

SCOTTISH GOVERNMENT – CONSULTATION PAPER ON ELECTORAL REFORM

CHAPTER ONE: HOW OFTEN ELECTIONS SHOULD BE HELD

1. Term Lengths

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)?

It is a matter for Parliament and the devolved administrations to determine election cycles but the AEA does see some benefits to introducing consistency to terms of office to the various different institutions.

There may be benefit in moving to a five-year cycle as the current four-year cycle means that over time, there will always be a clash with UK Parliamentary general elections being held on the same day. This results in combined polls, which can cause voter confusion and added complexity to the conduct of those polls.

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

See response to question 1 above, however it may be the timing of the poll in the year that should be considered, not just the length of the term.

Regardless of length of terms, clashes of elections should be avoided where possible.

The Gould Report made clear recommendations and advises the avoidance of having different elections on the same day.

CHAPTER TWO: WHO RUNS ELECTIONS AND HOW THEY ARE RUN

1. The Electoral Landscape

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?

Yes, it is important to provide consistency and the EMB role has a number of benefits for local government elections and would see no

disadvantage in this being extended to include Scottish Parliamentary elections.

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

None

2. Role of Returning Officers at Scottish Parliament Elections

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?

Yes. Any model introduced needs to consider and respect the independence of Returning Officers from local authority structures. The responsibilities should remain personal to the officers appointed, not fettered by their employment by local authorities.

The role of the Returning Officer was discussed as part of a Scottish Parliament's Local Government and Communities Committee, with evidence from the AEA, EMB, EC, SOLAR and a Returning Officer. All these parties were wholly agreed that it is key that the Returning Officer has sole legal responsibility, must not be directly or indirectly influenced by political parties or other elected representatives.

If the Returning Officer is not the Chief Executive, then it needs to be a senior member of staff to be able to access resources as needed and at critical times.

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.)

No. The role of Returning Officer needs to be independent from local authority structures in order to maintain integrity within the electoral process, free from political influence. The responsibilities should remain personal to the officers appointed, not influenced by their employing local authorities.

On a practical level, if the role and responsibilities of the Returning Officer comes under the officer's council employment and is subject to its terms and conditions, this will result in many practical issues. Some examples being around human resources, employment conditions, council policies, working time directive, job evaluation etc.

The primary interests should be those of the voter and ROs should not be directly answerable to elected representatives. It is better that such accountability is to the courts, providing greater transparency to the electorate.

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?

The appointment of Returning Officer is for each individual local authority to decide. In the majority of cases it is usually the Chief Executive, however in other cases it may be a Director, or Head of Law. The AEA sees no obvious reason to change this arrangement, particularly as one of the benefits accruing is that Returning Officers have easier access to the wider resources of the local authority when delivering elections.

The AEA believes that Returning Officers should be entitled to receive a personal fee at a rate that appropriately reflects the complex and high-profile position and the associated personal liabilities and additional workload that falls to the role.

The Returning Officer is a unique position set out in legislation, deliberately designed to ensure independence of this role so that it can be delivered without fear or favour. As an example, at UK Parliamentary elections, this independence is set out by Section 27(1) of the Representation of the People Act 1983.

The duties of the Returning Officer are defined in the appropriate legislation for each election type, but include the following:

- The publication of all relevant statutory notices relating to the election, for example the Notice of Election and the Statement of Persons Nominated/Notice of Poll (if a poll is needed);
- The nomination process;
- The production, dispatch and verification of postal votes;
- The identification, booking and equipping of polling places;
- The recruitment, appointment, training and remuneration of Presiding Officers, Poll Clerks and other polling staff;
- The secure transfer of ballot boxes from polling places to the count venue;
- The verification and counting of the votes;
- The declaration of the results;

- Holding for public inspection relevant documentation around the election process, including candidates' election expenses.

These duties are the personal responsibility of the Returning Officer who is answerable directly to the courts for any question or failure in these duties. The Returning Officer is not responsible to the local authority, its elected members or the Scottish Parliament.

As an independent role, the liabilities are that of the individual, not the local authority. This is demonstrated in that at UK Parliamentary elections, it is the Returning Officer who is subject to election petitions within Part III of the Representation of the People Act 1983. If they are guilty of any act or omission in breach of their official duty then they are liable on summary conviction to an unlimited fine. The fee can also be withheld for "poor performance" at the poll.

As a consequence of this role being independent, it would be inappropriate for any salary for a job which has been evaluated without these roles and responsibilities to be considered as appropriate remuneration for being the Returning Officer.

The Returning Officer role is a complex and high profile position and it would be completely wrong for that person to not be appropriately remunerated for taking on this role, the associated personal liabilities and additional workload.

It would not provide the independence or the transparency that the public would expect if the Returning Officer was accountable to the very people they were ensuring were freely elected by the electorate.

Any remuneration for any position should be regularly reviewed and evaluated and that of the Returning Officer should also be the case.

It would not be appropriate for this to be rolled into the job description of the Chief Executive, this then removes the independence of the role. It also removes the flexibility for local authorities to appoint other officers, which may be more suitable based on local factors.

3. Local Government Election Ballot Papers: Candidates' Addresses

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

Yes. In our 2017¹, report we made the following recommendation:

"The option for candidates to restrict publication of their home address should be extended to all polls."

In addition, in both our 2015² and 2016³ post-election reports, we made the following recommendation, which relates to a similar issue faced by individuals appointed as election agents:

"The UK Government should review the home address provision in relation to the nomination process for candidates acting as their own election agent."

It should be a similar process to the home address process for Westminster and/or the Scottish Parliament process.

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

A candidates' home address should not appear on any election literature or notice, not just ballot papers as indicated in question 8. In addition, the AEA believes that this arrangement should apply to all types of election and not just local government elections.

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

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?**

The AEA supports measures that, after full and proper evaluation, enhance public confidence in electoral systems, are deliverable and do not add unnecessary bureaucracy, cost and risk into the process.

However, it is noted that the proposals only apply to Scottish local government elections and not Scottish Parliament. On the basis that Scottish local government elections use the STV voting system, there is a danger that changing the order of candidates' names could create voter confusion if the list order is different for all other types of elections.

¹ [It's time for urgent and positive Government action - The AEA's review of the 2017 local government elections and the UK Parliamentary general election](#)

² [Elections and Individual Registration – The challenge of 2015](#)

³ [Pushed to the absolute limit: 2016 – the electoral year never to forget](#)

There are many practical problems and increased risks. Printing of the ballot papers, integrity checks and accuracy of ballot papers. Increased risk in counting, count staff confusion, explaining to candidates and agents, further confusion. Ensuring the software is properly managing the rotation and therefore producing a confident accurate count result. Increased questions/complaints from voters, for example where two postal voters in the same household get different looking ballot papers.

Additionally further research and assessment needs to be done to confirm if this is an actual issue that is worth the risk or could be better served with voter education.

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

There are issues with all of the various options in addition to those outlined in the consultation paper, such as printing, deliverability and increased risk of error from an administrators point of view. All will need to be carefully considered if randomisation as a principle is approved.

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

There are a number of practical issues that would need to be thoroughly tested and evaluated prior to any introduction.

These would include the following areas:-

- Printing – The ability of printers to be able to complete this job may be limiting.
- Proof checking of both the proofs from printers and the actual final production. This could potentially create a much harder task of checking ballot papers exponentially more difficult and expensive at a time of pressure for Returning Officer's staff.
- Voters with disabilities, while the tactile voting device may be suitable, great care would have to be taken by the Presiding Officer when assisting. Large print ballot papers would need to be done for each option if randomised ballot papers.
- The count – conducting a STV by-election would become very difficult forcing a reliance on electronic counts. Even electronic counts would be impacted, assurance that the system was interpreting the different rotations accurately.

Voter confusion could also potentially become an issue, e.g. two postal voters in the same household with different ordered ballot papers.

Full research and development as said would have to be done not only on the practicalities, but on the benefits, does the various options for changing the order necessarily reduce the bias?

5. Electronic 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?**

The AEA has no comment to make other than that the Association supports measures that, after full and proper evaluation, enhance public confidence in electoral systems, are deliverable and do not add unnecessary bureaucracy, cost and risk into the process.

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

The AEA's general view is that polling day should remain as a weekday but supports measures that, after full and proper evaluation, enhance public confidence in electoral systems, are deliverable and do not add unnecessary bureaucracy, cost and risk into the process.

In doing so, we would make the point that there are significant challenges associated with weekend voting and voting on more than one day, including:

- Resources – increased costs for staff and venue hire;
- Polling station venues – availability;
- Security – increased costs;
- Administration of elections – availability of sufficient polling station and count staff, ICT access, and count venues.

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

To enable electors to vote in any polling place in Scotland would be a huge logistical challenge and introduce a number of risks, but the AEA supports measures that, after full and proper evaluation, enhance public confidence in electoral systems, are deliverable and do not add unnecessary bureaucracy, cost and risk into the process.

- **Do you have any other comments?**

No further 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?**

Although the question is not appropriate for the Association to answer, the AEA urges that any proposal to introduce internet or mobile phone voting is fully and properly evaluated in order to ensure deliverability both on terms of cost and risk.

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

The AEA believes that the use of IT for voting should be considered but only utilised when the system(s) can be shown to deliver safe and secure results, deliver improvements on current paper-based systems, be cost-effective and demonstrate public confidence.

The use of IT for voting would replicate the way that some citizens generally conduct their business and interact with both private and public-sector organisations. This is particularly the case in terms of young people.

However, whatever system of voting is used would have to be secure and gain public confidence. In an international context, it should be borne in mind that several jurisdictions have moved away from the use of electronic voting systems for a variety of reasons and, most recently, in response to concerns about “hacking” and ransomware attacks, which are becoming more common.

Before pursuing any policy in this area, we believe the Scottish Government should seek detailed expert advice and guidance from GCHQ’s National Cyber Security Centre.

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

See response to question 12 above.

- **Do you have any other comments?**

The questions are phrased around making changes that would potentially increase turnout. Turnout may have a slight variation by changing the method of voting, but ultimately the turnout is driven by electoral demand. The Scottish Independence Referendum,

where engagement and political feeling was at a high, reached 84.6% turnout on average.

The Scottish Independence Referendum had its own challenges to integrity on the current system, internet or mobile voting does have a perception of being less secure and open to hacking or interference. On tight ballots, particularly referendums, this could drive a large number of potential or perception of fraud. This kind of mistrust in the system as stated above would be disastrous for our electoral system.

6. Boundary Reviews

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

There are both pros and cons to either having rolling reviews and all at the same time. If it was to be a rolling programme further discussions with the AEA, SAA and VJB staff on the timing of reviews, to ensure publication on the 1st December and on whether the councils within a VJB area should all be done at the same time. There are differing views, so there needs to be further work before a decision can be made.

There is suggestion that it may be unfair with some being done before a poll but others not.

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?**

No. It is important that the boundary reviews are conducted independently.

In our 2016 report⁴, we highlighted a similar issue relating to local authorities being responsible for the review of polling districts and polling places and reported on the conduct of polling district reviews and the influence political members have on the outcome of the polling scheme approved by local authorities. We reaffirmed our 2015⁵ recommendation: "The selection of 'polling places' should be the responsibility of independent Returning Officers, rather than of local authorities." The same principles apply in this case.

⁴ [Pushed to the absolute limit: 2016 – the electoral year never to forget](#)

⁵ [Elections and Individual Registration – The challenge of 2015](#)

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

Yes, any decision or recommendations made should be open to challenge. This will also allow the Boundary Commission the opportunity to justify the reasons for their recommendations. However, it is important that the boundary reviews remain independent.

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

Yes, although there should be procedures in place to allow for the Boundary Commission to review as necessary following any justifiable challenges made to allow for further consideration of any new issues that may not have been considered initially.

- **Please comment on your answer.**

Please see comments outlined above for question 15 under each bullet point.

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?

This is a matter for the Parliament and the devolved administrations to set the policy/legislation for the number of councillors per ward. However, the decision should be made with the consideration of in the interests of the voter, i.e. what will give the optimum degree of representation and also recognise the importance of local community boundaries, balanced with equality of representation.

From a local authority consideration, 5 councillors working together could cause practical issues in the management of elected members and for the public.

CHAPTER THREE: WHO CAN REGISTER AND VOTE

1. Extending the Franchise

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

It is a matter for Parliament and the devolved administrations to determine the franchise. AEA members will administer the process according to the legislation in force.

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

It is a matter for Parliament and the devolved administrations to determine the franchise. AEA members will administer the process according to the legislation in force.

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

No further comments.

2. Anonymous Registration

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?

The Association's general view is that changes could be made to make it easier for individuals who may be at risk from any form of abuse to register anonymously. At the same time the Association is also of the view the integrity of the electoral register must be maintained.

In April 2017 the Association responded to the UK Government's Policy Statement "A democracy that works for everyone: survivors of domestic abuse" which outlines their proposals and our response⁶ which may be of interest.

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.

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

Legislation currently allows for someone to register to vote more than once. However, it may be worth noting that there is currently no central way of checking if someone is registered and voted more than once at an election.

The UK voting system is largely based on trust and because of the ability of individuals to register more than once where they can

⁶ [AEA response to "A democracy that works for everyone: survivors of domestic abuse"](#)

demonstrate residence, there is a risk that electors can vote more than once when not entitled to.

It is a matter for Parliament and the devolved administrations to determine how the electoral system should be administered. However, the AEA supports measures that, after full and proper evaluation, enhance public confidence in electoral systems, are deliverable and do not add unnecessary bureaucracy, cost and risk into the process.

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

Legislation currently allows for someone to be registered at more than one address, which could be in more than one local authority area providing they spend a reasonable amount of time at the address they register at.

It is a matter for Parliament and the devolved administrations to determine. AEA members will administer the process according to the legislation in force.

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

It is a matter for Parliament and the devolved administrations to determine. AEA members will administer the process according to the legislation in force.

CHAPTER FOUR: ACCESSIBILITY OF VOTING AND ELECTED OFFICE

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

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

The AEA supports measures for the reforming of the voting system to encourage greater participation, after full and proper evaluation, enhance public confidence in electoral systems, are deliverable and do not add unnecessary bureaucracy, cost and risk into the process.

Brand new candidates accessing information particularly in advance of elections and the nominations stage. Independent candidates are disadvantaged, without the backing of parties, can be very difficult. Without handholding by Returning Officer staff, many would struggle

through the nomination process, but also could present an unfair view of assistance by others.

This leads to demonstrate that other categories of people may need support as well as disabled.

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

As part of our response to the "Political and Constitutional Reform Committee Consultation Paper on Voter Engagement" in January 2015⁷ we highlighted that if the option of "None of the above" was to be included on the ballot paper, it may be more of an incentive for electors to cast their vote either at a polling station or by post and it may increase turnout.

2. Improving Gender Balance in Elected Office

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

The issue of gender balance is not just an issue for the Scottish Government as it is an issue worldwide. The consultation paper highlights that some political parties introduced gender quotas with the use of all women shortlists in certain constituency areas in the 2016 Scottish Parliamentary election.

There is also international evidence that suggests the use of gender quotas in parliaments across the world is increasing, and over half of the world's nations use some form of electoral quota⁸.

However, it is a matter for Parliament and the devolved administrations to determine. AEA members will administer the process according to the legislation in force.

OTHER COMMENTS

Following on from the above comments in relation to any such reforms that are taken forward as part of evaluating the proposals, the following need to be considered:

⁷ [Political and Constitutional Reform Committee Consultation Paper on Voter Engagement in January 2015](#)

⁸ [Dalerup, D. for the Quota Project, About Quotas, 2009](#)

- Would the proposed reform(s) pose significant short or long term administrative difficulties to implement?
- Has the Scottish Government considered the voters' interests above all other considerations?

We would also ask that the Scottish Government ensure that any changes in legislation relating to elections are made well in advance of the polls in which the changes will take effect. In our 2016 report: ["Pushed to the absolute limit: 2016 – the electoral year never to forget"](#), we made the following recommendation:

"Except in cases of unforeseen emergencies and proportionate to the need, changes to election law should not be applicable to any elections within a six-month period from the date the legislation comes into effect."

In relation to any proposals to changes relating to electoral registration, a minimum of 12 months is given prior to the new provision(s) coming into force.

In addition, we would like clarification that the Scottish Government will guarantee to fully fund any new burden/initiative resulting from legislative reforms, and to fully engage with the electoral community in relation to practically implementing, developing and planning any new mechanisms or processes including the drafting of legislation.

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