WEST DUNBARTONSHIRE COUNCIL

Report by the Chief Executive

Council: 25 February 2009
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Subject: **Scottish Government Consultation on Creation of a Chief Returning Officer for Scotland**

1.   Purpose

1.1   The purpose of this report is to advise of the Scottish Government's Consultation document on the creation of a post of Chief Returning Officer for Scotland and to seek the Council's views. A copy of the full consultation document has been issued to Members.

2.   Background

2.1   A number of key players are involved in the administration of elections in Scotland – these are:-

- **Returning Officers**
  Each of Scotland's 32 local authorities has a Returning Officer (RO) with a statutory duty for the administration of elections and answerable thereon to the courts. In most cases, the RO for local government elections will also be the RO for Scottish Parliament, Westminster and European Parliament elections. For European elections, one of the 32 Returning Officers is designated Regional Returning Officer by the Secretary of State. Tom Aitchison, Chief Executive of Edinburgh City Council, holds this post. The Regional Returning Officer has the power to issue directions to local Returning Officers.

- **Electoral Registration Officers**
  Electoral registration is carried out by the Electoral Registration Officer (ERO) rather than by the Returning Officer. A small number of Scottish Councils have retained responsibility for electoral registration, but most have delegated the function to their local Valuation Joint Board.

- **The Scottish Parliament**
  The Scottish Parliament sets the legislative framework for Scottish local authority elections, but not the franchise.

- **The Scottish Government**
  The Scottish Government is responsible for electoral policy for Scottish local authority elections and implementing those policies through legislation.

- **The Scotland Office**
  The Scotland Office deals with the policy and legislative framework for the Scottish Parliament elections, the electoral registration process for both Scottish Parliament and Scottish local authority elections and the election franchise for those local elections.

- **The Electoral Commission**
  The Electoral Commission is an independent body reporting directly to the UK Government. It carries out a range of regulatory, operational and advisory functions for UK, Scottish and Euro Parliamentary elections. It has no formal remit in relation to Scottish local government elections, although it can carry out certain tasks if invited to do so by the Scottish Government.

- **The Elections Steering Group**
  The Elections Steering Group was formed from representatives of the professional associations in Scotland which have a role in administering elections. This group played a key role in liaising with the official bodies and in co-ordinating the 2007 combined elections. This group, however, had no statutory basis nor any powers of direction over Returning Officers. This Steering Group has evolved since 2007 to become the Interim Elections Management Board for Scotland (IEMB).

2.2   After the well-publicised problems in 2007, the Electoral Commission appointed Ron Gould to report on the conduct of those elections. Gould commented on the fragmented nature of electoral administration in Scotland and the lack of a single clear line of accountability. He made a number of key recommendations for the future conduct of elections in Scotland - including the decoupling of the Scottish Parliament from the local elections (a Bill to effect that measure has now been introduced) and the creation of a post of Chief Returning Officer for Scotland (CRO) to co-ordinate the efforts of the different individuals and bodies organising elections.   A similar role exists in his native Canada.

2.3   He recommended changes to the role of Returning Officers to include:-

- The "professionalisation" of the role of ROs in that their selection (and the selection of their deputes) should be ruled by agreed standards.

- A "full-time" role for Returning Officers, who would concentrate solely on electoral work from the day the election is called until all the statutory tasks have been completed after the poll and count.

- The inclusion of other responsibilities in the posts, such as electoral registration, on the basis that, if all electoral functions were included in the duties of the post, there would be a strong case for having a full time Returning Officer within every authority.

2.4   The Scottish Government undertook to consult on the proposal to create a CRO post. The consultation was issued at the end of December and closes on 20 March 2009.

3. Main Issues

3.1 The consultation document explores the possible role and responsibilities of a CRO, who would be appointed jointly by both the Scottish and UK Parliaments but who would remain independent from Ministers.

3.2 It is to be noted that the creation of a post of this sort would have implications, not only for the role and independence of local Returning Officers but also for the role of the Electoral Commission in that it might assume responsibility for a range of promotional, advisory and regulatory functions currently carried out by that body.

3.3 It is recognised in the document that the creation of a CRO along the above lines would require a new organisation with its own bureaucracy and that this is contrary to the Scottish Government's commitment to simplifying public services in Scotland. This being the case, some alternative models are suggested. These are:-

1) Appointing an existing Returning Officer as the CRO, perhaps fixed term, with the option of the post then passing to another RO.

2) Using the Regional Returning Officer (RRO) model. This model is practical and seen to work at European elections.

3) Using the Northern Ireland model. Northern Ireland has a Chief Electoral Officer who is responsible for all election administration and for electoral registration. This post is statutory, independent of government and has a substantial budget. This electoral solution was devised in response to the particular constitutional and electoral situation which applied in Northern Ireland.

4) The Electoral Commission model was outlined in its report into Electoral Registration in Scotland (August 2007). The Commission was not in favour of the creation of a CRO post but recommended the creation of an Electoral Management Board comprising all Scottish Returning Officers and Electoral Registration Officers with a small internal management group and a small secretariat.

5) A strengthened Scottish Elections Steering Group model. (See para 2.6 above). At present, the Interim Elections Management Board for Scotland, led by the RRO, has a co-ordinating role for European and other elections in Scotland until 2011. Made up of representatives of the professional associations, the Board has officers of the Scottish Government, the Scotland Office and the Electoral Commission as advisers.

4. Personnel Issues

4.1 There will be personnel issues arising from the consultation if Ron Gould's proposal for a professional, full time (during elections) Returning Officer is adopted.

5.   Financial Implications

5.1   It is not possible at this stage to quantify any financial implications arising from the proposal. It is unlikely that there would be any reduction in costs, given that there is no suggestion that the role of local Returning Officers and local councils in the physical administration of the elections would be reduced in any material way.

6.   Risk Analysis

6.1   The consultation itself has no inherent risks. However, the outcome of that consultation will have major implications for the structure of electoral administration throughout Scotland. The Scottish Government must analyse the risks to the effective delivery of elections when considering the outcome of the consultation. Once that outcome is known, it will be for local Returning Officers to look at the local risks and at control measures to minimise these.

7.   Conclusions

7.1   The problems of the 2007 combined elections precipitated a crisis of confidence in the delivery of elections. It is essential that this confidence is restored. The Scottish Government, in its consultation document, states clearly that the status quo is not an option.

8.   Recommendations

8.1   The consultation document poses eight key questions. Responses to these are proposed in the Appendix to this report as a basis for discussion.

8.2   Members are invited to consider the proposed responses and finalise their submission to the Scottish Government.

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Date: 12 February 2009

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Appendix: Proposed responses to Consultation on a Chief Returning Officer for Scotland

Background Papers: Chief Returning Officer for Scotland – A consultation exercise – Scottish Government consultation paper – December 2008 Available online at http://www.scotland.gov.uk/Publications/2009/01/06105804/0

Wards affected: All Wards

Consultation on a Chief Returning Officer for Scotland

1.   Do we need a Chief Returning Officer for Scotland?

We acknowledge a need for a national co-ordinating body for elections. We do not accept that the creation of a post of Chief Returning Officer and a supporting bureaucracy, as envisaged in the Gould report, would be the best option.

If elections are to continue to be administered by the local authority, through its Returning Officer, the creation of a CRO post will simply be an added burden on the taxpayer.

The creation of a CRO as outlined by Gould has implications for the role of Returning Officer which we believe to be impracticable, notably the proposed "full time" nature of the RO post. We do not believe that it is necessary or desirable to create a full time RO role.

The co-ordinating role for elections would be best served by a Board, rather than an individual and it is suggested that the strengthened steering group model would be the best option for this purpose. This Board should have oversight of all statutory elections. The Chairman of the Board will effectively be the CRO.

2.   Should the post be co-ordinator or director?

The role should primarily be that of co-ordination. However, the Chair of the Management Board should have the power of direction if it is necessary, similar to the arrangement in force for the RRO at European Elections. Returning Officers should retain responsibility for their own elections.

3.   What reporting mechanisms should be put in place?

Although the Board should be independent of Government, a formal reporting process will be required. This should be to a Parliamentary committee at the appropriate level (As the law currently stands, this would be theScottish Parliament for local government elections- UK Parliament for Scottish Parliament and other Parliamentary elections). The purpose of the reporting should be to enable discussion and to communicate views rather than to allow any direction by the Committee.

4.   How far should the concept of independence for the post holder go?

Independence is a key principle of the operation of the Board. Scrutiny is achieved by inclusion of the Electoral Commission and officers of central government as advisers/observers on the Board. The performance of the Board should be part of any post election evaluation.

5. **What arrangements should be put in place for the accountability of the post holder?**

Local Returning Officers should continue to be accountable to the courts for the conduct of the elections in their area. However, where Chair of the Board has issued a direction to local Returning Officers, he should be accountable for the consequences of that direction. (On the other hand, Returning Officers should be accountable for the consequences of any failure to follow a direction legitimately issued by the chair of the Board.)

6. **What role should there be for Ministers and Parliament?**

The political role should be to set policy and to deliver a timeous and robust legislative framework within which the Board and Returning Officers would administer the elections.

7. **How should a CRO be appointed?**

If the Steering Group model is to be adopted, the CRO should be appointed in the same way as the RRO at European Elections. Continuity and experience are very important in this role.

8. **How should the post be financed and supported?**

If the Steering Group model is adopted, there will be a need for a small secretariat to support its role. This should be funded centrally through the Scotland Office and the Scottish Government by a mechanism to be agreed.