

Response to the Scottish Government's consultation on electoral reform

Introduction

The Electoral Reform Society was founded in 1884 and has over 100 years of experience and knowledge of democratic processes and institutions. As an independent campaigning organisation working for a better democracy in the UK we believe voters should be at the heart of British politics. The Society works to improve the health of our democracy and to empower and inform voters. <http://www.electoral-reform.org.uk>

The Electoral Reform Society welcomes this consultation and fully supports many recommendations contained within this document. Meaningful, and more inclusive, participation should absolutely be the cornerstone of electoral reform and we look forward to seeing improved elections take place across Scotland.

We would nevertheless caution against viewing the reform of elections as sufficient to achieve a democracy fit for 21st Century Scotland. Democracy is probably best described as 'government of the people by the people for the people'. Elections are a method of helping to achieve that. Without efficient, well-run elections, trust and legitimacy in our system of government is unobtainable but good elections alone will not guarantee it.

An informed population that belong enthusiastically to social, civil, cultural and political institutions that allow them to be full and active citizens are the bedrock of a healthy society and democracy. The big changes we are living through can be opportunities for creating better democracy but also contain grave threats to it. The failure to take the opportunities only increases the potency of the threats.

Considering this it is vital that this reform of elections is closely coordinated with the Scottish Governments 'Local Governance Review' and subsequent bill. We cannot stress this point strongly enough.

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)?

A1: We think the terms should be set at four years for local councils and five for the Scottish Parliament. Where at all possible clashing should be prevented. We know that multiple campaigns running at the same time can often overshadow other elections.

The 2017 Scottish local elections took place a month ahead of the General Election, we would suggest that this meant much less press attention and scrutiny was therefore given to the Scottish elections. We also know from experience in 2007 that holding different elections with different voting systems on the same date results in unusually high levels of spoiled and rejected ballot papers.

If, however, the decision is made to retain four-year parliamentary terms we would note that the 2016 choice to delay the next Scottish Parliamentary Election to 2021, thus extending the current Scottish parliament's lifespan, is no-longer necessary in the wake of 2017's snap General Election. Indeed, if the four-year cycle were returned to there would not likely be another Westminster/Holyrood clash until 2037.

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

A2: No

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 makes good sense to have a body that coordinates across the Local Authority areas that are managing elections. We would suggest that this is re-structured and designed as a 'federal' type organisation with the LAs pooling and sharing resources standing separate from Parliament and

the minister but answerable to them. Any additional resources for this can be fed in through the LAs and pooled appropriately. This ensures 'distributed power' with the resultant checks, balances and degree of independence from points of concentrated political power i.e. ministers.

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

A4. Good research and reporting on elections is important for public confidence and for on-going improvement. The EMB could have a role in advising on or coordinating and disseminating primary data collected through the operation of the elections. E.G. National Turnout etc.

If the EMB's role is expanded to the point that a larger Board is required we would urge the adoption of a formal gender equality policy consonant with the Scottish Government's commitment to Gender Representation on Public Boards evidenced by the Bill currently progressing through the Parliament.

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?

A5. Currently all Returning Officers are Chief Executives or other senior employees of local authorities, therefore their independence from the politics of local government in practice will be difficult to be much more or less than those posts. If there is a problem with independence it is unlikely to be ensured by their appointment on a personal basis and the provision of a separate salary we assume paid through the LA and funded by the Scottish Government.

The personal liability/responsibility of the returning officer is in reality of little value or relevance and could be easily covered through contract terms. Local Authorities carry out very difficult and important functions every day for which senior council officers should be accountable and who are well paid to take on that responsibility.

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.)

A6: The running of elections is central to the duties of a local authority. While there is probably a need to define in contract the independence of the role from the political administration there are other duties that fall entirely on the CEs or other council officers beyond the authority of the administration i.e. duties of child protection.

As we have to-date heard no strong argument for Returning Officer to be classed as a 'second job' for CEs, we think it makes sense to make it a function of the CE job. This must be planned and managed with great consideration - Returning Officers are clearly vital and their role should not be an afterthought, nor should ad hoc RO commitments detract from their responsibilities as Chief Executives.

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?

A7: See above.

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

A8: Absolutely. Considering the disproportionately high levels of online abuse female candidates or members of ethnic minorities endure the publication of home addresses is antithetical to increasing democratic participation. Not only is the risk of potential physical abuse increased by the localised context, but also the candidate may have a partner or children living at their address who have not chosen to run for public office and should not have their privacy invaded.

A candidate's link with their community is undeniably important. We would be satisfied that this could be verified by a Returning Officer publishing a statement to that effect.

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

A9: No.

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?

A10: While there is clearly a problem of 'list ordering' in voting, we think this is much more of a problem for the candidates and the parties than it is for the voters. By its very nature 'list ordering' suggests that candidates and parties have not done enough to convince the voter that they are voting for a preferred candidate rather than a party programme. We feel this could largely overcome by better vote-management processes by the parties. It could in fact be seen as an incentive for the parties to help the system operate in a more candidate-focussed manner.

The scale of the problem in relation to the actual desired outcome of the voter expressed on the ballot paper is so small that the costs and risks attendant on any potential change are not commensurate to the size of the problem vis-à-vis voters' experience.

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

A11: No.

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?

A12: There are several concerning issues at present with electronic voting, particularly within polling stations. While security is a factor, there are also substantive risks of systems crashing. The cost of installing a number of electronic screens in each polling station would be prohibitive and there is also evidence to suggest a possible reduction in turnout. In addition, not everyone is comfortable with using computers, so there could be some issues with accessibility in this regard.

Evidence from Belgium¹, for instance, has shown a drop in turnout in municipalities using electronic voting machines, despite that country's use of compulsory voting. Evidence from the United States also indicates that polling station staffing problems were created when electronic voting was introduced since staff are most frequently of an age-group who are less comfortable using computers².

However, given the pace that technology is developing we would caution against saying electronic voting should never be used. Electronic counting was initially viewed with suspicion but proved successful –for example, there were no challenges to the count in the 2017 local elections. With the right developments and information provided to voters, there could be a case for trialling electronic voting at a later date. Should this happen adequate lead-time for testing is essential: rushed revisions risk providing a flawed picture of their usability and success.

There is no particular reason why Thursday should continue to be used as a voting day for elections in Scotland. In fact, weekends would be a strong option for voting in local elections, particularly as countries that utilise weekend voting in general have a higher turnout.

Indeed, holding elections on Thursdays in May fits with the rhythm English school year rather than the Scottish. If we, for example, held Scottish elections in September this would ensure that election scheduling clashes were nigh impossible since the month before is a holiday in England. It would also mean the Scottish Parliament, which currently has only a brief sitting before their summer holiday instead continues uninterrupted after a later start.

ERS also supports the creation of a unified electoral register. This would enable voters to use any polling place in Scotland. At the very least existing registers should be able to be collectively interrogated.

A combination of a change in day, with voters being able to vote in different places or a range of polling stations would be potentially game changing for voters in Scotland. Obviously, any changes would depend hugely on how well they were promoted and running an election over multiple days could increase costs. However, this has the potential to be offset slightly as running elections over the weekend could reduce issues with schools being used as polling stations.

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?

A13: 2007 trials of internet voting in Sheffield, Rushmoor & Swindon indicate it does not increase voter turnout³. Furthermore, the ERS view voting as an important act of citizenship. We would hesitate to promote more passive ways of doing so.

1. Regis Dandoy, 'The Impact of e-Voting on Turnout: Insights from the Belgian Case' (2014) at <http://ieeexplore.ieee.org/document/6819940/?reload=true>

2. Chris Carman 'E-voting, lessons from the States' (2018) at Scotland's elections – Fit for purpose in the 21st Century? Election Commission Conference, Glasgow University 26/01/18

3. John Curtice 'A vision for the future of Scottish democracy' Election Commission Conference, Glasgow University 26/01/18

The possibility that remote voting might increase participation in some areas however should be explored. Evidence from ERS's 'Missing Voices' project has shown that in rural areas in the UK access to polling stations can prove difficult. Furthermore, with young people perhaps less inclined to use postal voting this could present a good alternative.

However, Scotland's 'digital divide' is pronounced: 40% adults in most the deprived households do not have internet access and/or the required skills to use it; nor do 76% of those over 75 years of age⁴. Should any form of remote voting be introduced meaningful efforts must be made to ensure it does not further exclude already marginalised populations.

As stated in response to the previous question we believe voting should be possible on more than one day.

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

A14 If we consider the pace of social, technological and political change over the last few years, we think it is sensible to have an on-going review of local government electoral arrangements. We suggest an approach that views the local structures and systems as building blocks around which the larger state is aggregated.

This would ensure electoral and democratic improvements that are made through a rolling programme of reviews would have wider benefit. This is a different approach than viewing the state as a hierarchy that decides centrally the structure of its governance and hands down power from above.

There has been discussion around an idea of a 'power of general local competence' in that any community that felt it was able to take on some elements of its own governance should be allowed to organise itself around that, and be able to have those powers it felt able to use – while handing upwards any powers that it felt would be better pooled and shared. While this is a radical idea, it is worthy of further discussion and exploration.

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.

A15: The ERS agree with the Scottish Government that procedures for the creation of local council wards and Scottish Parliamentary constituencies should be harmonised while adopting the 'building block' principle set out in question 14. Ideally the Westminster Parliament constituencies will also be included in the harmonisation.

We would suggest a combination of the different processes that maximises both flexibility and transparency. Scottish Ministers should have the power to reject, accept-with-changes or accept in full the Commission's recommendations for both local council and Scottish Parliament constituency boundaries before the scheme is put before Parliament. Parliament should also have the power to accept or reject with recommendation for further consideration the subsequent proposals for both sets of boundaries.

Furthermore, there should be a failsafe mechanism for the boundary commission to be able to issue public notice if it ever feels that any decisions of the minister or the parliament are based upon party political advantage at the cost of the principles on which boundaries are created.

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?

A16: The ERS acknowledge the tension the Local Government Boundary Commission for Scotland face between ensuring parity of wards and representation in terms of registered electorate while representing meaningful communities.

While a balance between these things is important, we suggest that much more weight is given to 'discreet and meaningful' communities being represented as such rather than to heavy an emphasis on numbers of registered electors.

We would like to see a principle of parity in terms of community representation as well as that of individual voters. That is not to say that a small village should have the same level of representation as a large town but that a small village should have similar levels of representation to a larger village etc.

This should involve a very substantial increase in levels and quality of community involvement in them deciding which unit /size they would like to be represented at a local level. Such a process

could drastically improve the quality of Scotland's democracy.

We also note that Scotland is the least represented population in Europe – four-member wards for example currently cover around 16 000 registered electors and many more constituents.

Research is clear on this: “Below the national level, Scotland is the least democratic country in the European Union; some have argued that it is the least democratic country in the developed world. We elect fewer people to make our decisions than anyone else and fewer people turn out to vote in those elections than anyone else. We have much bigger local councils than anyone else, representing many more people and vastly more land area than anyone else, even other countries with low density of population. In France one in 125 people is an elected community politician. In Austria, one in 200. In Germany one in 400. In Finland one in 500. In Scotland it is one in 4,270 (even England manages one in 2,860)”⁹

In short, Scottish local councils are far more distant and unrepresentative of each community than in any comparable country. We believe the most appropriate solution is allowing smaller wards and increasing the number of councillors. ERS along with BMG polling carried out public opinion research around this in 2016 and in 2017 (see Appendix 1). 78% of those surveyed were in favour of more councillors.

Wards with fewer than three councillors effectively deny that population access to Proportional Representation. If wards and the population as a whole had more councillors then discrete communities could still ensure the election of someone with local ties without sacrificing the proportionality of the current system. We think many more smaller wards with more members probably within the context of a lower layer of local government closer to actual communities should be the goal.

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

A17: All those who choose to make their home in Scotland and thus contribute to our communities, regardless of their place of birth, should be allowed to vote in elections.

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

A18: If you are legally resident then you should be allowed to vote.

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

A19: No

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?

A20: Yes: anonymous registration should be made substantially easier for individuals at risk of gender-based violence of any kind including domestic abuse, stalking and female genital mutilation. The current standards of evidence required should be both lowered and expanded to include police officers of lower rank, refuge workers, social workers & medical professionals as well as any relevant type of protection order.

We would urge the government to consider making such anonymous registration valid indefinitely so victims can always be assured of safety when exercising their right to vote.

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

A21: We think it is fair to be able to register in two locations if you are unsure where you will be at the time of the election. However, there should be an undertaking to only vote in one location. With multiple registers this is clearly difficult to police. ERS would recommend the consideration of a single unified register for Scotland as is intended to be piloted in Wales.

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

A22: – As above – equal participation requires those with second homes not be able to vote twice.

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

A23: We would like to see a new layer of local democracy with many more councillors looking after much smaller wards probably with a work load that is possible as a volunteer with a small stipend. We think this would open the role up to many more people who could contribute a few

hours a week and thus increase the proximity of councillors to the communities they represent and provide a role as ‘community builders and facilitators’ rather than only administrative representation and points of complaint.

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

A 24: Improving political and civil education alongside future electoral changes would be a very strong approach in terms of increasing participation, particularly among young people. The ERS has previously highlighted the importance of political education⁶ and we would suggest there are considerable improvements to be made still in this area. In a recent roundtable we ran on political education there was strong agreement that citizenship education should be issue-led: that young people need to see reasons why active citizenship works.

Getting people practised at doing democracy is important – and needs to start as young as possible, and the presence of devolution in Scotland shows how this can take place closer to home. In addition, skilling young people to look at news sources more critically is particularly important in the current ‘post-truth’ context.

Further evidence to this effect can be drawn from our ‘Democratic Schools Initiative’. Students can get the best experience of democratic participation by seeing it affect one of the most important parts of their lives: their school day. Across the world there are hundreds of examples of democratically run schools, where students make collective decisions about the way that their classes, their curriculum, and their school buildings are run.

One measure that would likely decrease election accessibility must certainly be avoided. We believe that asking voters for ID before they can vote would be detrimental to participation. Ultimately there is very little evidence of fraud in terms of impersonation. In 2015’s General Election across the UK there were just 26 allegations of this⁷. The popular misconception that voter fraud is a major problem is the issue that needs action.

In fact, rather than solve a real problem - asking voters for ID could create one. Voter ID rules in the United States disproportionately disadvantage already marginalised groups. Many citizens who can’t afford to go on foreign holidays don’t have passports, and those that can’t drive don’t have driving licences. This is likely to hold true for Scotland.

We believe that any attempt to introduce ID requirements would disenfranchise those from disadvantaged communities whose participation we must instead seek to encourage. As a result, we would support Scottish government efforts to resist the imposition of mandatory voter ID for Westminster elections in Scotland.

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

A25: The recent announcement of a fund to boost women’s participation in Scottish politics is a positive development⁸. Nevertheless, the definition of ‘equality’ is simple: 50:50. Piecemeal and indirect methods to achieve this are not commensurate with the strong leadership the Scottish Government has shown in related areas such as domestic abuse and gender representation on public boards.

We know that equality guarantees are the most effective way to ensure gender balance & have seen them work (albeit briefly) in Scotland. For this reason, the Electoral Reform Society of Scotland backs Women 50:50’s call for new legislation ensuring all parties have to put forward at least 50% women candidates in the Scottish Parliament and Council elections.

We also encourage continued efforts to ensure the devolution of electoral and equalities law to the Scottish Parliament. Should this happen we would urge the Scottish Government to explore the introduction of gender quotas for the Parliament. Evidence indicates voters do not ‘punish’ quota women⁹; that such women are equally qualified to their non-quota colleagues; and the gatekeepers of executive office do discriminate against quota women. Furthermore, the quota system places the burden of recruitment on those who control the recruitment process, rather than individual women – and it is not the job of the marginalised to redress their marginalisation.

Several ‘pipeline’ measures can also help, including:

- Challenging gender stereotypes in the early-years and expanding political education in schools would help girls gain the confidence and skills necessary to ‘speak up’, as well as reducing the opposition of their male peers to the notion over future generations.
- Financial support for childcare and caring costs for candidates would boost participation as would the introduction of flexible working practices at all levels.

Additionally, we suggest:

- All parties and government bodies should publish diversity data to allow us to benchmark progress.
- Transparent processes with meaningful sanctions be ensured across parliament, political parties and local government to address gender-based discrimination and harassment.
- An intersectional perspective be adopted: barriers to participation affect different women differently - attempts to redress this should not, in themselves, compound exclusion.

6. Electoral Reform Society Cymru (2015) The Power and Voice of Young People in Wales at <https://www.electoral-reform.org.uk/wp-content/uploads/2017/06/Young-People-in-Wales-welsh-power-report.pdf>

7. Electoral Commission (2016) Analysis of cases of alleged electoral fraud in the UK in 2015

8. <https://www.holyrood.com/articles/news/nicola-sturgeon-launches-new-fund-boost-womens-representation-politics>

9. Allen, P., Cutts, D. and Campbell, R., 2016. Measuring the quality of politicians elected by gender quotas – are they any different? *Political Studies*, 64 (1), pp. 143-163.

Appendix 1

Myth – People don't want more councillors

Imagine you live in a scenario where all councillors are community volunteers giving up their time for no payment and only got paid expenses. Which of these statements is closest to your view?

Weighted base: 1013

Effective base: 829

Unweighted base: 1013

Statement	Support
People need a lot more representation (many more councillors)	260 (26%)
People need a little more representation (more councillors)	526 (52%)
Total more representation	(78%)
People need less representation (fewer councillors)	190 (19%)
People need a lot less representation (much fewer councillors)	37 (4%)

Myth – People won't pay for more councillors

Imagine you live in a scenario where all councillors are paid a small salary/stipend, as they are currently. Which one of these statements is closest to your view?

Weighted base: 1013

Effective base: 829

Unweighted base: 1013

Statement	Support
People need a lot more representation (many more councillors)	176 (17%)
People need a little more representation (more councillors)	515 (51%)
Total more representation	(68%)
People need less representation (fewer councillors)	262 (26%)
People need a lot less representation (much fewer councillors)	60 (6%)

Myth – People just want someone else to run the place for them

Would you be prepared to get involved with your local council, helping to make decisions on your services and local democracy?

Weighted base: 1013

Effective base: 829

Unweighted base: 1013

Statement	Support
No, I'd rather not give up my free time	145 (14%)
No, I wouldn't feel comfortable assisting in local decisions	225 (22%)
No, I'm too busy	184 (18%)
Total No	(55%)
Yes, I'd be willing to help for up to half a day (4 hours) per month	221 (22%)
Yes, I'd be willing to help for up to 1 day per month	108 (11%)
Yes, I'd be willing to help for around 1 to 2 days per month	60 (6%)
Yes, I'd be willing to help for 3 or more days per month	69 (7%)
Total Yes	(45%)
Total 1+ days per month	(23%)