

Promoting greater accountability and transparency in local government

A proposal for a Bill to remove the obligation on local authorities to appoint religious representatives to Education Committees; to remove the right of unelected members of local authority committees to vote; to require the full results of local authority voting to be published; and to require remote access to the public proceedings of local authorities.

**Consultation by
John Finnie MSP**

4 November 2013

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FOREWORD

A foundation stone of any democracy must be that elected representatives can be challenged by their electorate for decisions they make particularly when such decisions involve public expenditure.

At this time, unelected persons have a statutory right to participate in local authority committee meetings, including voting on decisions with significant financial implications. Local authorities are also not required to publish information about which elected members took part in particular decisions or to record who voted which way; nor are they required to provide the public with a means to view their proceedings remotely, either by live webcast or recordings. As a result, there is a distinct lack of transparency and accountability about much local government decision-making.

My proposed Bill will ensure that decisions taken by local authorities are made only by democratically elected representatives of the people. It will also ensure that the electorate will be able to know precisely whether and how their representatives cast their vote on any decision and provide technology to afford the public more ready access to council proceedings. I would welcome your views on the proposals contained herein.

A handwritten signature in black ink, appearing to read 'John Finnie', written in a cursive style.

John Finnie MSP

HOW THE CONSULTATION PROCESS WORKS

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at: <http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, I would expect to lodge a final proposal in the Parliament along with a summary of the consultation responses. If that final proposal secures the support of at least 18 other MSPs from three or more political parties or groups represented on the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements, considering financial implications and, in general, assisting in ensuring that the resulting legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at (MSP's Parliamentary address, telephone number and email address).

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 4 Proposals
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>

AIM OF THE PROPOSED BILL

Introduction

1. I firmly believe that all those taking decisions within local authorities should be accountable to their electorate. We have seen in Highland Council the preferred view of the elected representatives of the people being blocked by the appointed religious representatives. The instance in question was when the religious representatives on the Adult and Children's Services Committee managed to block the Council Administration's preferred location for a Gaelic School in Lochaber, with consequential financial implications, a decision which then had to be over-turned by a meeting of the full Council. The Edinburgh Secular Society has recently pointed out that "church representatives hold the balance of power on 19 council committees across Scotland."¹

2. It is simply an anomaly that in modern day Scotland we can have unelected representatives of religions being able to vote on local government committees. The ability of such representatives to affect decisions on a wide range of services and the resulting financial implications with absolutely no accountability to taxpayers runs counter to the very idea of democratic governance.

3. This proposal would remove the requirement that local authorities must have unelected representatives on their education committees, but would allow local authorities to continue to appoint unelected representatives to committees, albeit without voting rights.

Membership of Local Authority committees

Background

4. The Local Government (Scotland) Act 1973 ("the 1973 Act") permits delegation of council decisions to committees, but not to individual elected members.² In practice, local authorities throughout Scotland operate a range of structures to devolve responsibility and decision-making.

5. The 1973 Act permits membership of local authority committees by persons who are not elected members of the local authority. Furthermore, councils are **obliged** to appoint three unelected members, representing churches, to their Education Committees.³

6. The 1973 Act sets a minimum membership by elected members. "At least half" of the members of Education Committees must be elected to the council, while "at least

¹ BBC News, 17 July 2013, <http://www.bbc.co.uk/news/uk-scotland-23349729>

² Local Government (Scotland) Act 1973, Section 56.

³ Local Government (Scotland) Act 1973 Section 124(2)(a) (for education committees) and (b) and Section 124 (4).

two thirds” of the members of other council committees must be elected.⁴ With membership of the committee comes the right to vote. This raises a concern that unelected, unaccountable individuals are involved in decision-making, some of which has a financial consequence.

7. The arrangements for church representatives date back to when responsibility for running schools was transferred from churches to local government with the passage of the Education (Scotland) Act of 1872. Under the Act, parish and burgh schools were taken over by the state and managed by locally elected School Boards.

8. In August 1999, the Leadership Advisory Panel (LAP) was established by the then Scottish Executive as a result of recommendations made by the Commission on Local Government and the Scottish Parliament. Its report: *Moving forward: Report of the Commission on Local Government and the Scottish Parliament* is also known as “The McIntosh report.”

9. The LAP found that the statutory obligation with regard to education committees presented some difficulties for local authorities which were planning, as a result of recommendations contained in the McIntosh report, to move away from traditional committee structures to more streamlined structures, for example by adopting executive structures or devolved structures involving area committees. The impact was particularly felt by smaller local authorities, where the obligation could produce an unacceptably high proportion of unelected members of small executive structures where those structures had education matters among a range of responsibilities.

10. The Report concluded “we sympathise with councils which are experiencing difficulties in creating new structures as a result of this legislation but we believe it important that all interests are properly represented in whatever new structures are adopted”.⁵

11. The issue of religious representation has created controversy from time to time. In Highland Council, in 2012, religious representatives influenced a vote which defeated the coalition of SNP, Liberal Democrats and Labour members which had formed to run the Council. The Council’s depute leader described the arrangement as an “historic anomaly” and argued that it “threatens democratic decision-making”.⁶ This example raises the question of whether religious representatives should be in a position to influence such decisions, which involve major expenditure, when they are neither elected nor accountable.

⁴ Local Government (Scotland) Act 1973 Section 124(2)(a) (for education committees) and section 57(3).

⁵ Scottish Local Government’s Self-Review of its Political Management Structures. Report of the Leadership Advisory Panel. April 2001. Page 16. Paragraph 18. <http://www.scotland.gov.uk/Resource/Doc/158978/0043204.pdf>

⁶ <http://www.inverness-courier.co.uk/News/Clergy-embroiled-in-school-site-vote-controversy-31082012.htm>

12. In August 2011, the obligation provoked a good deal of discomfort among councillors of Shetland Islands Council, with one describing the ability of an unelected representative to vote as “offensive”.⁷ The issue has recently been raised by the Edinburgh Secular Society, who described the arrangements as “profoundly undemocratic”.⁸

13. I propose a legislative change in this area which would remove the obligation on councils to appoint religious representatives to Education Committees, but would not prevent local authorities from doing so if they wished to continue this practice. My proposal would be for education committees to be brought into line with other local authority committees, and so be subject to the rule that at least two-thirds of their members must be elected. A council could, therefore, continue to include three religious representatives in its education committee (so long as that committee had at least six other elected members), but could also have fewer such representatives, or none at all.

14. With regard to voting rights, I propose that unelected members who are appointed to any committees of the council will not have the right to vote but will continue to take part in all other aspects of committee work.

Q1: Do you agree that the obligation on local authorities to appoint three church representatives to Education Committees (set out in section 124 of the Local Government (Scotland) Act 1973) should be removed?

Q2: Do you agree that at least two-thirds of the members of all local authority committees should be elected councillors?

Q3: Do you agree that any unelected members of committees should no longer have a right to vote?

Recording votes

Background

15. Schedule 7 to the 1973 Act makes provisions for meetings and proceedings of local authorities. Practices of recording votes are determined by councils. Standing Orders⁹ and, as such, are subject to variation from one local authority to the next. Some decisions are taken by a show of hands and no record is taken of individuals voting a particular way. There is currently no legislation that determines how votes are taken and recorded by local authorities.

⁷ <http://www.shetlandtimes.co.uk/2011/08/25/education-committee-to-have-three-religious-representatives-despite-concerns>

⁸ Article in The Herald, 18 July 2013, [“Secular bid to halt religious influence on schools committees”](#)

⁹ Local Government (Scotland) Act 1973. Schedule 7, paragraph 8.

16. Where a vote does take place, it is common practice to record who voted “yes”, “no” or “abstain”. However, it is not necessarily a straightforward matter for any constituent wishing to determine whether an elected member was present for the vote but *chose* not to cast a vote as opposed to being called away on other business or unable to attend that part of the meeting for various reasons.

17. The 1973 Act states that “The names of the members present at a meeting of a council shall be recorded” and that this applies to committees and sub committees.¹⁰ In practice however, members need not be present throughout every meeting, and there have been suggestions that some members deliberately absent themselves from controversial votes, perhaps in order to avoid accounting to their constituents for voting in a particular way or abstaining. It certainly appears from examining minutes of council meetings that the number of votes cast for “yes”, “no” or “abstain” does not always correspond with the numbers recorded as present at each meeting, reflecting the fact that some members choose not to participate in every vote.

18. I believe that recording at every vote the names of those who voted “yes”, “no”, or “abstain”, and the names of those who were present at the time of voting but “did not vote”, would produce greater accountability in decision-making. The inclusion of a new category of “present but did not vote” would enable constituents to identify at a glance those members who declined to take part in a vote, as opposed to those who were unable to take part in the vote for other reasons.

19. A further category of “ineligible to vote” would identify individuals who are not eligible to take part in a particular decision due to conflicts of interest.

20. For the purposes of my bill, the word “committee” applies to any structures which comprise a sub-set of the whole council regardless of whether they are named “cabinets”, “executives”, “sub-committees” and so on.

21. I propose that local authorities should be required to record and publish, for every vote taken by the full council and council committees and sub-committees:

Names of all members present for that vote

Names of those voting yes

Names of those voting no

Names of those abstaining

Names of those ineligible to vote and the reason (e.g. because of a conflict of interest).

Names of those present and eligible but who did not vote

22. In addition to meetings of full council and committees (and committee-like structures), I would argue that this should also apply to all other meetings at which the statutory functions of the council are pursued. Bodies which discharge some of a local authority’s functions – such as arms-length external organisations, joint boards, trusts –

¹⁰ Local Government (Scotland) Act 1973. Schedule 7, paragraphs 6 and 10(1)

do not form part of local authorities' structures and, in some cases, are subject to different areas of law.

23. Audit Scotland defines arms-length external organisations as follows—

“companies, trusts and other bodies that are separate from the local authority but are subject to local authority control or influence. Control or influence can be through the council having representation on the board of the organisation, and/or through the council being a main funder or shareholder of the organisation. ALEOs can take many forms including companies limited by guarantee or shares, community enterprises, such as industrial and provident societies, trusts and Scottish Charitable Incorporated Organisations. Examples of the services they deliver include leisure, transportation, property development, and more recently, care services. ALEOs are often set up as non-profit making organisations such as charities to promote public benefit in areas such as health, education, recreation and equal opportunities”.¹¹

24. Due to the range of bodies involved, and the various laws to which they are subject, I propose that an obligation should be placed on councillors to record, in the same way, any votes cast regarding the statutory functions of the council and report publicly to local authorities the details of that vote.

Consultation questions on recording of votes

Q4. Do you agree that all votes taken by councils and committees of councils should be recorded in a manner which would allow constituents to identify whether their elected member(s) had been present and able to take part in the vote?

Q5: Do you agree with the following proposed categorisations of votes and no-votes? If not, what categories would best achieve the aim of greater accountability?

Names of all members present for that vote

Names of those voting yes

Names of those voting no

Names of those abstaining

Names of those ineligible to vote and the reason (e.g. because of a conflict of interest).

Names of those present and eligible but who did not vote

Q6: Beyond meetings of the whole council and its committees, are there any other meetings which should be covered by such a provision? How should such meetings be defined so as to apply clearly to every local authority and allow for variations in structure?

¹¹ Audit Scotland. [Arm's-length external organisations \(ALEOs\): are you getting it right?](#)

Q7: Do you agree that councillors should be obliged to record, in the same way as set out at question 5, any votes taken regarding local authorities' statutory functions that take place in organisations and bodies out-with the local authority?

Webcasting meetings

Background

25. Many local authorities now webcast meetings of the council and its committees, allowing the public to watch and hear meetings online as they take place and, in some cases, access an archive of recordings of meetings which have taken place.

26. Practice regarding webcasting varies considerably. While some local authorities webcast some or all of their meetings, not all of them provide an archive which can be used to catch up with meetings after the event. Some councils do not webcast any meetings.

27. The 1973 Act¹² obliges councils to make meetings of the council (and committees and sub-committees of council) open to the public (barring some exceptions relating to the disclosure of confidential and other sensitive information). Sections 50B to 50D cover the provision of access to documents associated with meetings. Section 50A(7) of the 1973 Act explicitly states that councils are not required to make provision for people not present to see or hear proceedings. Councils are also subject to Freedom of Information and Environmental Information Regulations.

28. I propose to oblige LAs to webcast live all meetings and parts of meetings to which members of the public currently have access, having regard to the normal exceptions under the 1973 Act.

29. I further propose that webcasts should be archived and available on the council's website for a period after the meeting took place

Consultation questions on webcasting

Q8: Do you agree that local authorities should be obliged to webcast all meetings to which the public are currently permitted?

Q9: Should the scope of this measure go beyond meetings of the full council and its committees and sub-committees? If so, what other meetings should local authorities be required to webcast?

Q10: Do you agree that, in addition to live webcasting, local authorities should be required to make archived recordings available for a period following the meeting? What would an appropriate period be?

¹² Local Government (Scotland) Act 1973. Sections 50A and 50E.

Other issues

Financial implications

30. I do not envisage that measures on membership of local authority committees or recording of votes will have a significant financial implications. I accept that webcasting of meetings and the provision of archived webcast will involve a degree of additional expenditure for some local authorities who are not currently webcasting but do not consider that this would be of a scale that could not be managed within existing budgets.

31. A recent report to the City of Edinburgh Council¹³ recorded a total cost of £30k for the council's webcasting project in its pilot year. It was estimated that on-going annual costs would be £17k. I have obtained information from Highland Council that costs in relation to webcasting and archiving meetings are just over £27k.

Q11: What is your assessment of the likely financial implications of the proposed Bill?

Equalities implications

32. Webcasting meetings would have a beneficial impact on those with mobility issues and would also benefit those who are unable to travel to attend meetings in person, perhaps for socio-economic reasons.

33. The Equality Act 2010¹⁴ protects people who lack religious belief as well as those who have it. Certain religious groups will be directly affected by any provision to alter representation on education committees under Section 124 of the Local Government (Scotland) Act 1973. As this measure would remove a privilege which benefits particular religious groups, it is not at odds with equalities legislation.

34. Local authorities are obliged under the public sector equality duty¹⁵ and the Equality Act¹⁶ to take steps to meet the needs of pupils from particular religious backgrounds. However, this should not present a barrier to the repeal of section 124 of the 1973 Act.

Q12: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

Other considerations

¹³ Report to City of Edinburgh Council, August 2012. [Council Meetings – Webcasting and ICT developments](#).

¹⁴ Equality Act 2010. Section 10.

¹⁵ Public sector equality duty. <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/>

¹⁶ Equality Act 2010, section 149.

35. Finally, it would be useful to know of any other relevant considerations, not covered in the previous questions, that you think I should consider in developing this proposal.

Q13: Do you have any other comments or suggestions relevant to the final proposal?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Responses should be submitted by 27 January 2014 and sent to:

John Finnie MSP
Room M3.19
Scottish Parliament
Edinburgh EH99 1SP

Tel: 0131 348 6898

E-mail: john.finnie.msp@scottish.parliament.uk

Please indicate whether you are a private individual or an organisation

Respondents are also encouraged to begin their submission with short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the view expressed was consulted on with their members).

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my [website](#) and in hard copy in the Scottish Parliament's Information Centre (SPICe).

Therefore, if you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as “anonymous response”. If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content of does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Parliament's Non-Government Bills Unit (NGBU) when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

NGBU may be responsible for summarising and analysing the results of this consultation and will normally aim to reflect the general content of any confidential

response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published in full.

There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.

In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send

me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:
www.itspublicknowledge.info.