

## Consultation response form

Consultation on Electoral Reform

Please return this form to reach the Welsh Government no later than 10 October 2017

If you have any questions, please email:

RLGProgramme@wales.gsi.gov.uk

Consultation on Electoral Reform	
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### Introduction

ALACE is a union whose members comprise chief executives and other senior managers in local government. We are responding only on questions that directly affect our members, including their employment rights and contractual terms.

### Consultation questions

#### **Q36 – Should any council staff below senior level be able to stand for election to their own authority?**

No. We strongly reject this option. Whilst we understand the desire to broaden participation in democracy and to achieve more representative elected memberships, this is not a solution. Encouraging overt political activity and loyalties within council workforces would be counter to the principles of professional conduct and good governance, and could cause relationship

tensions and conflicts between council employees and with serving and prospective candidates.

**Q37– Is there still justification for councils to keep a list of those other than senior officers who should be politically restricted?**

Yes. Senior officer impartiality is fundamental to professional conduct and governance.

**Q38 – Do you agree that the statutory chief executive role should include that of returning officer?**

Earlier in 2017, we welcomed the proposal in the draft Bill to include the requirement for councils to appoint a chief executive on the face of legislation.

We note that the WLGA's response is to reject the proposal for legislation to incorporate the role of returning officer in that of chief executive.

We recognise however that the Welsh Government may nevertheless decide to proceed with its proposal. This option will need careful and sensitive consideration. Clearly, as a matter of legislation, if the role of chief executive was to be made statutory, then the separate statutory roles of Electoral Registration Officer (ERO) and Returning Officer (RO) could be incorporated within it. The ERO and RO roles are separate and independent roles for good reason, and safeguards would need to be in place to ensure against the risk that the employing body of the council, made up of elected councillors, did not interfere with the statutory electoral roles and lead to a loss of confidence in impartiality in the conduct of elections.

A specific concern that would need to be addressed, if the Welsh Government goes ahead with its proposal, is that the Returning Officer acts as the employer of staff for each election and does this in an independent capacity. If the RO role was subsumed in the Chief Executive role, then it would seem that the council would become the employer of the elections staff. This would extend the right of auto-enrolment in the Local Government Pension Scheme to elections staff and could increase the cost of elections as a result of employer exposure to employer pension contributions. This would be an additional cost burden which would not represent value for money for such ad hoc contracted employment.

For example, in one Welsh council alone, the Returning Officer employs over 600 people directly to run elections. The Returning Officer is personally responsible as employer, including paying staff. The Returning Officer must auto-enrol his or her staff for pension purposes and we understand most, if not all, Returning Officers in Wales have chosen to adopt the NEST scheme, with a 1% employer contribution rate.

If however the Returning Officer role is not independent of the council, then all employees working to run elections would have to be council employees, even for one day or night. This is because the chief executive of the council is

not personally able to employ staff outside of the council, when acting in that role. This would mean that all staff working for a chief executive (albeit as Returning Officer) would have to be auto-enrolled into the Local Government Pension Scheme. We do not believe that councils can legally operate any other pension scheme. The employer contribution rates in Wales are in some councils over 25%. Given many staff currently employed by Returning Officers are already council staff, it is likely that they would not opt out of auto-enrolment. Therefore, whilst we do not have access to expenditure by all Returning Officers, it has been estimated that the cost of running a National Assembly election could rise by as much as £400,000 or more. Principal councils and town and community councils would see a similar overall increase across Wales.

We have not considered what other employment law consequences there may be from changing the employment status of staff of the Returning Officer, but there could be claims for equal pay (by elections staff in respect of other staff employed by the same council, or vice versa) or other unforeseen HR issues, which have not been identified or considered.

We would urge the Welsh Government to reconsider this proposal as a result of the risks and issues that we have identified.

**Q39 – Do you agree that any addition to salary in recognition of returning officer duties should be a matter for the local authority to determine?**

Following on from Q38 above, if the role of Returning Officer (RO) were to be incorporated within the new statutory role of Chief Executive, then one option is for any remuneration for the oversight of local elections to be included within a single consolidated, pensionable salary for the position. This arrangement is already operated by several employing councils in Wales and should remain a matter of local discretion. The additional responsibilities, demands and risks of being as Returning Officer should be appropriately reflected in any local review of remuneration and should not be dismissed lightly.

The Assembly does not have legislative competence in respect of UK elections including police and crime commissioner elections, and thus any fees in respect of those elections are a matter for the UK Government.

Generally, salaries for staff who perform the role of returning officer will not have been set on a basis that takes account of the responsibilities of returning officers as statutory office holders. A returning officer's responsibilities are ultimately to the courts, not to councils or even to the Assembly. The role is complex and time-consuming and is additional to whatever role an individual may perform in a council. The role is important and carries significant personal risk for post-holders. It carries exceptional levels of personal responsibility, including potentially being personally liable for any fault that occurs in electoral administration and automatically being a respondent in the case of an electoral petition. The role of a returning officer deserves fair and

appropriate remuneration that reflects the workload, commitment and level of responsibility.

As noted above, there are cases where salary as a council officer is inclusive of responsibility for acting as returning officer at a council's own elections (and the "base salary" may therefore be higher than it would otherwise have been). Individuals will have accepted arrangements such as these "with their eyes open". However, in our experience, salaries would not include remuneration of the responsibility for conducting other bodies' elections. In those cases, and for any individuals who are remunerated separately as returning officer for council elections, it would be a retrograde and unfair step to expect them to carry on discharging the role of returning officer for those elections for nil remuneration. ALACE is not aware of any other work that people are required to undertake for nil remuneration. The same point applies to Assembly elections, for which all returning officers receive separate fees at present.

We therefore strongly support the point made in paragraph 7.7 of the consultation document that, for chief executives who do not already have returning officer duties included within their pensionable, base remuneration, councils should review the base remuneration and implement an appropriate upward adjustment to the base remuneration to reflect the loss of separate RO fees for local and Assembly elections. Otherwise ALACE members would be left in a worse financial position than now, which seems wholly unreasonable and unjustified. We feel that such a review should be mandatory rather than left to each council's discretion as to whether or not to conduct a review.

As noted above, the Welsh Government's proposals cannot apply to other elections where the RO is engaged by the UK Government or Parliament to act for national elections and referenda and other electoral processes that are not devolved to the National Assembly (such as elections of police and crime commissioners). ROs should be appropriately reimbursed for the full costs of conducting such electoral processes including their own role.

It is disappointing that the Welsh Government opened a public consultation which includes a review of the contractual terms of Returning Officers, most of whom are Chief Executives in Wales, without any formal prior engagement with ALACE. This is poor consultative practice and we would urge direct contact with ALACE before any draft legislation is brought forward for consultation or consideration by the National Assembly.

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