

REPORT TO: East Lothian Council

MEETING DATE: 25 October 2016

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Local Government Boundary Commission Review

1 PURPOSE

- 1.1 To inform the Council of the outcome of the Local Government Boundary Commission's review of Councillor numbers and boundary arrangements as these apply to East Lothian.
- 1.2 To seek authority from Council either to accept the said outcome or to continue to challenge both the process and the outcome by means of a Judicial Review of the decision of Scottish Ministers to accept the LGBC's recommendation.

2 RECOMMENDATIONS

- 2.1 To note the Local Government Boundary Commission's recommendation to reduce councillor numbers in East Lothian from 23 to 22 with a consequential change to ward boundaries and to note the acceptance of that recommendation by Scottish Ministers.
- 2.2 To consider whether a Judicial Review of the decision is appropriate, taking account of legal advice, possible cost and risk and, if so, authorise officers to progress such an action.

3 BACKGROUND

- 3.1 The LGBC has now completed its fifth review of local authority ward boundaries and councillor numbers. When making its recommendations it must consider fixed criteria:
 - The number of electors per councillor in each ward should be, as nearly as may be, the same;
 - Subject to this it will have regard to:

- Local ties that would be broken by fixing a particular boundary; and
 - The desirability of fixing boundaries that are easily identifiable
- 3.2 As part of its methodology for the current review the LGBC, for the first time, categorised each council on the basis of levels of deprivation and population distribution rather than solely on population distribution. As has been reported to Council through a series of reports, East Lothian Council, along with a number of other authorities across Scotland, responded to the consultation on the review to the effect that it considered it inappropriate to use levels of deprivation as a factor in determining the size of a council. There have been no councillor caseload studies in the last 20 years that suggest that levels of deprivation contribute significantly to a councillor's workload. In addition, the Council's response pointed to the high level of population growth in East Lothian during the period 2001–2011 and the projected population growth in future years. Finally, having fulfilled its statutory obligation to consult with the Council on a proposed reduction to 21 councillors, the LGBC failed to consult with the Council on its final recommendation, being a reduction to 22 councillors.
- 3.3 As a consequence of the reduction in the number of from 23 to 22, there has been a consequential redrawing of the ward boundaries, as shown on Appendix 1 to this report. These new boundaries cut across existing, well-established communities, school catchment areas, local area partnerships and local natural and historical connections. It is considered that these are not in the best interests of effective local government and breach the Commission's statutory requirement to have regard to local ties and easily identified boundaries. These boundary changes would also require complete redrawing of how the Council carries out its business, and would involve considerable time and effort being diverted, from core Council business.
- 3.4 Despite extensive correspondence between the Council, COSLA, SOLACE and the LGBC objecting to both the process being followed and the outcome of that process, the LGBC's recommendation was submitted to Scottish Ministers in May 2016 and, despite the Council's objections on the foregoing grounds, was accepted by Scottish Ministers with a Statutory Order implementing this recommendation issued on 14 September 2016. The chronology of the interaction between the Council and the various interested parties is set out in Appendix 2 to this report.
- 3.5 Following the decision by Scottish Ministers to adopt the majority of the recommendations of the LGBC, a number of councils considered whether or not to initiate a legal challenge to the process followed by the LGBC. Counsel's Opinion had previously been obtained by East Renfrewshire Council (May 2015) and this suggested that there were sufficient grounds to raise such an action. East Lothian Council's cross-party group on the Boundary Review met on 4 October 2016 to consider this matter and agreed that East Lothian Council should participate in a legal challenge

(with the Leader of the Opposition dissenting). At that time, it was understood that three other councils had decided to participate in the court action with another three still to decide. In reaching a decision on whether to participate, the Chief Executive, acting under delegated authority, took account of the views of the cross-party group, the legal opinion on the matter, the likely share of the overall cost that would fall to East Lothian Council and the overall risk to the Council of challenging the decision as opposed to accepting the decision.

- 3.6 On 11 October we were advised that two of the councils that had intended to participate in the court action had reconsidered matters and were now not proceeding. This leaves East Lothian Council and one other authority to take this matter forward. In light of this, the Council's share of the cost of raising the action will increase significantly along with its share of the potential costs of the defenders should the action ultimately be unsuccessful. Officers are seeking to ascertain a clearer understanding of the possible extent of that liability. In addition, the reduction in number of councils pursuing the action may have an effect on the strength of the legal case. Officers are meeting with the Advocate who provided the Opinion in May 2015 to seek an update on the prospects of success in light of this new situation. An update will be provided to Members on both aspects at the Council meeting.
- 3.7 In light of the significantly changed circumstances, it is now considered appropriate that Members reach a decision on whether they wish the Council to continue its opposition to the review process by means of a court action or whether they are now content to accept the decision of Scottish Ministers to accept the recommendation of the LGBC to reduce councillor numbers to 22 with the consequential boundary changes as shown in Appendix 1.

4 POLICY IMPLICATIONS

- 4.1 None

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – Participation in a legal challenge will involve costs to the Council. Should the action be unsuccessful, the costs of the LGBC and Scottish Ministers could be awarded against the Council(s) raising the action. The likely level of costs will be confirmed to Council on 25 October when officers have undertaken further investigations.

6.2 Personnel - None

6.3 Other - None

7 BACKGROUND PAPERS

7.1 Council Report – 22nd April 2014

7.2 Council Report – 21st April 2015

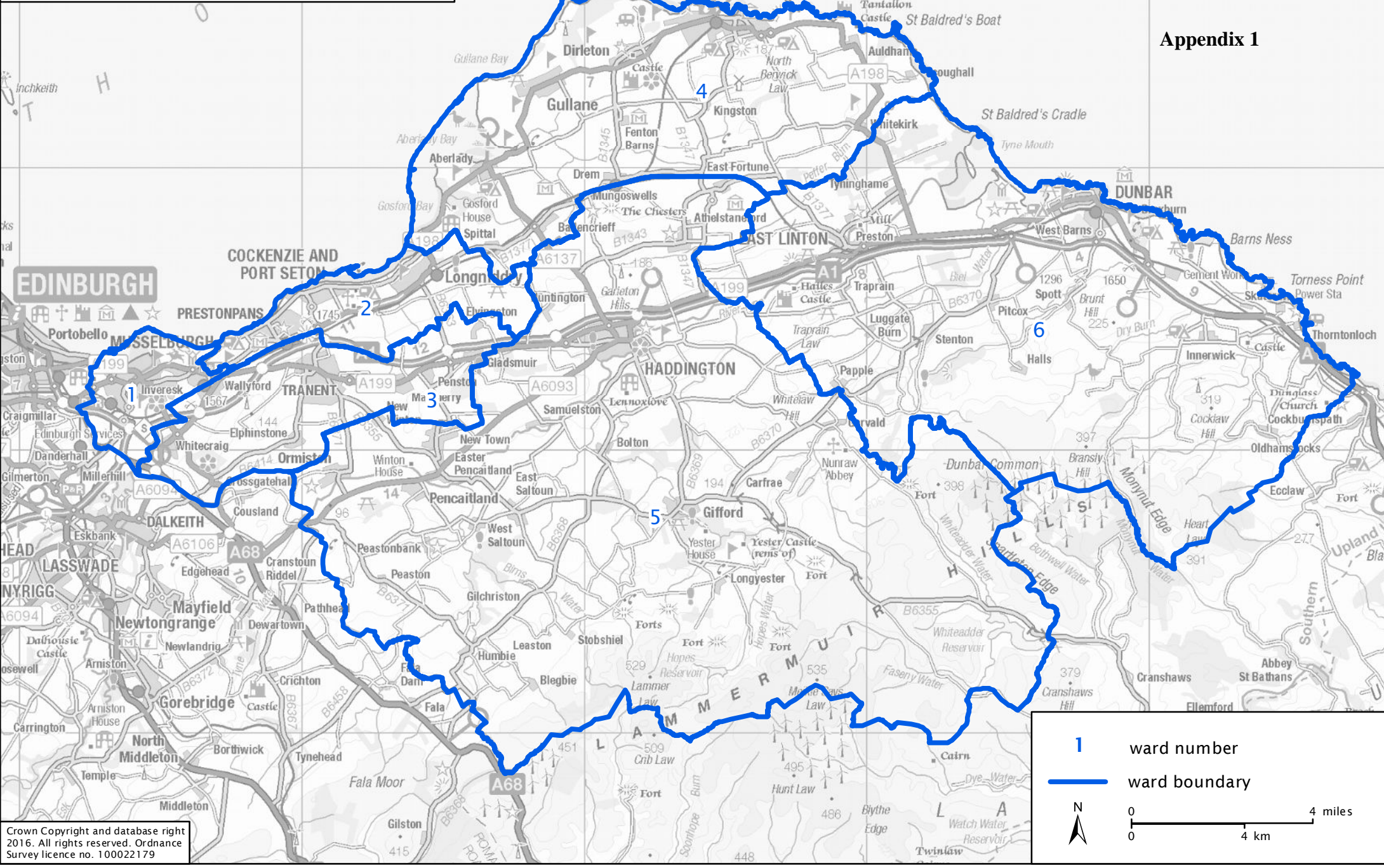
7.3 MLS Report – 3rd June 2015

7.4 Council Report - 25th August 2015

7.5 Appendix 1 – New Ward Boundaries for East Lothian Council area

7.6 Appendix 2 – Chronology of engagement on 5th Boundary Review

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DATE	14 th October 2016



Chronological Summary of Events

Date	
2011-13	LGBC consulted on methodology for future Review – existing methodology considers population distribution and density.
6 June 2013	LGBC writes to ELC Chief Executive advising that substantive work on Fifth Review will commence in autumn 2013 and asking for preliminary views on the number of Councillors in the area
October 2013	New Chair appointed to LGBC. Board meeting - Deprivation discussed as a possible factor but dismissed
24 Oct 2013	LGBC writes to ELC Chief Executive requesting information on new housing forecasts, established communities and other locally recognised boundaries, including community council areas and school catchment areas.
November 2013	LGBC Board meeting – Board asked that further analysis be carried out including deprivation as a factor
December 2013	LGBC Board meeting – new analysis presented and Board chose method that categorises Councils according to their levels of deprivation and population density rather than one that took account of deprivation, population and population density
January 2014	LGBC considers 6 options – 5 using deprivation as a factor and one using existing methodology. Confirms its intention to incorporate deprivation into its methodology.
21 Feb 2014	LGBC commences Fifth Review of Electoral Arrangements
	2 month statutory period of consultation with Councils on Councillor numbers commences – Proposal for East Lothian is reduction from 23 Councillors to 21. Guidance Booklet advises that deprivation had been used as a factor in categorisation of Councils.
	LGBC meets with all Councils to provide background to Review
22 April 2014	Council Report seeking authority to for consultation response opposing reduction to 21 Councillors on basis that there is no evidence that deprivation has an impact on Councillor workload; that EL's growing population is likely to lead to increases in workload; that the reduction in numbers will lead to boundary changes that will cut across established communities and that, if deprivation was a relevant factor, the reduction in numbers did not take account of the areas of deprivation within EL.
23 April 2014	Chief Executive writes to LGBC in terms approved by Council
7 May 2014	LGBC advises that public consultation on Councillor numbers will commence on 29 May 2014 and that responses received from Councils will be 'useful in refining the scope of research which the Commission plans to initiate later this year on the role of Councillors, which it hopes will be of value for future reviews of electoral arrangements'.
29 May 2014	LGBC commences public consultation on Councillor numbers – consulting on same proposals on which it consulted Councils.
3 July 2014	COSLA write to LGBC expressing concern about lack of a clear and comprehensive methodology for the review; singling out of deprivation as a factor that might impact workload rather than a comprehensive examination of the range of factors that might impact; the fact that the link to deprivation was asserted but not proven in the review; the limits selected for maximum and minimum numbers of Councillors with no reasons given and the fact that there can be no overall increase in Councillor numbers meaning that any increase in representation in one area must come at the expense of a decrease elsewhere.
21 July 2014	LGBC acknowledges ELC response to consultation and asks for more information about assertion that there is no evidence that Councillors in deprived areas have a greater workload than others, including a request for any published evidence that would be of interest to the Commission and others. Advising that proposal to increase representation in deprived areas is to provide additional accountability and decision making capacity within a Council facing challenges – it is not primarily driven by the Commission's view on the impact of deprivation

	on Councillor workload.
11 Aug 2014	Letter from LGBC to COSLA
20 Aug 2014	Chief Executive responds to LGBC – directs them to 2005 study on Councillors' Workloads commissioned by Scottish Govt, which found no link between deprivation and workload. Pointed out that the LGBC's approach failed to take account of Accounts Commission report – An Overview of Local Government 2014; the effect of multi member wards; the fact that any decrease in numbers in EL would be in the areas of most deprivation; the fact that no account has been taken of which Councils no longer have housing stock to manage.
25 Aug 2014	COSLA write again to LGBC reiterating concerns with methodology and lack of evidence regarding deprivation.
16 Oct 2014	<p>LGBC advise ELC that they are now looking at Ward boundaries for EL – two options proposed.</p> <p>Both Options place Musselburgh as one Ward. Ward 2 merges into Wards 1 and 4 and is split along the railway line.</p> <p>Option B retains the existing boundary of wards 5 and 7; extends the boundary of Ward 3 to include Macmerry; extends the boundary of Ward 6 to include Ward 4.</p> <p>Option B1 retains the existing boundary of Ward 6; creates new ward boundaries in Wards 4 and 5 and adds Longniddry to Ward 5.</p> <p>Both proposals are for 21 Councillors.</p> <p>Officers asked not to share this information with Councillors pending a formal consultation with the Council and then the public in 2015.</p>
November 2014	Richard Kerley of QMU and Neil McGarvey of Strathclyde University commissioned to undertake survey into Councillors' roles and workloads on behalf of LGBC
21 Nov 2014	Chief Executive writes to LGBC in her capacity as Chair of SOLACE advising that it is not reasonable to ask officers not to share proposals with Councillors prior to public consultation in 2015 and that the proposals are premature in advance of the findings from the above study commissioned by LGBC.
21 Nov 2014	Chief Executive writes to LGBC in similar terms to letter above.
16 Dec 2014	LGBC (New Secretary – Isobel Drummond-Murray) response to ELC. Proposals only shared for option of comments from officers on local issues prior to formal consultation process. Confirmed that outputs from commissioned study would inform future reviews but not this one due to timing. Believe there is 'a plausible case to be made for using deprivation' as a factor that impacts on a Council's corporate capacity and may impact on Councillors' workload.
18 Dec 2014	LGBC Board Meeting held. Minutes – noted possible extension of franchise to 16 and 17 year olds but confirmed it would not materially affect current review or methodology for calculating Councillor numbers. With regard to East Lothian, noted that there were three Options – Options A and B both proposing a reduction of 2 Councillors with Ward boundary changes and Option C with a reduction of 1 Councillor and 'minor' Ward boundary changes. Noted that the Commission's methodology had suggested a reduction of 2 Councillors to 21 – would have been a greater reduction were it not for the 10% limit to change rule that the Commission has chosen to apply. Noted ELC's opposition to proposal and high level of public engagement in response to consultation. Noted that it is sensible to have Musselburgh as a single Ward under each of the Options. Noted that whilst change has to be accommodated, disruption to existing Wards and local communities is to be minimised. Taking all this into account, Commission adopted Option A as its initial proposal for consultation.
20 Feb 2015	Chief Exec writes to Chair of LGBC, in her capacity as Chair of SOLACE, to feedback on the position of SOLACE re lack of engagement with Councils; failure to take on board concerns expressed by Councils; lack of consultation on new criteria; dissatisfaction the methodology used, regardless of outcomes; prematurity in pressing on before research results were known; use of out of date electorate numbers.
19 March	LGBC advise ELC that it is proposing 21 Councillors and associated ward boundary changes.

2015	Consultation with Council runs from now to 19 May 2015 with a public consultation to follow.
March 2015	Chief Exec writes to Chief Executive of COSLA, in her capacity as Chair of SOLACE, reiterating concerns raised by COSLA and suggesting that it is now appropriate for that body to take these forward.
21 April 2015	Report to Council seeking authority to request an extension of time to respond to the consultation due to the impending General Election and, if refused, to authorise officers to respond.
May 2015	Counsel's Opinion obtained by East Renfrewshire Council on prospects for a legal challenge to LGBC's process. Tentatively positive view taken by Counsel subject to obtaining further information through FOI requests
29 May 2015	ELC responded to consultation, reiterating its opposition to reduction in Councillor numbers and use of deprivation as a factor and advising that proposal would cut across established local ties and school clusters and catchment areas.
3 June 2015	ELC Members Library report advising Members of terms of above response.
7 July 2015	LGBC Meeting – reviewed proposals for East Lothian and approved an alternative proposal for 22 Councillors and associated Ward boundary changes, very similar to one of the proposals originally considered and rejected at meeting in December 2014. This proposal was then subject to public consultation but not further consultation with ELC.
13 July 2015	FOI request submitted by East Renfrewshire Council regarding use of deprivation as a factor
20 July 2015	LGBC responds to ELC updating on process. Proposals about to be submitted for public consultation – not final. Following public consultation, LGBC will revisit all 32 reviews before deciding on next steps.
30 July 2015	Public consultation on new proposal begins. ELC advised they can submit a further representation during this period.
24 Aug 2015	FOI request submitted by ELC regarding use of deprivation as a factor and internal consultation procedures
25 Aug 2015	Report to EL Council seeking authority for officers to submit response to LGBC reiterating its opposition to new proposal
22 Sep 2015	LGBC responds to ELC FOI request.
22 Oct 2015	Council responds to LGBC consultation restating its opposition to the new proposal, raising concerns re legality of consultation process and calling for a local inquiry.
22 Oct 2015	Public consultation period ended. 42 responses received regarding East Lothian. Main themes- support for retaining current position due to expected population growth; concern that changes to ward boundaries will affect school catchment areas; proposals break Local Area Partnership boundaries; Inveresk village will be split between wards; and proposal breaks local ties of Tranent and Musselburgh.
25 Nov 2015	ELC reminder to LGBC re legality of consultation process and call for local inquiry
8 Dec 2015	COSLA write to Marco Biagi, MSP, advising of cross party unanimity opposition to review.
8 Dec 2015	LGBC Board meeting - considered all responses received, discussed further options and decided to make a minor change to boundary between wards 1 and 3 to avoid breaking local ties at Inveresk. Recognised strong opposition to proposals for reducing Councillor numbers but noted that, without 10% limit, number for East Lothian would be 20. Decided to retain proposal because they improved overall forecast parity; improved local community ties in Musselburgh and minimised change by retaining 3 existing ward boundaries.
10 Dec 2015	LGBC response to ELC – confident it has complied with legal requirements for consultation and will consider whether it requires to hold a local inquiry
Feb 2016	COSLA President writes to Deputy First Minister calling for a delay in process to address fundamental and cross party unanimous opposition to review
19 Apr 2016	LGBC Board meeting - confirmed Final Recommendation for East Lothian.
25 May 2016	Final recommendations Report from LGBC issued to ELC – 6 weeks for comments. Final recommendation is an alternative proposal first considered by LGBC at its meeting in December 2014 and confirmed at its meeting in July 2015 – 22 Councillors and associated Ward boundary changes.
28 May	LGBC submits Final Recommendations to Scottish Ministers

2016	
15 June 2016	Letter sent to Joe FitzPatrick MSP on behalf of number of Councils requesting that he not approve Final Recommendations for those Council areas
20 June 2016	ELC write to Joe FitzPatrick MSP reiterating strong opposition to proposal and requesting that he reject recommendation from LGBC.
30 June 2016	Meeting between COSLA Presidential team and Joe FitzPatrick, MSP – Minister advised that he will look at every review individually; will be looking for cross party and community views in each local area response to their review; Scottish Govt will discuss parameters for next review with COSLA
14 Sep 2016	Order implementing Final Recommendations laid before Parliament
30 Sep 2016	Order comes into force – effective for elections held on or after 4 th May 2017
10 Oct 2016	East Renfrewshire Council receives response from LGBC to FOI request – confirming that no report is yet available on the outcome of the research into Councillor Workload and that no report on this subject was submitted to Scottish Ministers in support of the LGBC recommendations