

LOCAL GOVERNANCE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Local Governance (Scotland) Bill introduced in the Scottish Parliament on 21 November 2003. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 14–EN.

POLICY OBJECTIVES OF THE BILL

2. The overall objective of the Local Governance (Scotland) Bill is to strengthen local democracy. The measures in the Bill are important parts of the Scottish Executive's wider local government modernisation agenda, aspects of which have already been taken forward through other legislation, or by non-legislative measures. For example, legislation has been passed to provide local authorities with a 4-year term to allow for effective planning over a longer time-scale; a duty of Best Value; a power to advance well-being; and a statutory basis for community planning to ensure effective partnership working, leading to better services. This Bill makes changes to the way councillors are elected, and the way they are remunerated for the role they undertake on behalf of their constituents and their community. It also makes changes to the rules concerning political restrictions on council staff and introduces other measures as part of the Scottish Executive's drive to widen access to council membership.

3. Specifically, the Bill provides for:

- the introduction of the single transferable vote (STV) for council elections;
- amendments to existing legislation to bring the conduct and administration of council elections further into line with Scottish Parliamentary elections;
- changing the age for standing as a councillor from 21 to 18;
- the repeal of legislation establishing a salary threshold for politically restricted posts within local authorities;
- the amendment of current legislation so that council employees have to resign on election as a councillor to their employing council, rather than on nomination as a candidate;
- the reduction to three months of the period during which most former councillors are unable to take up employment with the council after their period of service comes to

an end. The current twelve month period will be retained for politically restricted posts and for councillors who have been involved in the appointment of senior council staff;

- the introduction of a new system of remuneration, supplemented by a limited number of payments to reflect members' additional responsibilities;
- 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 advise on the detailed arrangements for, and the level of, the remuneration package for councillors.

CONSULTATION

4. The measures in the Bill have been subject to considerable debate and consultation over recent years. In addition, policy development has been greatly assisted by the workings of the independent groups which have considered a number of complex issues in detail. Changes to the way in which councils are elected, and consideration of political restrictions on council employees, were first considered by the Commission on Local Government and the Scottish Parliament¹ known as the 'McIntosh Commission'. In forming its recommendations to the Scottish Executive, the McIntosh Commission relied on a wealth of evidence gathered from engagement with local authorities, community groups, trade union representatives, business interests, and the general public.

5. The Renewing Local Democracy Working Group,² known as the 'Kerley Group', built on the recommendations of the McIntosh Commission and considered, among other things, the most appropriate system of election, remuneration for councillors, and a number of issues around widening access to council membership.

6. The first Scottish Executive consultation paper which sought views on the policy issues now reflected in the Bill was the White Paper *Renewing Local Democracy – The Next Steps*³ published in March 2002. This paper was given a wide circulation among key stakeholders and attracted a total of 1,075 responses from members of the public, councils, community councils and other interested bodies. The consultation process was enhanced by a series of meetings with, and presentations to, councils and other stakeholders, which allowed the Scottish Ministers and Scottish Executive officials to have in-depth discussions with those most affected by the issues raised in the consultation paper. The outcome of that consultation allowed policy to be developed further, leading to the publication of a draft Bill⁴ in February 2003. This draft Bill was available to the new Executive for decision following the elections in May 2003.

¹ *Report of the Commission on Local Government and the Scottish Parliament*, June 1999, <http://www.scotland.gov.uk/library/documents-w10/clg-00.htm>

² *You should be taking part, getting involved, making a difference. The Report of the Renewing Local Democracy Working Group*, June 2000, <http://www.scotland.gov.uk/library2/doc16/rldw-00.asp>

³ *Renewing Local Democracy – The Next Steps*, March 2002, <http://www.scotland.gov.uk/library5/localgov/rldm-00.asp>

⁴ *Local Governance (Scotland) Bill Draft*, Scottish Executive, February 2003, <http://www.scotland.gov.uk/library5/localgov/lgsb-00.asp>

7. A revised draft Bill⁵ was issued for consultation in July 2003 and attracted 187 responses from councils, community councils, equalities interests, trade unions, professional bodies, and others. As part of the consultation process, the Scottish Executive also held meetings with representatives from the Convention of Scottish Local Authorities (CoSLA), the Society of Local Authority Chief Executives (SOLACE), the Society of Local Authority Lawyers and Administrators (SOLAR), the Association of Electoral Administrators (AEA) and a number of local authorities. A presentation to the Scottish Parliament Local Government and Transport Committee was also a useful part of the consultation process.

RENEWING LOCAL DEMOCRACY WORKING GROUPS

8. The Scottish Executive has established 3 independent working groups which will carry forward practical work associated with the key measures in the Bill. The Single transferable Vote Working Group is examining the procedures necessary to facilitate council elections being held using STV, and how multi-member wards will operate in practice. This Group's findings and recommendations will be important in implementing the provisions in Part 1 of the Bill.

9. The Councillors' Remuneration Progress Group is considering options for, and the associated costs of, a new system of remuneration for councillors. The Group is also considering the role which councillors fulfil, the part-time commitment required of the majority of councillors, and the salary which this should attract. The Group will also consider the practical implications of giving councillors access to a pension scheme and options for a one-off severance scheme intended to recompense long-serving councillors who will not be standing at the next election. The Group has also been asked to consider the remit of the Scottish Local Authorities Remuneration Committee which the Bill will establish, and the skills and experience needed by its members. The Councillors' Remuneration Progress Group is not the precursor to the Scottish Local Authorities Remuneration Committee. Rather, it will undertake background and research work which will be needed in enabling the statutory Committee to start work as quickly as possible.

10. The Widening Access to Council Membership Progress Group is taking forward work on making council membership more attractive to a wider cross-section of the community and will make recommendations on the training, development and support given to councillors. The Group will also prepare non-statutory guidance on the definition of politically restricted posts.

11. It is expected that all 3 groups will report to the Scottish Ministers around September 2004.

LOCAL GOVERNMENT ELECTIONS – PART 1 (SECTIONS 1 TO 12)

Policy objectives

12. The first past the post (FPTP) system currently used for council elections does not necessarily result in councils which reflect the political balance of votes cast. In some areas, a party with a minority of votes has a majority of seats thus enabling it to form the administration

⁵ *Draft Local Governance (Scotland) Bill: Consultation*, Scottish Executive, July 2003, <http://www.scotland.gov.uk/consultations/localgov/dlgsc-00.asp>

without a truly democratic mandate. Under a more proportional system of election, the number of seats secured by a party reflects more accurately the number of votes cast. Councils are therefore more likely to represent the full spectrum of views expressed by their electorate and every vote is felt to count for the purposes of determining who should be elected. The Kerley Group concluded that the STV system should be adopted for council elections, because STV maximises the use made of each vote cast, and therefore ensures that those elected represent the spread of opinion within a ward. The Group also took the view that STV retains the councillor-ward link but creates multi-member wards where the members are elected under the same system. This avoids the risk of confusion about the status and role of different councillors which can occur with other PR systems. The responses to the White Paper endorsed this view.

13. The Bill therefore sets out the system of election that will be used for the next and subsequent council elections. This method is generally known as the single transferable vote (STV) and is already used in other countries. STV allows voters to vote for candidates in order of preference. First preference votes are the first to be looked at and, if necessary, the votes are then transferred from candidates who have been elected comfortably, or who have no prospect of being elected, to voters' subsequent preferences.

14. For the purposes of the next and subsequent council elections, council areas will be divided into wards and each ward will have 3 or 4 councillors. That process will be carried out by the Local Government Boundary Commission for Scotland. Thereafter, the number of councillors to be elected in each ward will be prescribed in secondary legislation. The choice of three or four councillors per ward is intended to achieve a balance between the need for a proportionate outcome and the need to ensure a link between councillor and ward. With a higher number of councillors per ward the result would be more proportional, but wards would also need to be much larger, and this could have practical implications for councils and councillors, particularly in remote and rural communities.

15. The mechanics of the STV system are described in the Explanatory Notes.

Consultation

16. There are many different views on which electoral system is best for Scottish local government, and the issue has been consulted on a number of occasions in recent years. The McIntosh Commission's consultation process found substantial and widespread support for the view that a move to proportional representation would be beneficial for local government. The Kerley Group examined different systems in more detail and recommended STV. The Executive's White Paper *Renewing Local Democracy – The Next Steps* sought further views to enable a final policy decision to be taken on which system should be introduced. Of the 1,075 responses received, 890 dealt solely with the issue of electoral reform, and supported the introduction of STV. Over 700 of these responses were the result of a pre-printed postcard campaign. A further 66 responses which dealt with a number of the issues covered in the consultation paper also supported the introduction of STV.

17. Once the decision had been taken, as reflected in *A Partnership for a Better Scotland*⁶, to proceed with the introduction of STV, the Executive published a draft Bill for consultation in July 2003. It was made clear that the Executive was committed to introducing STV for council elections and that views were being invited on the draft provisions and practical issues relating to the introduction of STV. This consultation process was again supplemented by a series of meetings with key stakeholders. 187 written responses were received, many of which offered helpful technical comments allowing the draft Bill to be finalized for introduction.

Alternative approaches

18. Alternative approaches are:

- *Maintain the current statutory position.* The current statutory position provides that council elections are conducted using the first past the post method. Although this method is familiar to voters and provides a clear councillor-ward link, it does not produce a proportionate result. Maintaining the current statutory position is not therefore in keeping with the views of the McIntosh Commission, the Kerley Group, or the majority of responses to the Scottish Executive's White Paper consultation.
- *Alternative proportional representation systems.* The Kerley Group examined other proportional systems before reaching its conclusion that STV best met the requirements of its remit. The Group concluded that the alternative vote (AV) system provided a strong link between councillor and ward, but did not provide a proportionate outcome. List systems were considered to be highly-proportional, but failed to provide a strong councillor-ward link. The additional member system (AMS) was seen as producing a very proportionate result and a strong councillor ward link for those elected on the first vote, but it was also seen as creating two different types of elected representative, which could be disadvantageous for the administration of a council. Alternative vote top-up was not seen as sufficiently distinct from AMS to merit further consideration. The White Paper *Renewing Local Democracy – The Next Steps* also discussed alternative electoral systems. The outcome of that consultation process showed a clear majority in favour of STV with only a very small number of respondents expressing support for other systems of proportional representation.

MEMBERSHIP OF LOCAL AUTHORITIES ETC – PART 2 (SECTIONS 13 TO 19)

Policy objectives

19. Part 2 of the Bill makes provision for various measures concerned with widening access to local authority membership and recompensing councillors for the role they undertake. These are important aspects of a broader agenda aimed at making council membership more attractive to a wider cross section of the community. Some aspects of that agenda can be addressed by local authorities and political parties, or by the Scottish Executive through non-legislative means. As noted above, work in this area is being taken forward by the Widening Access to Council Membership Progress Group.

⁶ *A Partnership for a Better Scotland*, Scottish Executive, May 2003, <http://www.scotland.gov.uk/library5/government/pfbs-00.asp>

Disqualification

20. Current legislation prohibits all local government employees from standing for election to the council which employs them. If they wish to stand, they must resign from their job when they are nominated as an election candidate. The Scottish Executive believes that many local authority employees have the skills necessary to be effective councillors but recognises that many employees will be reluctant to seek office as a councillor, when they are, in effect, being asked to gamble their careers against the uncertainties of the ballot box. Given that, in some parts of Scotland, the local authority can be the major or a significant source of employment, a disproportionate percentage of the population in those areas is effectively being discouraged from standing for election.

21. The Bill therefore removes the requirement for a local authority employee to resign when they are nominated as a candidate for election. It is replaced with a requirement to resign if the employee is successfully elected as a councillor. The successful candidate must resign on the first working day following the declaration of election and any period of notice which applies to an employee resigning from local authority employment should be waived. Where council employees are not elected, their right to remain in the local authority's employment, without detriment to grade, pay, pension, or other terms and conditions of service, is unaffected. In addition, the Bill repeals existing legislation which prevents a person whose business partner is a council employee from being nominated as a candidate. In future, such people will be able to stand for election as a councillor and, if they are elected, their conduct as a councillor would be regulated by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) .

Reduction of age qualification

22. Section 29 of the Local Government (Scotland) Act 1973 currently provides that one of the qualifications for nomination and election to, and holding office as a member of, a local authority is that the person must have reached the age of 21 years. The Bill amends section 29 so as to reduce that age qualification from 21 to 18 years. This brings the age for standing into line with the voting age and will help encourage younger people to consider standing for council membership.

Eligibility for membership: politically restricted posts

23. Existing legislation sets out the categories of local authority employees who are to be designated as holding politically restricted posts and who are therefore prevented from standing for election as councillor and engaging in a range of political activities. The Bill provides for the removal of two of those categories, which are determined by a salary threshold, as they have proved to be an arbitrary measure which unnecessarily barred some employees from standing for election. The removal of these categories means that the content of a post is now the sole determining factor of whether it is politically restricted. The Scottish Executive understands that there is currently some inconsistency in the approach taken across Scotland to determining which posts should be classed as politically restricted on the basis of content and the Widening Access to Council Membership Progress Group has therefore been asked to prepare guidance on defining politically restricted posts. Such guidance will be developed in consultation with local authorities, trade unions and other interests and will ensure a consistent approach across all local authorities.

Prohibitions on appointment of councillors and ex-councillors to local authority posts

24. Section 67 of the Local Government (Scotland) Act 1973 prevents a former member of a local authority from being employed by that authority for a period of twelve months after ceasing to be a member. This restriction can cause real difficulties for retiring councillors seeking employment, particularly in areas where the local authority is a major employer. In some cases, such as teaching or social work, council employment may be the only avenue open to an individual. The Bill therefore substitutes a new section 67 so that the twelve month restriction is retained only for employment in posts designated as politically-restricted and for employment by retiring councillors who have been directly involved in the appointments process for senior council officers. This is intended to ensure that any perception that an appointment made before a councillor retired was not in any way influenced by the hope of council employment at a later date. The restriction is however reduced to three months for retiring councillors who do not fall into either of these categories.

Pay, pensions etc. of councillors

25. These measures are designed to support the councillors elected to serve their communities, and to enable them to make the career choices which may arise if they wish to take on additional responsibilities within the council. Available evidence suggests that councillors are not primarily motivated by the level and type of remuneration available to them, but there is no real way of knowing whether the current system of remuneration discourages some people from standing for election. It is clear however, that many councillors are finding it increasingly difficult to combine their role as a councillor with other activities, such as employment, childcare or caring responsibilities etc. This may be a factor in some people's decision not to seek election. Research suggests that it is certainly a factor in some councillors' decision to stand down from office, and it is possible that it is also a factor in preventing some in taking on more responsibility.

26. The Scottish Executive recognises the important role which councillors play in their local communities and that councillors often have to face difficult choices between their chosen career, their families, and their role as a councillor. Examining how councillors are recompensed for the work they do is a key part of the drive to attract new people into local government.

27. The Scottish Executive also recognises that a number of councillors have represented their communities for many years. Councillors do not receive any form of pension and long-serving councillors may not have accrued rights in other pension schemes. The Bill therefore enables the Scottish Ministers to make regulations relating to the payment of severance to councillors who cease to serve as a councillor, subject to their meeting any criteria which may be set out in secondary legislation. The Scottish Executive has emphasised that it intends to offer severance on a one-off basis at the time of the next council elections and prior to the introduction of pension arrangements for councillors. The Bill provides that the acceptance of a severance payment will prevent an individual standing again for election as councillor in relation to any Scottish local authority. The precise detail of the severance scheme will be considered in light of recommendations by the Scottish Local Authorities Remuneration Committee.

28. This Bill establishes an independent Scottish Local Authorities Remuneration Committee and provides that it will be made up of 7 members, appointed by the Scottish Ministers. Its members will be appointed following consultation with local authority associations and other

interested parties. The Committee will be required to collect information on matters relating to councillors' remuneration, allowances, pensions and severance and give such advice to the Scottish Ministers in relation to those matters as the Scottish Ministers may require.

29. The activities of the Committee will be funded from grants provided by the Scottish Ministers and the Committee may, with the consent of the Scottish Ministers, appoint staff to help it carry out its functions. Its procedures will be a matter for the Commission itself to determine.

30. The Bill also provides that that the Committee shall comply with any directions made by the Scottish Ministers in relation to the discharge of its functions. The Scottish Ministers intend to give specific directions to this Committee, and, in particular, to direct it to consider the role which councillors fulfil, and the salary which this should attract; and the fact that the severance arrangement should be a one-off scheme, available to cover the period before pension arrangements can be introduced and only in the run up to the next council elections.

31. The Bill enables the Scottish Ministers to issue regulations to provide for the payment of remuneration and expenses to councillors. These regulations may cover payments made in respect of activities carried out in connection with any of the duties of a councillor and make different provisions for different circumstances and purposes. The power to make regulations also allows for an element of remuneration to be payable by way of a pension and for a pension scheme to be set up or adapted for this purpose. It also enables regulations to be made in relation to severance. These are enabling powers and the exact form that remuneration, pension, and severance arrangements take will depend upon decisions taken by the Scottish Ministers in light of recommendations made by the Scottish Local Authorities Remuneration Committee. That Committee will start work as soon as possible after enactment to enable new arrangements to be in place before the next council elections.

Consultation

32. The measures in Part 2 of the Bill have been subject to extensive consultation. Measures concerning political restrictions on council employees were first considered by the McIntosh Commission and were further discussed in the Scottish Executive's consultation paper *A Power of Community Initiative, Community Planning, Political Restrictions on Council Employees*.⁷ More recently, further views were sought in the White Paper *Renewing Local Democracy – the Next Steps* and during the consultation on the draft *Local Governance (Scotland) Bill*. At each stage, there has been a broad measure of support for the proposals on political restrictions from the majority of respondents. The proposal to reduce the age at which people can stand for election as a councillor has also received wide support.

33. The proposal to change the period after which former councillors can take up employment with their former council was also covered in the White Paper. There was a range of views on the nature of the restrictions which should apply to former councillors wishing to take up council posts, with views ranging from no change to the current restrictions to removing

⁷ *A Power of Community Initiative, Community Planning, Political Restrictions on Council Employees*, Scottish Executive, November 2000, <http://www.scotland.gov.uk/consultations/planning/pcip-00.asp>

the restrictions completely. The proposal to reduce the period during which most former councillors are unable to take up employment with the council has, however, been generally welcomed.

34. Councillors' remuneration was first subjected to consultation as part of the McIntosh Commission's work. The views expressed during that process led to McIntosh's recommendation that a pay and conditions package for councillors should be drawn up and that remuneration should in future be subject to independent review. The Kerley Group also examined remuneration and the case for change was debated in the Scottish Executive's White Paper *Renewing Local Democracy – the Next Steps*. The majority of respondents to the White Paper who commented on this issue recognised the need for change in the way councillors are remunerated. There was broad agreement that all councillors should receive a basic salary in future, with further payments for those with additional responsibilities, and that pension and severance arrangements should be made available. There was, however, no consensus on the levels of salary that should be paid in future. There was also a broad measure of support for the suggestion that remuneration might be considered by an independent body in future. Most recently, the Scottish Executive's proposals were considered in the draft *Local Governance (Scotland) Bill* consultation. Relatively few responses commented on the provisions dealing with councillors' remuneration at that stage, although some respondents commented on the need for the Committee to be truly independent and their desire to preserve some element of local flexibility.

Alternative approaches

35. Alternative approaches to provisions in Part 2 are:

- *Maintaining the current position on the disqualification of local government employees from standing for election; age qualification; eligibility for membership: politically restricted posts; and prohibitions on appointment of councillors and ex-councillors to local authority posts.* The current legislation on each of these areas is not causing enormous difficulties. Changing the various restrictions covered in this part of the Bill does, however, contribute to the Scottish Executive's objective of widening access to council membership and removing unnecessary barriers which may currently be discouraging people from standing.
- *Maintaining the current position on councillors' remuneration.* Councillors are currently remunerated by a system of allowances. The key elements are a basic allowance which is paid to all councillors, and additional allowances, particularly special responsibility allowances (SRAs), which are paid to some, but not all, councillors. The level of basic allowance available varies according to the size of the council and is set by the Scottish Executive, but the number and level of SRAs in payment is determined by each individual council. This system of allowances, and, in particular, the level of allowances paid, do not appear to encourage people to stand for election as a councillor. Nor do they appear adequately to recompense many councillors for the role they now play. Conversely, about two thirds of councillors receive SRAs. This proportion seems very high, and it appears that some councils may be using SRAs to compensate councillors with limited additional responsibilities for the fact that the basic allowance is too low. In addition, current arrangements do not include provision for pension arrangements which is considered

to be a further factor which will discourage people from considering standing for election as a councillor.

- *The Scottish Executive considers remuneration issues rather than independent committee.* As final decisions on councillors' remuneration will be taken by the Scottish Ministers, an alternative approach would be for the Scottish Executive to develop options to allow such decisions to be taken. While this would be a relatively straightforward approach, the Scottish Executive considers it important that any proposals concerning councillors' remuneration are developed by an independent body which has a breadth of expertise in this complex area.
- *Establish local remuneration committees.* Instead of a national remuneration committee, it would be possible to create a number of local remuneration committees which might be better able to take account of particular local circumstances. Such an approach would, however, perpetuate the current system under which councillors' remuneration varies considerably across Scotland.

MISCELLANEOUS AND GENERAL – PART 3 (SECTIONS 20 TO 23)

Policy objectives

Election expenses etc.

36. The Scottish Local Government Elections Rules 2002 sought to bring the procedures for council elections further into line with those for Parliamentary elections, but a number of changes which had been made in respect of Parliamentary elections by the Political Parties, Elections and Referendums Act 2000 (c.41) ("the PPERA") could not be introduced for council elections without primary legislation.

37. The Bill therefore amends certain sections of the PPERA to extend to council elections the meaning of "election expenses" and "candidate" currently in use for Parliamentary elections. It also repeals section 82(4) of the Representation of the People Act 1983 (c.2) removing the requirement for a declaration of election expenses to be made before a justice of the peace or the proper officer of a local authority. Again, this change is in line with the arrangements already made for Parliamentary elections. The need for both changes has been raised by electoral administrators and political parties.

Consultation

38. Responses to the consultation on the draft *Local Governance (Scotland) Bill* were supportive of these changes.

Alternative approaches

39. No alternative approaches were considered. The changes bring the procedures for council elections in Scotland further into line with those for Parliamentary elections.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

40. The Scottish Executive believes the measures in the Bill, and its broader widening access agenda will have a positive effect on equal opportunities. Women, younger people, people with disabilities, and minority ethnics are currently under-represented in Scotland's councils. The provisions relating to the political restrictions on council employees, the electoral system and councillors' remuneration will be important factors in encouraging a wider cross-section of the community to consider standing for election as a councillor. Of course, there are many others ways in which people from groups currently under-represented in councils can be encouraged to seek election. As noted above, these are being examined by the Widening Access to Council Membership Progress Group which will make recommendations to the Scottish Ministers around September 2004.

Human rights

41. The Scottish Executive considers that the provisions in the Bill are consistent with the European Convention on Human Rights. Complaints under the European Convention on Human Rights can only be brought by a "person, non-governmental organisation or group of individuals claiming to be the victim of a violation" of a convention right by virtue of Article 34 of ECHR. While "non-governmental organisation" and "groups of individuals" are wide terms they do not cover local government organisations.

42. Article 3 of Protocol 1 to the Convention provides that "the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature." In respect of Part 1 of the Bill, the Scottish Executive is of the view that this article is not applicable to council elections because of the interpretation of the word "legislature." On the basis of case law the Scottish Executive would conclude that as local authorities do not possess an inherent primary rule making power and the powers which have been delegated to them are exercised subject to Parliament's ultimate control they would not be considered by the Court to form part of the legislature.

43. In respect of Part 2 of the Bill, the Scottish Executive has considered whether the sections relaxing existing provisions are creating new restrictions on standing for election as councillor and, as such, whether they restrict an individual's rights to impart information and ideas to third parties in a political context thereby interfering with an Article 10 right. Similar it can be argued that they interfere with the freedom of association with others an Article 11 right. The Scottish Executive is of the view that these interferences are justified on the basis of case law.

44. In relation to severance payments for councillors, the Scottish Executive has considered whether such a provision would infringe Article 3 of Protocol 1 (Right to free elections) and has concluded that there is no infringement on the basis that local authorities do not fall within the definition of "legislature".

Island/rural communities

45. The local authority can be the major or a significant source of employment in a rural or islands area. An individual in an urban area has the option of working in one local authority and being a councillor in a neighbouring authority. That is unlikely to be a practical option for those in rural or islands areas. Current legislation on designating politically restricted posts, or the appointment of councillors and former councillors to the local authority is therefore likely to have a greater impact in rural and islands communities where a significant percentage of the population will be unable to, or be discouraged from, standing for election. The measures in the Bill concerning the designation of politically restricted posts, and the measures concerning the appointment of councillors and former councillors to local authority posts should therefore have a positive effect in rural and islands areas.

46. The Scottish Executive recognises that there has traditionally been a high proportion of councillors, particularly in rural and islands areas, who stand as independent candidates with no party affiliations or backing. One of the core principles at every stage of the consultation and policy development process that led to this Bill has been that the electoral system used should not unduly act for or against the interests of independent candidates. The Scottish Executive does not believe that the STV system is in any way detrimental to independent candidates. Indeed, in areas where there may be a mix of party and independent candidates standing, STV may give independents (and candidates from small parties) a greater chance of being elected.

47. As noted above, multi-member wards will generally be larger than those which exist at present. The Scottish Executive recognises the challenges this will pose, particularly in islands authorities where wards may contain more than one island. The Scottish Executive expects councillors in such wards to work in a co-operative, consensual way, in the interests of the ward and its constituents. In the meantime, the Single Transferable Vote Working Group will be examining the practical issues which the introduction of multi-member wards raises for rural and islands and communities.

Sustainable development

48. There are no effects on sustainable development.

Local government

49. The effects on local government are set out in the discussions on the policy objectives of the Bill throughout this Memorandum.

This document relates to the Local Governance (Scotland) Bill (SP Bill 14) as introduced in the Scottish Parliament on 21 November 2003

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