

REPORT TO: POLICY AND RESOURCES COMMITTEE - 8 SEPTEMBER 2003
REPORT ON: DRAFT LOCAL GOVERNANCE (SCOTLAND) BILL : CONSULTATION
REPORT BY: ASSISTANT CHIEF EXECUTIVE (COMMUNITY PLANNING)
REPORT NO: 538-2003

1 PURPOSE OF REPORT

To provide a summary of the Draft Local Governance (Scotland) Bill and recommend a draft response to the consultation based on previous Council decisions and consideration of any legal and financial issues raised, and to request members to consider any further comments they may wish to make.

2 RECOMMENDATIONS

A draft response to the Draft Bill is set out for consideration in Section 7 of this report. This is based on existing Council policy around these issues and on officers' consideration of the legal and financial issues concerned. The Committee's views are requested on the issues which have not been previously considered.

3 FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report, although any changes arising from any enactment may have an impact on future budgets.

4 LOCAL AGENDA 21 IMPLICATIONS

There are no direct Local Agenda 21 implications in this report.

5 EQUAL OPPORTUNITIES IMPLICATIONS

The draft bill makes provision for lowering the age for standing as a Councillor from 21 to 18 and addresses issues around political restrictions and remuneration.

6 BACKGROUND

6.1 Draft Local Governance (Scotland) Bill

- 6.1.1 The Scottish Executive published its latest consultation paper on the Local Governance (Scotland) Bill on 10 July. Copies of the consultation document and the draft bill are available from Group Secretaries and in the Members' Lounge. The Draft Local Governance Bill follows on from the reports of the McIntosh Commission and the Kerley Working Group on Renewing Local Democracy as well as the white paper "Renewing Local Democracy - The Next Steps" which was submitted to the Policy and Resources Committee for consideration on 10 June 2002. Comments on the Draft Local Governance Bill are requested by 30 September 2003.

The Bill is also a direct consequence of the Partnership Agreement published on 14 May 2003 which made clear an Executive commitment to renew local democracy by:

- introducing for next Local Government elections the proportional Single Transferable Vote system of election;

- removing unnecessary political restrictions on standing for local authority election;
- lowering the age limit for local government candidates to 18; and
- establishing an independent remuneration committee for councillors

6.1.2 It is proposed that the Bill would be introduced to Parliament by the end of 2003, obtain Royal Assent by autumn 2004 to allow the Local Government Boundary Commission for Scotland's review of ward boundaries to begin before the end of 2004. The Remuneration Committee would be established before the end of 2004 and report its findings by the end of 2005. Work (including secondary legislation) on implementing and introducing pay, pensions and severance; revised election rules; training for elections staff and voter awareness campaign would be taken forward from the beginning of 2006 through to Spring 2007 prior to local government elections. The Draft Bill is in three parts. Part One on Local Government Elections; Part Two on Membership of Local Authorities etc; and Part Three on Miscellaneous and General.

6.1.3 The Bill provides for :

- the introduction of a Single Transferable Vote system for local government elections in Scotland;
- amendments to existing legislation to bring the conduct and administration of local government elections further into line with Scottish Parliamentary elections;
- changing the age for standing as a councillor from 21 to 18;
- the repeal of the legislation establishing a salary threshold for politically restricted posts within local authorities but retaining the provisions which identify particular posts as politically restricted;
- the amendment of current legislation so that Council employees have to resign on election as a councillor, rather than on nomination as a candidate;
- the reduction to three months of the period during which former councillors are able to take up employment with the Council after a period of service comes to an end. The current twelve-month period for politically restricted posts will be retained and will also apply to councillors who have been involved in the employment of council staff;
- the abolition of the current system of basic and special responsibility allowances and the introduction of a new system of remuneration, supplemented by a limited number of payments to reflect members' additional responsibility;
- powers to introduce a pension scheme for councillors to allow future service to count for pension purposes;
- a severance arrangement for councillors; and
- the establishment of an independent committee to be involved in deciding on detailed arrangements for, and a level of, the remuneration package for councillors.

Ministers will give specific direction to this committee, and will direct them to consider the role which councillors fulfill, the part-time commitment required of a majority of councillors, and the salary which they should attract; and the fact that the severance

arrangements should be a one-off scheme, available to cover a period before pension arrangements can be introduced and only in the run up to the next local government elections.

6.1.4 What Else is Happening?

Given there are a number of practical issues surrounding the measures in the Draft Bill, the Executive is establishing three independent working groups to examine these. Each will have a lifespan of around a year and will have an independent chair and small membership comprising key stakeholders who will be able to bring a degree of expertise to each of the groups. Groups are expected to seek views and evidence and they consist of:

- the Single Transferable Vote Working Group which will examine procedures to facilitate council elections being held using the Single Transferable Vote, of how multi-member wards will operate in practice, and will commission research and other information as required;
- the Councillors Remuneration Progress Group which will consider options for, and associated costs of, a new system of remuneration for councillors;
- the Widening Access to Council Membership Progress Group which will take forward work on making council membership attractive to a wider cross-section of the community within the current legislative framework

6.1.5 What Happens Now?

The consultation paper provides an opportunity to comment on how the principles are being enacted and to raise any major issues about their practical implementation. In order to address the latter the consultation paper asks a series of questions in regard to implementation which are addressed in the suggested response outlined in Section 7 below.

7. **A DRAFT RESPONSE**

7.1 **Bill Provisions**

The main provisions of the Bill with existing Council Policy in italics indicated below each provision are included within this section.

7.1.1 The introduction of a Single Transferable Vote system for Local Government Elections in Scotland

In response to the White Paper the Council took the view that the First Past The Post was the most suitable form of Electoral System for Local Government as it is best understood by the electorate and best retains the Ward/Member link. Failing this, the Alternative Vote System would be the best alternative as it also retains the Ward/Member link.

7.1.2 Amendments to existing Legislation to bring the conduct and administration of Local Government Elections further into line with Scottish Parliamentary Elections

In responding to the report of the Renewing Local Democracy Working Group the Council was of the view that Local Government elections should be held on a separate date from National elections in order that the issues relevant to each level of Government should be addressed separately at the relevant election.

7.1.3 Changing the age for standing as a Councillor from 21 to 18

The Council previously agreed that the age for standing as a Councillor should only be reduced if this is also done for MSPs and MPs to allow for consistency.

7.1.4 The repeal to the Legislation establishing a salary threshold for politically restricted Posts within Local Authorities but retaining the provisions which identify particular posts as politically restricted

The Council has previously agreed that the salary threshold for politically restricted posts should be abolished so that any restrictions are based on the duties of the post alone.

7.1.5 The amendment of current legislation so that Council employees have to resign on election as a Councillor, rather than on nomination as a Candidate

The Council took the view in its response to previous consultation on the Report of McIntosh Commission, that employees that stand for election should have the right to return to their post within a certain timescale if not successful.

7.1.6 Reduction to three months of the period during which former Councillors are able to take up employment with the Council after a period of service comes to an end. The current twelve month period for politically restricted posts will be retained and will also apply to Councillors who have been involved in employment of Council staff.

The Council previously agreed that the existing blanket ban on Councillors seeking employment with the Council within a year of leaving office should be repealed. A three month restriction should apply to politically restricted posts but no restrictions on other posts.

7.1.7 The abolition of the current system of basic and special responsibility allowances and the introduction of a new system of remuneration, supplemented by a limited number of payments to reflect members additional responsibility

The Council previously reaffirmed its position that the remuneration for additional duties should be decided locally by the Council from a global sum allocated by the Scottish Executive, and therefore opposed the suggestion of a national remuneration Committee.

7.1.8 Powers to introduce a Pension Scheme for Councillors to allow future service to account for pension purposes

The Council previously agreed that Councillors should have access to Local Government Pension Scheme if desired or to a scheme under which allowances would be pensionable as proposed in Wales but they should be able to opt out if they already have adequate pension provision.

7.1.9 Severance arrangements for Councillors

The Council previously agreed that Councillors in Scotland should have severance pay arrangement based on a formula included in the Draft Guidance on Members Allowance in Wales.

7.1.10 The establishment of an independent committee to be involved in deciding on detail the arrangements for, and the level of, remuneration packages for Councillors

The Council oppose this suggestion of a national remuneration committee.

7.2 **Consultation Paper Implementation Questions**

Listed below are the questions looking for any specific views the Council may wish to express on the proposed legislation.

7.2.1 Any Views regarding the practical implementation of STV.

The Single Transferable Vote system proposed to be introduced is to be based on wards of 3 to 4 members. A brief explanation of the system and a model election under STV is contained in Appendix A.

As regards practicalities officers are of the view that:

- The process is entirely different to the current system. Elected members, as well as staff, will require some form of training or briefing.
- There will be a need for voter education.
- 3 different voting systems on the same day will lead to confusion .
- Publicising the 3 systems could be quite complicated whereas now its fairly clear - one cross on each ballot paper.
- The local count will be difficult. In Belfast it takes two days and that's with 30 years experience of STV counts
- Confusion would be minimised if the elections were not held on the same day.
- It is not practical to hold the local count on the Friday following an overnight Scottish count. A new system and tired staff is a recipe for disaster. The only solution is to hold the local count on the Monday and Tuesday of the following week assuming of course that the Monday isn't the May day holiday as it was this year in which case it would be Tuesday and Wednesday
- Training in the new count procedures will be a prerequisite. Local government staff in Ireland would be the obvious persons to train staff here and possibly assist on the day of the count.
- There is an IT gap. We need a software system which will do all the calculations as the formula is quite complex. Everyone will need this so it should be developed on a Scotland wide basis .

Officers main concern is that if as at the present the Local Elections are combined with Elections to the Scottish Parliament then the Council will be operating two different electoral systems on the same day which will undoubtedly lead to confusion among the electorate.

At present the Council operates the AMS system alongside the traditional first past the post system. The message to electors is quite clear and simple to understand in all that is needed is one cross on each of the three ballot papers.

Combining AMS and STV would mean one cross on each of the Scottish Parliament Ballot Papers and then listing preferences i.e. first choice, second choice, third choice etc on the local paper. This will no doubt lead to confusion and an increase in spoilt papers.

Current Council policy is indicated under 7.1.1 above.

7.2.2. Any views on any particular election procedures which might be streamlined to ease implementation

There is potential for ballot papers to consist of 20 names or more and be bigger than A4. As the sort is vital in an STV count then it is recommended that Sorting staff stand whilst sorting as opposed to being bent double over a table. There should be two staff to each set of sorting racks so the sort is dealt with relatively quickly. Sorters simply sort. They should make no attempt to count. The count should be done by counters in full view of the Counting Agents. A double check of bundles should be carried out by checkers.

A similar system would work for the Scottish Parliament Election, both the first past the post and the list element.

7.2.3 Any views on the role of the Remuneration Committee

Members views are requested. Current Council policy is indicated under 7.1.10 above.

7.2.4 Any views on bringing Election Practices and Procedures for Scottish Parliamentary Local Government Elections further into line

Staff experienced few problems at the last election. The Scottish Count went particularly well with the new sort system being welcomed by candidates and staff. It was decided to number the candidates down the left hand margin of the ballot papers. This decision aided the sort process enormously. However, it is recognised that this will not be possible using STV as any numbers may cause confusion regarding the completion of ballot papers by the electorate

The harmonisation of the local and Scottish rules and regulations assisted greatly.

The training manual provided by the Electoral Commission was also useful as were the training sessions .

Current Council policy is indicated under 7.1.2 above.

- 7.2.5 Any views on whether it be appropriate for the Local Government Boundary Commission for Scotland to consider joint agreed proposals from two or more Local Authorities for changes to their Local Government areas – in particular to change shared boundaries or even merge their local government areas.

Members views are requested.

8. CONSULTATION

The Chief Executive and the Depute Chief Executive (Support Services) and Depute Chief Executive (Finance) have been consulted on this report.

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BACKGROUND PAPERS

Scottish Executive White Paper – March 2002
‘Renewing Local Democracy – The Next Steps’

Report to Policy and Resources Committee – June 2002 (Report No 500-2002)
Response to White Paper: ‘Renewing Local Democracy – The Next Steps’

APPENDIX A

The Single Transferable Vote

The Single Transferable Vote is a form of preferential voting in multi-member constituencies where the voter casts a vote by putting a 1 in the column next to their preferred candidate, a 2 for their second favourite candidate and so on. This allows voters to vote for as many or as a little number of candidates within and across parties as well as for independents. Given that there was an average of over 4 candidates per seat in the last Council elections in Dundee, ballot papers could potentially extend to as many as 16 possible candidates in a new electoral area electing 4 councillors.

The counting of votes in a Single Transferable Vote system is fairly complicated. However, in order to win every seat parties would have to gain around 85% of the vote. This is highly unlikely and in elections held under the STV system, for example in Northern Ireland, political parties tended to field candidates for less than the six seats that were available in individual constituencies.

Under STV voters can choose between candidates of the same party which means they could take into account factors which may cross party boundaries e.g. individual candidates' views on contentious issues such as abortion or Europe or the war in Iraq. As each constituency will be represented with more than one elected member likely to be from different parties, then voters are more likely to have an elected member from their particular favourite political party and could therefore choose the elected member which they wish to approach for help.

A quota is calculated which sets the number of votes a candidate must attain to be elected. This is, simply, the total number of votes cast, divided by one more than the number of candidates to be elected, plus one vote. By following this formula, no more than the required number of candidates can reach the quota.

Votes are counted according to the first preferences and any candidates who exceed the quota are elected. (Stage 1)

To decide which of the remaining candidates are elected the votes are transferred from candidates who have more than the necessary number to achieve the quota and from the candidate with the least number of votes. This means that where the first preferences of the voters were not able to be used to elect a candidate, their second preferences come into play. This process of transferring votes continues until the required number of candidates have attained enough votes to be elected. In one particular count witnessed by Officers of the Council in Belfast eleven stages were required and the count did not finish until 7.00 pm - a nine hour count to elect nine members.

The Single Transferable Vote is currently used in Northern Ireland for local and European elections.

The aim of the system is to give the voter the widest choice possible between candidates whilst eliminating, as far as possible, wasted votes (i.e. all votes which do not help to elect a candidate).

Because constituencies are multi-member, the number of seats in each one can vary, depending on natural boundaries, so that the artificiality of carving segments out of a city, or tacking odd bits of countryside on to a town to make up the numbers, can be avoided. In Ireland, constituencies elect three, four and five members. The Draft Bill proposes 3 or 4 member wards.

SINGLE TRANSFERABLE VOTE - A MODEL ELECTION

Our sample election uses a hypothetical 5 member ward of 50 electors. In this case there are 7 candidates from two political parties, Party A and Party B. The number of electors and the number of parties have been kept to a minimum for illustrative purposes only.

Stage 1 - Counting the Votes and Establishing the Quota

The Returning Officer verifies the ballot papers and identifies doubtful papers. In this case, two are marked with several crosses and are declared spoilt.

The Returning Officer then calculates the "quota" needed for election i.e. the smallest number of votes a candidate needs in order to be elected. To calculate the quota the Returning Officer divides the total number of valid votes (in this case 48) by one more than the number of members to be elected (in this case $5 + 1 = 6$) to make a total (in this case $48 \div 6 = 8$). The total is then rounded up to the next highest whole number (in this case $8 + 1 = 9$).

For this election the quota is therefore 9 votes.

Thereafter, the Returning Officer sorts and counts the ballot papers according to the candidates marked as first preference. Here we are concerned with 48 votes. First preferences for each candidate are represented by the No "1" marked by the elector against the candidates name. Votes cast are indicated in the diagram below and a sample ballot paper is attached.

| Candidates | Party | Stage 1 | Stage 2 | | Stage 3 | | Outcome |
|------------|-------|---------|---------|--|---------|--|-----------------|
| Erin | A | 3 | | | | | |
| Lance | B | 8 | | | | | |
| Peter | A | 15 | | | | | Elected Stage 1 |
| Rodney | B | 4 | | | | | |
| Shaw | A | 3 | | | | | |
| Todd | B | 6 | | | | | |
| Vann | A | 9 | | | | | Elected Stage 1 |
| Total | | 48 | | | | | |

Two candidates Peter and Vann have reached the quota of votes and are therefore deemed elected at Stage 1.

Stage 2 Transfer of Peter's Surplus Votes

Peter has 15 votes but only needs 9 to be elected. His surplus, the equivalent of 6 votes must be transferred ie he does not require 6/15th of his vote. All 15 of Peter's first preference ballot papers are examined and transferred each at a transfer value of 6/15th or 0.4 of a vote to the next available preference. In the case of any second preferences for Vann (who is already elected) the third preference is used. Peter is standing for Party A and therefore we can suppose that 10 of the 15 papers show a next available preference for Shaw and 5 for Erin. Shaw receives 4 votes (10×0.4) and Erin receives 2 (5×0.4) from the surplus of 6. The transfer of the surplus constitutes Stage 2 of the count and is illustrated below.

No further candidates have been deemed elected at this stage as undernoted:-

| Candidates | Party | Stage 1 | Stage 2 | | Stage 3 | | Outcome |
|------------|-------|---------|---------|----|---------|--|-----------------|
| Erin | A | 3 | +2 | 5 | | | |
| Lance | B | 8 | | 8 | | | |
| Peter | A | 15 | -6 | 9 | | | Elected Stage 1 |
| Rodney | B | 4 | | 4 | | | |
| Shaw | A | 3 | +4 | 7 | | | |
| Todd | B | 6 | | 6 | | | |
| Vann | A | 9 | | 9 | | | Elected Stage 1 |
| Total | | 48 | | 48 | | | |

Stage 3 - Exclusion of Rodney

As there were no further surpluses to be distributed, the candidate who now has fewest votes, Rodney is excluded and all his votes are transferred to the next available preferences of all those who voted for him. Rodney is standing for Party B so we can suppose that three of Rodney's votes passed to Todd and 1 to Lance. (The "transfer value" here is 1 as these votes have not been taken into consideration in any other totals).

Exclusion of that candidate constitutes Stage 3 of the count as undernoted:-

| Candidates | Party | Stage 1 | Stage 2 | | Stage 3 | | Outcome |
|------------|-------|---------|---------|----|---------|----|------------------|
| Erin | A | 3 | +2 | 5 | | 5 | Runner-up |
| Lance | B | 8 | | 8 | +1 | 9 | Elected Stage 3 |
| Peter | A | 15 | -6 | 9 | | 9 | Elected Stage 1 |
| Rodney | B | 4 | | 4 | -4 | | Excluded Stage 2 |
| Shaw | A | 3 | +4 | 7 | | 7 | Elected Stage 3 |
| Todd | B | 6 | | 6 | +3 | 9 | Elected Stage 3 |
| Vann | A | 9 | | 9 | | 9 | Elected Stage 1 |
| Total | | 48 | | 48 | | 48 | |

Lance and Todd on obtaining the quota are now deemed elected. Erin now has the fewest votes and therefore Shaw fills the last vacancy.

Apart from the three votes which Erin obtained in Stage 1, 45 of the 48 electors have been effective in helping to elect a candidate.

Comments

1. In this example only 2 parties are contesting the ward whereas in reality at least 5 parties will contest each ward.
2. Similarly only 7 candidates have been included. It is anticipated that in a 4 member ward with 5 parties, there will be at least 8 or 9 candidates.
3. Party A received 30 first preference votes (62.5%)
 Party B received 18 first preference votes (37.5%)
 Of the 5 seats, 3 went to Party A (60%)
 and 2 went to Party B (40%)

As members can see, proportionality has been achieved.

4. The actual calculations will be more complicated as the "valid vote" could be as much as 8,000 electors. (50% turnout of a 16,000 elector ward) and the quota would then be 1601.
5. More than 3 stages are usually required.
6. There are likely to be a large number of spoilt papers if this system is used in a combined Poll with the AMS system at Scottish Parliament Elections.

WARD 1**ANYTOWN COUNCIL**

| | Mark Order of Preference in Space Below |
|--|---|
| <u>ERIN</u> James Andrew (1 Beech Street) A | |
| <u>LANCE</u> David Walter (24 Woodview Place) B | |
| <u>PETER</u> Sandra Elaine (6 West End Park) A | |
| <u>RODNEY</u> Mitchell (34 Butcher Street) B | |
| <u>SHAW</u> James (44 Milebush Park) A | |
| <u>TODD</u> Ian Richard (17 Cyprus Avenue) B | |
| <u>VANN</u> Audrey (10 University Street) A | |