431.pdf

Appendix One

1   Do you think the term length for the Scottish Parliament and local government should be:
      - 4 years?
      - 5 years?
      - Other length (please specify)?

      The Council supports a 5 year term for local government and Scottish Parliament.

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

      Adopting a five year term for all institutions will help to avoid electoral clashes in the future.

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?

      The Council agrees and supports the proposal.

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

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

      Yes. In order to secure the independence of the Returning Officer the appointment should be on a personal basis.

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.)

      No. This proposal does not address the need to secure the Returning Officer's independence and has the potential to create significant uncertainty around critical issues such as liability and risk.

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?

      The Council supports the view that all involved in elections should be remunerated appropriately. If the Returning Officer is to continue to receive a payment a more transparent system should be established.

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

      The Council believes that candidates should be afforded the opportunity to retain their addresses on ballot papers if that is their wish. The Council's experience is that in rural areas such as the Highlands electors appear to continue to place importance on candidates' connection to the local area and community links. Upon election the Council publishes all Members' addresses on its website.

9   Do you have any other comments to make on this issue (question 8)?

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?

The Council notes that the use of an alphabetical list of candidates is a long established convention across all elections. The electorate are familiar with this approach and if change is to be considered the review needs to encompass all elections.

It is premature to offer a considered view upon any alternative system of presenting the ballot paper. All proposed systems will create challenges and issues which have to be evaluated, tested and costed.

11 Do you have any other comments to make on this issue (question 10)?

-

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?

Whilst the Council acknowledges the potential benefits that moving towards a form of electronic voting may offer, particularly in areas such as the Highlands, it represents a significant departure from current practice with which the electorate are familiar. Before embarking on such a trial significant work requires to be undertaken to address issues such as security, voter identity and data storage.

The Council does not support conducting polling on more than one day.

The Council does not support allowing voters the opportunity to vote in any polling place in Scotland.

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?

These issues are directed towards individuals rather than local authorities which are undertaking the planning and conduct of elections.

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

The Council supports a programme of review which involves a more transparent consultation process and methodology and one whose conclusions better reflect the local evidence that had been presented.

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.

The Council does not believe Scottish Ministers should be able to change the recommendations of the Commission on constituencies and council wards. The Council does believe the Scottish Parliament should be able to challenge the Commission's recommendations on constituencies and wards. but does not believe recommendations should be implemented without change.

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?

The Council welcomes and supports the flexibility that this would offer for areas of super sparsity such as parts of the Highlands. It would not be appropriate to consider two member wards in urban settings. However the Highlands has too many rural wards covering huge geographical areas and this proposal would allow these wards to be split in to two wards each with two members.

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

Yes

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

This should be in line with the normal residency requirements for citizenship and for those who are considered to be 'ordinarily resident' in Scotland

19   Do you have any other comments to make on this issue (question 18)?
-

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?

The Council agrees that everyone entitled to vote should enjoy that opportunity free from the potential or threat of abuse.

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

No. The Council believes an individual should be registered only in one area.

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

The Council supports this principle.

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

The Council believes that for many people the challenges and demands of elected office are a barrier as these would lead to affordability issues and potential loss of associated employment rights. Councillors' remuneration is low in comparison with other positions which might carry much less responsibility.

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

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