

**ANGUS COUNCIL – 7 NOVEMBER 2024**

**PROXY VOTING BY COUNCILLORS: SCOTTISH GOVERNMENT CONSULTATION**

**REPORT BY JACKIE BUCHANAN, DIRECTOR OF LEGAL, GOVERNANCE & CHANGE**

**1. ABSTRACT**

The Scottish Government are seeking views by way of a consultation on introducing a statutory provision to allow for proxy voting to be used by elected members within local authorities in Scotland.

**2. ALIGNMENT TO THE COUNCIL PLAN AND COUNCIL POLICIES**

The contents of this Report contribute to the achievement of our priority that the council is efficient and effective as detailed in our Council Plan for 2023 – 2028.

**3. RECOMMENDATIONS**

It is recommended that Council:

- (i) Notes the detail of the proposals set out in the Proposal to Allow Proxy Voting by Councillors Consultation set out in Appendix 1 of this report.
- (ii) Determines and agrees a formal response to Question's 1 and 2 as set out in the Proposal to Allow Proxy Voting by Councillors Consultation, as set out in Appendix 2 of this report, to be submitted to the Scottish Government.
- (iii) Reviews the remainder of the proposed draft formal response to the Proposal to Allow Proxy Voting by Councillors Consultation as set out in Appendix 2 of this report and thereafter determines and agreed a final formal response to be submitted to the Scottish Government in terms of the full consultation questions.
- (iv) Authorises the Director of Legal, Governance & Change to submit Angus Council's agreed final formal response by 28 November 2024, being the deadline for responses in terms of the consultation.

**4. BACKGROUND**

- 4.1 There are currently no statutory provisions which explicitly allow for proxy voting within local government in Scotland. The Scottish Government has raised concerns that the absence of explicit provisions allowing for proxy voting within local authorities could impact councillors on parental leave, or those who are unable to attend for other reasons, for example, because of an accident or serious illness. Proxy voting in these circumstances would allow a councillor to nominate another specified councillor to vote on their behalf during Council decisions.
- 4.2 Section 43 of the Local Government in Scotland Act 2003 made provision for the remote participation in and calling of local authority meetings. This section allows for meetings (including committees, joint committees and sub-committees) to be conducted in any way in which each member is enabled to participate, even if not physically present. There may be an argument that section 43 of the 2003 Act, by allowing local authority meetings to be conducted as long as members are participating, even if not present, already allows the use of proxy voting. However, the Scottish Government raised concerns that there may be room for doubt as to the correct position, which could result in local authorities facing challenge.
- 4.3 The Scottish Government are therefore seeking views on introducing a statutory provision to explicitly allow for proxy voting to be used within Scottish local authorities.

## 5. CURRENT POSITION

- 5.1 As noted above, there are currently no explicit provisions to legislate for proxy voting in local government. However, the Scottish Government note options, short of proxy voting, that could aid decision making.
- 5.2 The Scottish Government note that it is likely that local authorities could introduce informal pairing agreements along the lines of those previously used in the Scottish Parliament prior to its introduction of explicit proxy voting provisions. Pairing occurs where two individuals from opposing parties both agree not to vote on a decision. This would allow a councillor to be absent without affecting the result of the vote as the absences balance each other out. However, the Scottish Government recognises that there could be difficulties around this given that Councils are smaller, with more limited numbers of councillors to pair. There may also be instances where cross-party working is under “local tension”, and it would not be possible to agree a pair. Such a pairing agreement might also prevent quorum requirements being met.
- 5.3 The Scottish Government Consultation notes that local authorities could consider the appointment of named substitutes to committee, effectively allowing a form of proxy voting to be used. Angus Council’s current Standing Orders permit substitutes on all Standing committees of the Council, apart from the Development Standards and Civic Licensing Committees, provided that the Director of Legal, Governance and Change has been notified before the relevant meeting starts. The Scottish Government note that they operate a similar scheme where substitutes are agreed in advance by the Committee and the individuals would then be able to attend meetings in the absence of another member. However, it was noted that where there are independent members or a smaller number of councillors from the same party opportunities for named substitutes may be limited. It would also not be possible to apply this to full Council meetings as all councillors are required at those meetings.
- 5.4 Given the limitations to the options above, the Scottish Government recognises that a statutory provision around proxy voting would be preferable.
- 5.5 The Scottish Government proposes to amend the Local Government (Scotland) Act 1973 to enable a councillor in Scotland to arrange for their vote to be cast by a proxy. A further amendment would also be made which would require local authorities to agree and publish a scheme setting out how proxy voting would work in practice, where they choose to introduce proxy voting.
- 5.6 A proxy vote is defined in the Cambridge Dictionary as “a vote that you do not cast (make) yourself but that is cast by someone who is representing you and voting according to what you want”. It may be difficult for a person who does not attend an actual meeting to know how they wish to vote without hearing the debate and also in terms of any amendments. Although proxy voting is used in the Scottish Parliament, amendments on matters debated and decided there are published in advance of the relevant meeting. For example, amendments in relation to Stage 2 Parliamentary Bills are required to be lodged no later than the fourth sitting day before the day the stage takes place or begins. The purpose of the four-day notice period is to ensure that members (and others with an interest in the Bill) have an opportunity to consider amendments in advance of the debate. Similarly, any amendments made in relation to Motions are required to be lodged one day in advance of the relevant debate. This is not what normally happens in a local authority setting where amendments are only brought forward during the course of consideration of the matter at the actual committee meeting. A proxy system is unlikely to be appropriate in relation to quasi-judicial matters where there is a recognised legal requirement when taking part in the decision-making to be present during the meeting. The Scottish Government has noted that it would be for the local authorities to determine how a scheme could work in practice and under which circumstances proxy voting could be available. Both these issues would require careful consideration and may limit the extent to which a proxy voting system would work effectively.
- 5.7 Subject to views from the consultation, The Scottish Government have proposed that the following criteria be included within the operation guidance as suggestions on where proxy voting could be appropriate:
  - i. maternity leave, paternity leave, parental leave, shared parental leave or adoption leave;
  - ii. complications arising from pregnancy, childbirth, miscarriage or baby loss;

- iii. serious long-term illness or injury;
- iv. bereavement;
- v. attending to a person who is near the end of their life;
- vi. any other reason subject to agreement of the full Council.

## **6. PROPOSALS**

It is proposed that Members:

- (i) Note the detail of the proposals set out in the Proposal to Allow Proxy Voting by Councillors Consultation set out in Appendix 1 of this report.
- (ii) Determine and agree a formal response to Question's 1 and 2 as set out in the Proposal to Allow Proxy Voting by Councillors Consultation, as set out in Appendix 2 of this report, to be submitted to the Scottish Government.
- (iii) Review the remainder of the proposed draft formal response to the Proposal to Allow Proxy Voting by Councillors Consultation as set out in Appendix 2 of this report and thereafter determine and agree a final formal response to be submitted to the Scottish Government.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 There are no direct financial implications arising from the recommendations of this report.

## **8. RISK MANAGEMENT**

- 8.1 If statutory provision was introduced to allow explicitly for proxy voting to be used within Scottish local authorities, careful consideration would be required as to how this would work in practice.
- 8.2 Amongst other things, there would be challenges in a proxy system in relation to quasi-judicial matters, where it would not be deemed appropriate to appoint a proxy. The Scottish Government has advised that it would be for each council to determine under which circumstances proxy voting could be available. Therefore, this risk can be mitigated by making quasi-judicial matters exempt from proxy voting.
- 8.3 Another challenge with a proxy voting system is in relation to the council process, when amendments are tabled on the day. In terms of the current system, this would mean that the party who has nominated the proxy, would not know the detail in advance. As noted above, each council would determine how the proxy system would work. It may require changes to current practices.

## **9. ENVIRONMENTAL IMPLICATIONS**

- 9.1 There are no direct environmental implications arising from the recommendations of this report.

## **10. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY**

- 10.1 Although if proxy voting was introduced it would have a differential impact on people with protected characteristics, as this report is only concerned with a consultation response on the matter there is no such differential impact and therefore no requirement for an EIA and no impact in terms of human rights or the Fairer Scotland Duty.

## **11. CHILDRENS RIGHTS AND WELLBEING IMPACT ASSESSMENT**

- 11.1 A Childrens Rights and Wellbeing Impact Assessment has been undertaken and a full assessment is not required as the "General Principles" do not apply to this proposal.

## **12. CONSULTATION**

- 12.1 The Director of Finance and the Chief Executive have been consulted in the preparation of this report.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

**REPORT AUTHOR:** Maaria Zahir – Governance Solicitor

**EMAIL DETAILS:** [zabirm@angus.gov.uk](mailto:zabirm@angus.gov.uk)

**Appendix 1** - Consultation on Proposal to Allow Proxy Voting by Councillors

**Appendix 2** – Draft Consultation Response on Proposal to Allow Proxy Voting by Councillors