

SPICe Briefing

Local Electoral Administration (Scotland) Bill

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The Local Electoral Administration (Scotland) Bill was introduced on 7 October 2010 by John Swinney MSP. The Bill has a dual purpose: firstly, the establishment of an Electoral Management Board for Scotland, and secondly, the extension of the Electoral Commission's remit to include Scottish local government elections. The Bill forms part of a wider response to the events of the 2007 Scottish Parliament and local government elections. This paper outlines the development of the proposals in this Bill from the findings of the Gould report and subsequent responses from key stakeholders prior to discussing the content of the Bill.



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EXECUTIVE SUMMARY

The Local Electoral Administration (Scotland) Bill was introduced on 7 October 2010 by John Swinney MSP. The Bill deals with two specific topics in relation to local electoral administration. Firstly, the Bill proposes the statutory establishment of an Electoral Management Board for Scotland. Secondly, it proposes the extension of the Electoral Commission's functions to include Scottish local government elections.

The Bill forms part of a wider response to the events of the 2007 Scottish Parliament and Scottish local government elections and seeks to provide greater consistency and coordination in electoral administration in Scotland. The provisions of the Bill have been subject to an extensive process of policy development and consultation.

The proposal to establish an EMB builds upon the experience of the Interim Electoral Management Board (IEMB) which was established in 2008 and has fulfilled a co-ordinating role in relation to the 2009 European Parliament elections and 2010 UK General Election. The Bill proposes that the EMB be placed on a statutory footing in relation to local government elections. The Scottish Parliament does not have legislative competence in relation to Scottish Parliament, House of Commons or European Parliament elections.

The Bill sets out the arrangements for determining the composition of the EMB, proposes providing the Convener of the EMB with a power of direction over Returning Officer's (ROs) and details reporting requirements for the proposed EMB. Generally, electoral stakeholders were in favour of the proposed EMB although some stakeholders expressed concern that it was not clear whether the body would deal with all elections in Scotland and not solely local government elections. Similarly, the allocation of funding to the EMB has yet to be agreed between the Scotland Office and the Scottish Government and the Financial Memorandum to the Bill sets out two possible funding options.

The Bill also seeks to extend the remit of the Electoral Commission to include local government elections. At present, local government elections are the only set of elections in Scotland, and the UK, which the Electoral Commission has no formal role in supporting. The Bill would require the Electoral Commission to undertake a range of functions including to report on the administration of local government elections, apply performance standards to ROs and to provide guidance to electoral administrators, candidates and political parties. The Electoral Commission would also be required to run public awareness and information campaigns in relation to the local government electoral system and the system of local government more generally. Electoral stakeholders generally supported the proposal to extend the Electoral Commission's remit.

The Local Government and Communities Committee has been designated the lead Committee on the Bill.

INTRODUCTION

The Local Electoral Administration (Scotland) Bill was introduced on 7 October 2010 by John Swinney MSP. The Bill deals with two specific topics in relation to local electoral administration. Firstly, the Bill proposes the statutory establishment of an Electoral Management Board for Scotland. Secondly, it proposes the extension of the Electoral Commission's functions to include Scottish local government elections.

The Bill forms part of a wider response to the events of the 2007 Scottish Parliament and Scottish local government elections. Previously, the Scottish Parliament passed the Scottish Local Government Elections Act 2009, which de-coupled local government elections from Scottish Parliament elections. The Scottish Government (2010) has recently consulted on a range of other electoral administration issues, which do not require primary legislation, that arose out of the Gould report into the 2007 elections (Gould 2007). The issues being consulted on included: ballot paper design, maintaining the secrecy of the ballot, when the count should take place and possible measures to improve turnout. The closing date for consultation responses was 15 October 2010. The results of the consultation are expected to inform the drafting of regulations for the 2012 local government elections.

This paper outlines the development of the proposals in this Bill from the findings of the Gould report and subsequent responses from key stakeholders prior to discussing the content of the Bill.

CURRENT ELECTORAL ADMINISTRATION LANDSCAPE IN SCOTLAND

The Scottish Parliament has responsibility for the legislative framework for elections to Scottish local authorities with the exception of the franchise. The United Kingdom Parliament is responsible for the policy and legislative framework for Scottish Parliament elections, House of Commons and European Parliament elections and for the franchise for all four elections.

Local Government Returning Officers (RO) are appointed by local authorities to administer the election of councillors to the relevant local authority. They are usually but not always the Chief Executive of a local authority. In most cases, the RO for local government elections will also be the Returning Officer for Scottish Parliament and House of Commons elections. For European Parliament elections, one of the 32 ROs in Scotland is designated by the Secretary of State for Scotland as Regional RO. For example, in 2009 the Regional RO was Tom Aitchison, Chief Executive of Edinburgh City Council. RO's have responsibility for all aspects of the organisation and conduct of elections and are answerable through statute, to the Courts.

Electoral Registration Officers are responsible for preparing and maintaining the register of electors and the lists of absent voters in their specified area. These lists are used for all the elections mentioned above.

A range of professional associations represent the views of elections professionals. The main associations in Scotland are the Society of Local Authority Chief Executives and Senior Managers in Scotland (SOLACE Scotland), the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), the Association of Electoral Administrators (AEA) and, the Scottish Assessors Association (SAA).

The Electoral Commission is an independent body that reports directly to the UK Parliament via the Speakers Committee on the Electoral Commission¹. The Commission holds a number of functions in relation to Scottish Parliamentary elections which can be broadly termed as being regulatory, operational and advisory. These roles include functions such as providing:

- guidance to candidates, agents, ROs and EROs
- public information campaigns, and
- general guidance and advice on changes to electoral law and procedures

The Electoral Commission also has a UK wide role in relation to the regulation of political party financing and matters relating to electoral registration. Currently, the Commission has no formal remit in relation to Scottish local government elections. However the Commission can, and has since its establishment, undertaken specific tasks in relation to Scottish local government elections, when invited to do so by the Scottish Government.

Lastly, an Elections Steering Group / Interim Electoral Management Board has dealt with preparations for the 1999, 2003 and 2007 Scottish Parliament and local government elections (and the 2009 European Parliament election and the 2010 House of Commons general election). The role of this body, which is discussed later in this paper, is broadly to bring together electoral stakeholders in order to coordinate the planning for elections and ensure consistency of approach in the delivery of electoral administration.

GOULD REPORT

The Electoral Commission asked Ron Gould, an independent electoral expert, to conduct an independent review of the 2007 elections with specific reference to the problems which had arisen at the 2007 elections. The remit for the review was to consider (Gould, 2007, p.5):

- “the reasons for the high number of rejected ballot papers;
- the electronic counting process and its impact on the final results;
- the arrangements for the production and dispatch of postal ballot packs;
- the decision to combine the Scottish parliamentary and local government elections;
- the decision to electronically count both the local government and Scottish parliamentary ballot papers;
- where decision-making took place in relation to these issues as opposed to where it should have taken place, either according to the law or responsibility; and
- the role of the Electoral Commission itself in the preparations for the elections”.

The key finding of the Gould report was as follows:

“In considering the circumstances surrounding the planning, organising and implementation of the 3 May 2007 elections in Scotland, we have observed an unfortunate pattern. Almost without exception, the voter was treated as an afterthought by virtually all the other stakeholders. Numerous factors – such as combining the ballot papers for the Scottish parliamentary elections, introducing a new voting system with different ballot paper marking requirements, the failure to conduct adequate research and testing on the impact this new system would have on the electorate, the insistence on conducting an overnight count – all indicate to us that voters were overlooked as the most important stakeholders to be considered at every stage of the election. We obviously recommend that all those with a role in organising future elections consider the voters’ interests above all other considerations” (p.120).

¹ Details of the Speakers Committee on the Electoral Commission can be accessed at: <http://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-on-the-electoral-commission/membership/>

Gould proposed considerable change to the electoral administration landscape in relation to the issues which the Bill deals with. Firstly, he recommended the creation of a Chief Returning Officer (CRO) for Scotland. The CRO, Gould proposed, would be responsible for issuing directions, coordinating and overseeing all aspects of the electoral processes for Scottish Parliament and local government elections where consistency or centralisation of Returning Officer responsibilities arise. Secondly, Gould proposed a rationalisation of the role of the Electoral Commission and other electoral stakeholders as a result of the proposed CRO post. Gould also proposed that the operational functions of the Electoral Commission in relation to elections, such as party political registration, public information and training, should become the responsibility of the CRO. The Electoral Commission would then focus on its regulatory and advisory roles such as conducting post-election audits and offering advice and guidance to the CRO and electoral stakeholders more generally.

RESPONSES TO THE GOULD REPORT

The Electoral Commission (2007), Scottish Government (2008), Scotland Office (2008) and the Local Government and Communities Committee (2008) of the Scottish Parliament all produced reports in response to the Gould report². These responses are considered, with regard to the provisions proposed in the Local Electoral Administration (Scotland) Bill, below.

ELECTORAL COMMISSION RESPONSE

The Electoral Commission published an initial response to the Gould report in November 2007 (Electoral Commission, 2007). The Commission's response emphasised the need for consideration of the issues raised by Gould in a UK wide context commenting on Gould that:

“These recommendations have far reaching implications for electoral administration both in Scotland and across the UK. The key issues raised in the Gould report – independence, accountability and voter focus – have not all been examined in the context of other UK elections. They arise beyond as well as in Scotland, and should not remain unaddressed” (Electoral Commission, 2007, p.10).

The report went on to raise a number of issues which the Electoral Commission considered should be given further consideration before implementing Gould's recommendation to establish a Chief Returning Officer. These issues included (Electoral Commission, 2007, p.10):

- the cost effectiveness of a Chief Returning Officer conducting public information for some but not all elections in Scotland while the Commission continues its role in relation to UK and European Parliamentary elections and with respect to electoral registration
- the needs of the Chief Returning Officer as regards staff, budget and other resources, and a more detailed consideration of how such an officer would improve the level of professionalism among Returning Officers
- how the Chief Returning Officer would operate, and most importantly be accountable, in the context of whatever decisions may be taken about the report's recommendations on jurisdiction
- the fact that the Commission's role in respect of Scottish local government elections is different from its role in respect of all other elections in Scotland

² The House of Commons Scottish Affairs Committee (House of Commons, 2008) also produced a report on the Scottish 2007 Elections, which is not considered in detail in this paper.

SCOTTISH GOVERNMENT RESPONSE

The Scottish Government (Scottish Government, 2007) concurred with the Electoral Commission that Gould's recommendations raised significant issues for the structure of electoral administration in Scotland. With regard to the Gould recommendation that a CRO be established, the Scottish Government commented that electoral stakeholders were divided on the merit of this recommendation:

"The response to the Gould report of the key stakeholders with responsibility for running elections – SOLACE, SOLAR and AEA – reflected divided opinion on the creation of a CRO. They indicated that, for the CRO post to be worthwhile, it must be for all elections in Scotland, not just the local government elections. Whatever the scope of the post, they believe that more discussion and debate is required" (p.11).

The Scottish Government considered that the CRO proposal required "further thought and discussion" (p.11). In addition, the Scottish Government observed that there were posts in Canada and Northern Ireland which were similar to the CRO post Gould recommended and indicated that the Scottish Government would explore the options for a CRO post further and learn from international examples of such posts.

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Following the difficulties experienced at the 2007 elections and the findings of the Gould report, the Local Government and Communities Committee conducted an Inquiry into the 2007 elections. The Committee made two recommendations with regard to the creation of a CRO post as follows (p.7):

"The Committee agrees that a chief returning officer post for Scotland should be established in order to secure a co-ordinated and unified approach to elections held in Scotland. There should be consultation with local authorities and returning officers on how such a post would work with existing returning officers and on whether there is a need for full-time returning officers in local authorities.

The Committee recommends that further investigation of the Northern Ireland model be carried out with a view to considering whether it could be appropriate for Scotland".

Annex D to the Committee's report (p.20-23) included evidence from the Scottish Government on the role of the Chief Electoral Officer for Northern Ireland and this is reproduced at Annex A to this paper.

SCOTLAND OFFICE RESPONSE

The Scotland Office produced a response to the Gould report findings (Scotland Office, 2008) commenting on the recommendation to establish a CRO as follows:

"With regard to the recommendation relating to the appointment of a Chief Returning Officer for Scotland, the views that have been expressed across the political spectrum and by administrators are not conclusive. I have decided that the Government should work with others – including the Electoral Commission, the Scottish Government, and electoral administrators – but that, owing to the need for this further consideration, our intention is not to introduce legislation to create a CRO prior to the 2011 Scottish Parliament elections" (p.1).

FURTHER POLICY DEVELOPMENT

Following on from the initial responses from stakeholders to the Gould recommendations, the Electoral Commission produced a detailed policy response and made a range of recommendations regarding how to improve electoral administration in Scotland (Electoral Commission, 2008). The Scottish Government also consulted on the proposal to create a Chief Returning Officer for Scotland (Scottish Government, 2008). Both of these further episodes of consideration of electoral administration in Scotland are considered below.

ELECTORAL COMMISSION: ELECTORAL ADMINISTRATION IN SCOTLAND

Prior to the Scottish Government consultation on establishing a CRO post the Electoral Commission published a detailed report on electoral administration in Scotland (Electoral Commission, 2008). The Electoral Commission had also consulted with a wide range of electoral stakeholders such as electoral administrators, professional associations, political parties, individual politicians and Ministers within both the Scottish and UK Governments. With regard to the establishment of a CRO post the report commented on the views of electoral stakeholders as follows:

“Some of those working in the field have seen the proposals for a Chief Returning Officer as an implicit and, in their view, unfounded criticism of existing Returning Officers. In particular, there has been concern expressed about the management relationship between any Chief Returning Officer and existing local Returning Officers. Others have expressed support for establishing a centralised coordinating role – although with less clarity as to the precise responsibilities and authority the post would carry” (Electoral Commission, 2008, p.11-12).

The Electoral Commission report also noted that the House of Commons Scottish Affairs Select Committee and the Scottish Parliament Local Government and Communities Committee had both reported on the Gould report and had supported the establishment of a CRO post. The report noted (p.12), however, that:

“Neither report, however, contains substantial analysis of what role and responsibilities a Chief Returning Officer would have or how that role would be legally and administratively structured”.

The consultation exercise undertaken by the Electoral Commission found a range of areas where consensus existed amongst stakeholders, including:

- Agreement that there are inconsistencies in the way in which elections are delivered, in part due to the different structures for electoral administration that exist across and within the UK
- A wide degree of acceptance that there is a need for some change to improve the capacity of those responsible for electoral administration to provide a consistently high quality of service
- Agreement that the fragmented legal framework and complex funding arrangements are critical issues for electoral administration
- Agreement that consistency in structures for administration between the different parts of the UK is not essential to delivering consistent outcomes for electors and that diversity in the delivery structures of electoral administration may be both necessary and beneficial

However the Electoral Commission found that there was limited agreement about how proposals for reform might address the situation. In particular the Electoral Commission found:

- No consensus on whether fundamental structural change, such as changes to the management and accountability arrangements for ROs and EROs, is required to address inconsistencies in the delivery of electoral administration
- Of those who agreed that change was required, there was no clear agreement on the form that change should take or the degree of change that is required
- Whilst funding was considered to be a critical issue for electoral administration, no solution was identified that would deliver improved funding
- No agreement on whether current performance accountability mechanisms are appropriate or adequate

In particular, there was no agreement amongst stakeholders as to whether a CRO, the Electoral Commission or some other body should have a power of direction over ROs and EROs. The report commented:

“Some consultees saw a power of direction as an essential lever for improving consistency and quality of electoral administration, while others expressed doubts as to the likely impact of any power of direction (whoever exercised it) in the absence of any sanctions for non-compliance” (p.13)

The Electoral Commission took the view that given the current fragmented arrangements for electoral administration in Britain it is unlikely that the current structures would be considered if designing a system from scratch. The report commented:

“Instead, if an administrative structure was designed from first principles, it would probably involve a centrally organised and dedicated professional service It would also be designed with a clear understanding that electors’ interests would be at the heart of the administrative and decision-making process. That is broadly equivalent to the independent non-governmental electoral administration model currently used in Canada and Australia” (p.17).

The Electoral Commission took the view, in line with views expressed during their consultation exercise, that a more coordinated and unified approach to electoral management would help address concerns arising from the 2007 elections. However the Electoral Commission went on to comment (p.18-19):

“We do not believe, however, that a compelling case has yet been made for removing responsibilities for the administration of elections and electoral registration from local authority control and re-configuring them directly under a single body or officer. In particular, there is little confidence among electoral professionals that such change would deliver the improvements sought by all those interested in the effective administration of elections in Scotland. ... Given the benefits of the existing local infrastructure for the administrative aspects of electoral registration and elections management – we believe that it continues to provide an effective basis for the development of an improved structure for electoral administration”.

The Commission report also stressed the need for a consistent approach to the administration of all the elections being held in Scotland, commenting (p.23):

“Effective coordination also requires a consistency of approach for all statutory elections in Scotland, rather than event-specific structures organised by three separate government bodies for different elections (the Scotland Office, the Scottish Government and the Ministry of Justice)”.

The Electoral Commission concluded that there is scope to create a structure which will enable more effective coordination of electoral administration in Scotland. The Electoral Commission proposed the creation of a permanent Scotland-wide coordinating body of RO's and ERO's which would deliver integrated election plans and timetables and support professional coordination between ROs and EROs across Scotland. The Electoral Commission also proposed that the formal remit of the Commission should be extended to include Scottish local government elections in order to "support wider professional coordination between RO's and ERO's across Scotland" (p.13).

The Electoral Commission report then made six recommendations for changes to electoral administration in Scotland, as follows:

1. **Establish an Electoral Management Board for Scotland:** consisting of Scottish RO's and ERO's which would develop coordinated election plans and timetables for all elections in Scotland and promote coordination between RO's and ERO's across Scotland
2. **Provide the Convener of the Electoral Management Board with statutory powers to direct local officers**
3. **Develop the Electoral Commission's role in driving and monitoring performance improvements for electoral administration in Scotland**
4. **Consolidate and simplify the legal framework for electoral administration in Scotland**
5. **Take steps to address structural causes of funding shortfalls for electoral administration in Scotland**
6. **Consider the potential for and implications of a coordinated electoral registration service**

A proposed remit for the Electoral Management Board was included in the Electoral Commission report and this is reproduced at Annex B of this paper.

SCOTTISH GOVERNMENT: CONSULTATION ON A CHIEF RETURNING OFFICER FOR SCOTLAND

In December 2008, the Scottish Government issued a consultation paper on a Chief Returning Officer for Scotland. The consultation paper set out a number of potential benefits which the Scottish Government considered may derive from the creation of a Chief Returning Officer post, including the following:

- Could provide an overarching coordination function
- Could ensure consistency of delivery for all election functions
- Could provide clear lines of accountability for the delivery of elections in Scotland
- Could form an effective link between Government and the election professionals
- Should be able to issue direction to fellow Returning Officers

In addition, the consultation paper set out a number of roles which the proposed CRO could fulfil, including:

- Chairing a Committee to rationalise electoral legislation
- Chairing elections planning / steering group
- Chairing formal consultation process for finalising ballot papers
- Providing authoritative advice directly to Ministers and legislators
- Taking responsibility for conducting public information campaigns

- Developing and implementing strategies to ensure all ballot papers are adjudicated consistently
- Verifying electronic count information before storage
- Taking responsibility to waive the proposed six month rule prohibiting the introduction of new electoral legislation within six months of an election, if appropriate
- Developing proposals for the further professionalisation and selection of Returning Officers
- Taking responsibility for the integration of electronic counting into the management process and introduction of any new technologies
- Registering political parties in Scotland, and
- Providing standardised training for electoral management professionals

The Scottish Government noted that the general view of electoral professionals was that if a CRO was appointed that it should be for all elections held in Scotland and not just for local government elections. The Scottish Government concurred with this view and noted that position of the then Scotland Office was to work with the Scottish Government and the Electoral Commission on this issue.

The consultation document also outlined a range of alternative approaches which could be taken in establishing a CRO post in addition to that proposed by Gould (p.14-19). These were: Regional Returning Officer, Northern Ireland model, the Electoral Commission model, and an Elections Steering Group. These models are broadly similar to the 'alternative approaches' contained in the Policy Memorandum to the Bill (p.4-6).

The Scottish Government expressed their position, in the consultation document, with regard to CRO proposal as follows (p.19-20):

“The Scottish Government believes that an integrated approach to management, accountability and legislation would provide the Scottish people with the best reassurance that the problems identified by Gould would not recur. It would provide the most practical way of running future parliamentary and local elections.

It is vital, that there are clear lines of accountability and responsibility for running elections, and a CRO could help to address this issue. We need a coherent and unified organisation of elections based in Scotland. It must be clearly accountable to Scottish Ministers and to Parliament. As mentioned above, we believe that the CRO's jurisdiction should ideally extend over all elections held in Scotland but we recognise that this would require the co-operation of the UK Government.

It is right that the Scottish Parliament should set the legislative framework for elections but Parliament's involvement cannot end there. It is right that we should respect and safeguard the independence of local election Returning Officers, registration officers and others who play a vital role in ensuring that elections are run properly. The challenge is to develop proposals which separate legislative and operational or administrative responsibilities without allowing politicians or electoral professionals to abdicate responsibility for the other side of the equation.

The status quo is not an option”.

The consultation document sought views on 8 questions which were:

- Do we need a Chief Returning Officer for Scotland?
- Should the post be coordinator or director?
- What reporting mechanisms should be put in place?
- How far should the concept of independence of the post holder go?

- What arrangements should be put in place for the accountability of the post holder?
- What role should there be for Ministers and Parliament?
- How should a CRO be appointed?, and
- How should the post be financed and supported?

INTERIM ELECTORAL MANAGEMENT BOARD

Prior to the 2007 elections, an Elections Steering Group was established to oversee and coordinate the delivery of the 2007 local government and Scottish Parliamentary elections which comprised:

- The Scottish Executive
- The Scotland Office
- The Electoral Commission
- SOLACE
- SOLAR
- AEA
- COSLA
- Scottish Assessors' Association, and
- Others (for specific subjects as required)

Similar Steering Groups had been established previously for the 1999 and 2003 combined Scottish Parliament and local government elections.

The Scottish Government's consultation document, discussed above, also stated that the Scottish Government and Scotland Office had agreed to reconvene the Elections Steering Group, which was now renamed the 'Interim Electoral Management Board', initially to oversee the preparations for the 2009 European Parliament elections. The Scottish Government stated:

"The Scotland Office has said that it is committed to working with the Scottish Government and the Electoral Commission on the right long term arrangement for the coordination of elections planning in Scotland. In the meantime, the Scotland Office has given its support for the Management Board until 2011" (p.20).

RESPONSES TO THE SCOTTISH GOVERNMENT CONSULTATION

There were five responses to the Scottish Government consultation, as follows:

- A joint response from SOLACE (Scotland), SOLAR, AEA and the Scottish Assessors Association
- The Electoral Commission
- City of Edinburgh Council
- North Lanarkshire Council, and
- West Dunbartonshire Council

The consultation responses can be accessed at:

<http://www.scotland.gov.uk/Publications/2009/05/13132313/0>

A brief summary of the main themes in these consultation responses is provided below.

JOINT RESPONSE (SOLACE, SOLAR, AEA, SAA)

This response considered that improvements to the electoral process in Scotland were more likely to be achieved through the consolidation and clarification of existing legislation and by building on existing collaborative working arrangements among electoral officers and their professional associations. The professional associations considered that whatever arrangements are put in place should cover all parliamentary and local government elections in order to maximise consistency of approach and ensuring the best use of expertise and resources. The joint submission also considered that the new arrangements could also be extended to include other statutory elections such as to Health Boards and Business Improvement Districts.

The joint response (SOLACE et. al., 2009) took issue with aspects of the Gould report and the Scottish Government's consultation paper in the following terms:

“In our previous responses, we did not accept the Gould recommendation that RO's and DRO's [Deputy Returning Officers] required to be more professional in their approach to the management of elections, and, in the absence of any supporting evidence, we do not accept the statement in the current consultation paper (at paragraph 29) that ‘there is a pressing need to strengthen consistency’ in the delivery of electoral services” (p.3)

The response took the view that no evidence had been presented in earlier reports (as detailed above) which justified the creation of a CRO post in Scotland and that the creation of such a post would be overly bureaucratic, costly and unnecessary. Instead the professional associations preferred approach was:

“to build on the Elections Steering Group model, applying it to all elections in Scotland, but incorporating some of the features of the Regional Returning Officer model; such as the RRO's directional powers. ... the recently established Interim Electoral Management Board for Scotland provides a working example of this approach” (p.3).

In the view of the professional associations building on the Elections Steering Group model offered the advantage of its:

“clear intent is to improve the running of elections rather than merely providing someone to blame if things go wrong. However if something does go wrong it does help to clarify whether that was a problem with administration of the election or with the political framework. This approach passes the stringent test at paragraph 41 of the consultation paper and is not over influenced by Gould's apparent difficulty in finding someone to blame”(p.8).

The professional associations also considered that the remit of the Electoral Commission should be extended to include Scottish local government elections.

ELECTORAL COMMISSION RESPONSE

The Electoral Commission (2009) response to the consultation also emphasised the need for any new set of arrangements to apply to the overall system of electoral administration and not solely to local government elections. The Commission encouraged the Scottish Government to continue dialogue with the Scotland Office and the Ministry of Justice on this issue. Extending the remit of any new set of arrangements to other elections under the jurisdiction of the Scottish Government, such as health board elections, was an issue which the Commission suggested the Scottish Government should consider.

The Electoral Commission supported the Electoral Management Board (EMB) approach in their response commenting (p.3-4):

“The aims of this model are to reassert the independence and responsibility of those who deliver electoral administration, allow central co-ordination of activity, where it is appropriate, to improve consistency and provide greater leadership. It would also create a focal point of accountability for voters. Equally, local delivery of electoral services would be retained with the flexibility to respond to local needs and circumstances.

The Commission recognises that its recommendation for an EMB in Scotland may not be the ultimate conclusion of this debate. Therefore, we would welcome alternative structures that achieved our aim of a better electoral administration service for electors which resulted in the clarification of roles and responsibilities, improved co-ordination of RO's and ERO's, and strengthened leadership and accountability for electoral administration professionals”.

The Commission supported the concept of the Convener of the EMB having a power of direction over ROs and EROs in order to encourage greater cooperation and consistency of practice. With regard to the accountability of the Convener position the Electoral Commission commented:

“We do not believe it would be appropriate for the CRO, or Convener of the EMB, to be formally accountable to Scottish or UK Ministers given the need for independent and non-partisan delivery of electoral administration. It would, however, be appropriate for the work of the Convener and the EMB to be scrutinised by the relevant committees of the Scottish and UK Parliaments either by giving formal written or oral evidence, or submitting regular reports to those committees and to Ministers on behalf of the EMB. We would envisage that the Convener and the relevant Ministers will wish to have regular meetings to keep each other informed of developments” (p.7).

LOCAL AUTHORITY RESPONSES

Edinburgh City Council (2009) opposed the creation of a CRO post on the grounds that it would be an additional cost to the taxpayer and would have significant implications for the role of the RO. Instead, Edinburgh City Council favoured the Interim Electoral Management Board approach stating (p.3):

“We believe that the recently established Interim Electoral Management Board is a good model that, with further development, can achieve the outcomes sought from the proposed CRO, developing a consistency of approach and much reducing the previously fragmented and complex decision making processes associated with elections in Scotland”.

North Lanarkshire Council (2009) strongly opposed the creation of a CRO post contending that there was a lack of factual evidence regarding the need for such a post and that such a post would have serious consequences for the status of RO's. The North Lanarkshire Council response concluded (p.2):

“it has not been established that there is a need for a post of Chief Returning Officer for Scotland; that further analysis of the perceived advantages of such a post is required; and that the establishment of a post of Chief Returning Officer for Scotland with responsibility for only local government elections in Scotland could not be supported”.

West Dunbartonshire Council (2009) expressed similar reservations with regard to the proposed CRO post and also supported the IEMB model, commenting (p.1):

“The co-ordinating role for elections would be best served by a Board, rather than an individual and it is suggested that the strengthened steering group model would be the best option for this purpose. The Board should have oversight of all statutory elections. The Chairman of the Board will effectively be the CRO”.

OPERATION OF THE INTERIM ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

In October 2009, the Electoral Commission published a paper (Electoral Commission, 2009b) which set out the Electoral Commission’s perspective on the first year of operation of the IEMB. The composition of the IEMB, as of January 2009, is detailed in Annex C. The Commission welcomed the establishment of the IEMB and its work up to that point commenting (2009b, p.1-2):

“We have observed from our interactions with other stakeholders a widespread support for the concept and acceptance that the IEMB has had a positive benefit upon the delivery of elections. The structure of the IEMB is widely regarded as being more in keeping with the Scottish public service ethos of cooperative working and has developed positively the Chief Returning Officer model proposed by Ron Gould in October 2007”.

Nevertheless the Electoral Commission went on to propose a range of measures which were necessary in order embed the IEMB in the Scottish electoral landscape and ensure its effectiveness. Among the measures suggested were that:

- the IEMB be placed on a statutory footing
- the Elections Convener be provided with a power of direction over RO’s and ERO’s
- that the IEMB should play its part fully in UK activities and not confine itself to solely Scottish matters
- that consideration be given to methods by which more RO’s and ERO’s can be involved in the development and delivery of the IEMB’s work programme
- that the IEMB has to take steps to ensure that accountability to individual RO’s and ERO’s is achieved as opposed to relying on representatives of the various professional associations
- that the IEMB produce an annual report, and
- that the IEMB meet relevant Ministers and relevant Committees of both the UK and Scottish Parliaments on a regular basis.

In commenting on the need to place the IEMB on a statutory footing, the Electoral Commission expressed concern that (2009b, p.2):

“more than two years have passed since the 2007 Scottish Parliamentary and local government elections and final decisions are still to be taken with regard to the permanent structures to be put in place to ensure electoral administrative performance continues to improve in Scotland. We understand that governments are still considering policy proposals but we believe early decisions are needed and any necessary legislative changes enacted to ensure future elections benefit from the establishment of a statutorily based EMB.

...Our view is that without statutory recognition of the EMB and the Elections Convener with a power to direct, Scotland remains in a situation where the IEMB is essentially a steering group on the same basis as the 2007 Elections Steering Group. It is therefore open to all the problems faced in 2007 with none of the solutions identified by the Gould report put in place”.

In response to the Electoral Commission’s observations, the Scottish Government and Scotland Office (Scottish Government, 2009) issued a joint response in which the Electoral Commission’s report and the work of the IEMB in administering the 2009 European Parliament elections were welcomed. The joint statement considered that the IEMB had demonstrated that it could provide the necessary coordination to facilitate the smooth running of elections in Scotland. A range of actions relating to the structure and role of the IEMB were set out in the joint statement including:

- The purpose of the Board should be clarified and set out in detail in a public and accessible form
- The Board should publish revised terms of reference and a clear explanation of roles and responsibilities
- The Board should raise its profile within the electoral community and beyond so it is seen as the driving force for electoral administration in Scotland
- The Board’s remit should extend to all elections in Scotland
- The Convener should be appointed through a clear and open appointment process
- The role of the Convener should be clarified and set out in detail in a public and accessible form
- The membership of the Board should reflect and represent the 32 returning officers, 15 electoral registration officers and other electoral administrators in Scotland
- The Convener should have the authority to give directions to RO’s in certain identified and agreed areas where consistency is vital, and
- The Board should recognise the importance of maintaining a regular dialogue with Government Ministers and Parliaments

The Scottish Government and Scotland Office commented:

“In issuing this statement we agree to work together (and with the Electoral Management Board) to provide the necessary framework within which electoral professionals in Scotland can continue the progress made in delivering effective and well run elections which put the voter at the heart of the electoral process.

Some of the developments outlined above may require legislation at Holyrood and Westminster. In the meantime we hope that the EMB will take account of our proposals and the recommendations in the Electoral Commission report in developing arrangements for the future co-ordination of electoral administration in Scotland”.

The Electoral Commission (2010) also commented on the role of the IEMB in their report on the administration of the 2010 UK general election. The Electoral Commission considered that the IEMB has added value to the planning and delivery of elections in Scotland and has built upon the support it has received from stakeholders in the electoral community. The report went on to comment on the work of the IEMB as follows (p.24-25):

“It meets on a regular basis and its remit varies from the operational detail of planning the delivery of the UK general election, through to the more strategic consideration of legislation and policy.

There were discernable benefits from its efforts and work in relation to preparations for the general election, in particular, its discussions with Royal Mail. Other benefits also include additional guidance on recounts and adjudication of doubtful ballots, and its work to achieve a greater consistency in the design of election materials, which has led to the establishment of a 'Community of Practice' in this area.

The Elections Convener also put in place an escalation procedure amongst Returning Officers to allow discussion of issues arising locally which could have impacted elsewhere in the immediate run-up to polling day. All this contributed to a well-run election in Scotland. The IEMB has also undertaken post-election evaluation and is developing ideas to inform its future thinking.

We are therefore concerned that the IEMB still remains interim. It is three years since the Gould Report recommended legislative change to establish in statute an Elections Convener with a power of direction within an EMB. Permanent structures are needed to ensure electoral administrative performance continues to improve. While we commend the discussions between governments on this matter we would urge early legislative action is taken”.

In September 2010, the Scottish Government published a consultation paper on the administration of future elections in Scotland (Scottish Government, 2010). The consultation, which closed on 15 October 2010, sought views on the:

- Election timetable
- Process for deciding the format and effectiveness of ballot papers
- The positioning of candidates' names on ballot papers
- Maintaining the secrecy of the ballot
- Counting of ballots
- Auto-adjudication of ballot papers,
- Methods to improve turnout, and
- Whether the voting age should be reduced to 16

The Scottish Government commented (p.5), in the consultation paper, that it intended to:

“introduce legislation which would place the Electoral Management Board (EMB) on a statutory footing for local government elections in Scotland at the earliest opportunity. Any legislation would also provide for the Convener to be appointed by Scottish Ministers and for the Convener to have the power of direction. This would build on the Gould recommendations and continue the process of strengthening independent electoral administration”.

LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) BILL

The Local Electoral Administration (Scotland) Bill [hereafter “the Bill”] was introduced on 7 October 2010 by John Swinney MSP, on behalf of the Scottish Government. The Bill has a dual purpose. Firstly, it proposes the establishment of an Electoral Management Board for Scotland. Secondly, it proposes the extension of the functions of the Electoral Commission to cover Scottish local government elections. The remainder of this paper considers the Bill in the context of the previous consultations and policy development work which has been conducted on these issues.

ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Part One of the Bill seeks to:

- establish the Electoral Management Board (EMB) for Scotland (Section One)
- details the membership of the Board (Section Two)
- proposes providing the Convener of the EMB with a power of direction over RO's (Section Five), and
- the reporting arrangements for the EMB (Section Eight).

The Bill proposes the establishment of an EMB with the general function of co-ordinating the administration of local government elections in Scotland. This function is stated as including assisting local authorities (and other persons) in carrying out their functions in relation to local government elections and secondly, promoting best practice in local government elections, for example, by providing information, advice or training.

As the preceding discussion in this paper has emphasised there has been general support from electoral stakeholders, the Electoral Commission and the previous Scotland Office for the creation of an EMB covering all elections taking place in Scotland. At the time of writing, the position of the current Scotland Office with regard to the EMB having jurisdiction over Scottish Parliament, House of Commons and European Parliament elections is not known. However throughout the policy development process stakeholders tended to be firmly of the view, for example local authority respondents to the Scottish Government consultation on a CRO, that an EMB which covered only local government elections should not be supported. As these elections, with the exception of local government, are all reserved functions the Bill deals solely with local government elections. The Bill is also silent on whether the remit of the EMB should include other statutory elections such as for community councils, health boards, business improvement districts and national park authorities.

Membership

The Bill proposes that the EMB would consist of nine officers (Sections Two to Four). These are a Convener (who must be a RO) and eight other members. Five of these members are to be ROs or DROs and three are to be EROs. The Bill proposes that Scottish Ministers should appoint the Convener and that the Convener would then appoint the other members of the EMB. Section 2(4) states that the Convener, when appointing members, should have regard to obtaining a broad range of experience in relation to different local authority areas. The Policy Memorandum to the Bill makes the following comments on the membership of the EMB (p.1-2):

“The convener of the Board will be appointed by Scottish Ministers from returning officers for Scottish local government elections through a process of open competition. Board members will be appointed by the convener. Members of the Board will represent the 32 returning officers, their depute returning officers where appointed and 15 electoral registration officers from across Scotland. Individual returning officers and electoral registration officers will remain legally accountable for the delivery of their responsibilities but will be subject to a power of direction from the convener. Neither the Board nor the convener will be subject to any direction by Ministers.”

Throughout the consultation process, respondents such as the Electoral Commission, tended to emphasise the importance of ensuring that the appointment process for the Convener should be conducted in a neutral, transparent and non-partisan manner in order that the post can ensure public confidence. Reflecting the Commission's 'observations' that the EMB should be directly accountable to RO's and ERO's rather than relying on the professional organisations, the Policy Memorandum comments (p.2):

“The Bill provides the framework for the operation of the Board. All returning officers and electoral registration officers should be linked directly to the work and discussions of the Board and those who are appointed to serve on the Board should be accountable for the decisions they make on behalf of their peers. The Board will have the power to invite advisers to sit on the Board to address any gaps in representation through full membership”.

The composition of the EMB proposed in the Bill reflects the current membership of the IEMB. In this sense the composition of the EMB proposed in the Bill does not reflect the Electoral Commission position that the EMB should be representative of, and accountable to, those who are directly responsible for electoral administration, i.e. the EMB should consist of ROs and EROs and not DROs. The Bill proposes that the appointments to the EMB would be for a period of four years with no limit on the number of reappointments. The Explanatory Notes (p.2) comment that:

“It is anticipated that appointments will be made in 2011, 2015, 2019 and so on with local government elections taking place in 2012, 2017, 2021 and subsequently every four years”.

The Bill does not comment on how this timescale would fit with other elections which are currently reserved. Lastly, Section 4 provides for the Convener of the EMB to determine its own operating procedures and quorum for meetings and also allows the Convener (with the agreement of other EMB members) to invite advisers to assist the Board in its functions. At present the Scottish Government, Scotland Office, Electoral Commission and COSLA send representatives to act as advisers to the IEMB (see Annex C).

Power of Direction

The Bill provides, in sections five to seven, for the Convener of the EMB to have a power of direction over ROs and EROs similar to that currently held by the Regional Returning Officer (RRO) in European Parliament elections. The Policy Memorandum comments (p.3) that this power has been used at European Parliament elections in relation to the opening of postal votes and the timing of the count. The power of direction over ROs relates to either local government elections generally or a particular local government election. The power of direction over EROs is more limited in that it applies solely to their functions in relation to a particular local government election. The Policy Memorandum suggests (p.3) that possible uses of the power in relation to EROs could include:

“the supply of data to returning officers at a particular time, the requirement to use an agreed style or form or to confirm specific dates for making available updated electoral registers”.

More generally the Explanatory Notes comment (p.3):

“In practice it is likely that this power will be exercised only in limited circumstances and where other options for resolving issues have been explored and exhausted”.

The Bill also proposes that the Convener must consult other members of the EMB and the Electoral Commission before issuing a direction. As discussed earlier, the Electoral Commission (2008) found a divergence of views amongst those it consulted over the need for a power of direction. Some considered such a power to be an essential lever to improve the consistency and quality of electoral administration. Alternatively, others questioned the impact of such a power in the absence of any sanctions for non-compliance with a direction. The Bill is

silent on the issue of what sanctions would apply should a RO or ERO not comply with a power of direction. However the Policy Memorandum does comment (p.3) that:

“Individual returning officers will remain accountable through the courts for their decisions and actions in administering the legal framework for elections. The convener can be similarly accountable where actions carried out under his or her direction are at issue”.

Reporting

Throughout the policy development process, ensuring that there was a regular dialogue between the proposed EMB and the relevant legislatures and Governments (as well as local authorities) was a recurring theme. Section eight of the Bill requires the Convener of the EMB to prepare an annual report, as soon as practicable following the end of the financial year, detailing the performance of the EMB in relation to its functions. Section nine of the Bill requires the Convener, following the EMB approving the report’s contents, to provide a copy of the report to the Scottish Parliament and to Scottish Ministers. The Policy Memorandum comments (p.3):

“Given the need to protect the independence of arrangements for delivering the administration of elections in accordance with the legislative framework, it would not be appropriate for the convener to be formally accountable to Ministers. It is appropriate however to ensure that the Scottish Parliament is able to scrutinise the work of the convener and receive reports on behalf of the Board. The Bill establishes arrangements to ensure that this scrutiny is possible”.

FUNCTIONS OF THE ELECTORAL COMMISSION: LOCAL GOVERNMENT ELECTIONS

Part Two of the Bill (sections 10 to 18) deals with the proposed extension of the powers of the Electoral Commission to cover local government elections. The current remit of the Electoral Commission, as an independent body that reports directly to the UK Parliament, was outlined earlier in this paper.

The Local Electoral Administration and Registration Services (Scotland) Act 2006 allows Scottish Ministers to introduce performance standards for ROs and provides Scottish Ministers with a power to establish an observer scheme for Scottish local government elections. In addition, the Political Parties, Election and Referendum Act 2000 permits the Electoral Commission to give advice to returning officers at local elections in Scotland, with the consent of Scottish Ministers and for Scottish Ministers to invite the Electoral Commission to promote public awareness of current electoral systems and systems of local and national government. To date, Scottish Ministers have not exercised their powers under either Act although they have still invited the Electoral Commission to undertake activities in relation to local government elections without requiring to take this approach. The Policy Memorandum comments (p.6):

“Using the provisions of the 2000 and 2006 Acts would not confer the full range of functions on the Commission and for reasons of consistency and to avoid further fragmentation of electoral legislation the Scottish Government propose to include all the issues within this legislation”.

The Bill proposes that the Electoral Commission’s remit be expanded to include local government elections which is the only set of elections taking place in Scotland, and in the UK, which the Electoral Commission has no formal role in supporting. The Bill would enable the Electoral Commission to undertake the following functions:

- report on the administration of local government elections (section 10)
- include local government elections in Scotland within the Electoral Commission's Observers Scheme (section 11)
- be consulted on changes to electoral law and involved in changes to electoral procedures (section 12)
- apply performance standards to returning officers for local government elections (section 13)
- provide guidance and advice to electoral administrators, candidates and political parties (section 14), and
- run public awareness and information campaigns in relation to the local government electoral system and the system of local government more generally (section 15)

Section 17 of the Bill requires the Electoral Commission to produce an annual report, on the performance of their functions in relation to local government elections in Scotland, which will be laid before the Scottish Parliament and be published. The Bill therefore provides for an independent UK body to report to the Scottish Parliament for its delivery of the functions outlined above.

The Electoral Commission (2008) recommended that their remit should be extended to include local government elections. Electoral stakeholders also supported this proposal, for example, SOLACE et. al. (2009) who commented within the context of the EMB that:

“The role of the Electoral Commission should be extended to include Scottish local government elections and there should be regular discussion between the EMB and its convener with COSLA in connection with those elections”.

On the rationale for extending the Electoral Commission's remit the Policy Memorandum to the Bill comments (p.5):

“In practice the Commission works very closely with returning officers and the Scottish Government to ensure that local government elections in Scotland are run to the same high standards as other statutory elections. It would be possible to continue with the informal mechanism that is currently in place whereby the Scottish Government requests that the Electoral Commission carries out functions for local government elections on an “advice and assistance” model.

However, there is a strong argument for extending the statutory roles and responsibilities of the Commission to include Scottish local government elections. This brings the management of local government elections in line with other elections and would help to reduce the perceived fragmentation identified by Gould as a contributory factor behind the difficulties faced in 2007. Extending the remit of the Electoral Commission as proposed would comply with Gould who recommended consistency in this area and a rationalisation of the Commission's role”.

PART THREE OF THE BILL

Part three of the Bill details a range of measures to support the implementation of the Bill. Section 19 proposes that the Scottish Ministers should have the power to lay statutory instruments before the Parliament, via the negative procedure, should the effect of the Order be to make incidental, consequential, transitional or saving provisions relating to the Bill. However this section also provides a power for Scottish Ministers to lay statutory instruments before the Parliament, via the affirmative procedure, where the effect of the Order would be to add to,

replace or omit any part of the text of the Act. The Delegated Powers Memorandum accompanying the Bill comments on the rationale for this approach as follows (p.3-4):

“We consider that most possible uses of the ancillary powers are unlikely to justify affirmative procedure. Where an Order is limited in scope and effect, such as one containing incidental, consequential, transitional, transitory or savings provisions, the negative resolution procedure is considered appropriate. There is no power to make supplementary provision that could have a wider scope and effect, or a more significant impact. However, where the use of the powers would add to, replace or omit any part of the text of an Act it is appropriate that the Order should attract a higher level of parliamentary scrutiny. This gives a clear dividing line for determining what procedure should be used, and restricts the use of affirmative procedure to uses of the power that justify the higher level of scrutiny”.

FINANCIAL IMPLICATIONS OF THE BILL

The Financial Memorandum, accompanying the Bill, sets out the potential costs associated with the two purposes of the Bill. This paper considers the funding of the two discrete aspects of the Bill in the context of earlier consultation exercises that had been undertaken.

ELECTORAL MANAGEMENT BOARD: FUNDING

The Electoral Commission in consulting with stakeholders in 2008 highlighted complex funding issues as being a critical issue for electoral administration. Accordingly, one of the Electoral Commission’s recommendations in the 2008 report was the need for steps to be taken to address structural causes of funding shortfalls for electoral administration in Scotland. The Electoral Commission commented that for many working in the field of electoral administration in Scotland that:

“ring-fenced funding appears to be the ‘golden ticket’ that would improve performance, allow greater innovation and boost the status and independence of election professionals. We must acknowledge the political reality, however, that electoral services are no more likely than any other hard-pressed part of local government, or public services more generally, to be able to secure a dedicated fund of resources. We must also acknowledge that the clear trend more generally in local government across Great Britain is to move away from ring-fencing in favour of more flexible local settlements” (Electoral Commission, 2008, p.33).

The Electoral Commission noted that discussions had taken place between UK Government departments regarding the funding of electoral administration commenting that:

“Following recommendations that we made in 2003 for reform of the funding arrangements for electoral administration, the main UK government departments with responsibility for funding began discussions aimed at identifying options for improvements, but we understand those discussions reached no conclusions and came to an end” (p.33).

Accordingly, the Electoral Commission recommended that such discussions, including the Scottish Government and Scottish local authorities should resume regarding “alternative, rationalised, funding mechanisms for electoral administration in Scotland, as a matter of priority” (p.33). Generally one of the main objections made, in response to the Scottish Government consultation on a CRO for example by SOLACE et al (2009), was that such a post would be costly. With regard to the IEMB there was a consistent view that funding should be provided

centrally by the Scottish Government and Scotland Office. For example, SOLACE et al (2009) commented:

“The EMB and its convener will need a small secretariat to support them. This should be funded centrally through the Scottish Government and the Scotland Office by a mechanism to be agreed. As the level of work for such a secretariat may vary from year to year a possible arrangement might be a recognition by government that the convener will be obliged to provide staffing towards the administration of the EMB during the course of any year and to agree reasonable compensation with the convener’s local authority” (p.8).

The Electoral Commission responded along similar lines:

“The EMB and the post of Convener should be adequately funded with a small Secretariat able to support it (and act as an interface with other stakeholder organisations) on a permanent basis. The Secretariat should be independent of the UK and Scottish governments although it would be appropriate for them to provide funding if the Convener and EMB were to have a remit that extends to all elections in Scotland. We are pleased to see that the Scottish Government and the Scotland Office are making arrangements to provide funds for the Interim Electoral Management Board for Scotland” (p.5).

To date, the IEMB has been funded with monies from the Scotland Office, Scottish Government and the Improvement Service. The Scottish Government and Scotland Office have each provided £11,000 per annum. Staffing of the IEMB has been provided by City of Edinburgh Council. The Financial Memorandum to the Bill notes that the responsibilities contained in the Bill will impose additional costs upon the EMB than have been funded to date in supporting the IEMB. Given the split in legislative responsibility for elections between the Scottish Parliament and UK Parliament and on-going discussions between the Scottish Government and the IEMB two potential funding options for the EMB are outlined in the Financial Memorandum (FM). The FM comments on this approach as follows (p.5):

“The provisions within the Bill provide flexibility for the Board to determine its own administrative and operational arrangements. The estimates below are therefore based on two possible mechanisms for this and, as a result, identify a range of possible costs. Discussions are underway between the Interim Board and the Scottish Government to implement the changes contained in this Bill. As part of these discussions we will identify and agree firmer costs for the future operation of the Board.

Given the current split in legislative responsibility between the Scottish Parliament and Westminster, the Scottish Government can only legislate in relation to local government elections. As a result the Board will only be established on a statutory basis in terms of its activities in relation to local government elections in Scotland. However, we anticipate that the Board will adopt revised and improved working arrangements in relation to its work in all elections. The cost implications arising from these revised working arrangements and structures will have to be considered with the UK Government to identify which elements fall to be funded by the Scottish Government and which by the UK Government. As a result the final cost to the Scottish Government will be less than the overall estimated costs included in the Memorandum. At this time it is not possible to determine the proportion which will fall to the Scottish Government so the Memorandum provides a range of costs for the total figure”.

Option One is funding a ‘dedicated Secretariat and Policy function’ in line with the model outlined by the Electoral Commission. This is estimated to cost £70,000 per annum. Option Two is a ‘portfolio model’ whereby individual Board members would carry out tasks with any

support staff required being drawn from the Board members' parent local authority. This is estimated to cost £50,000 per annum. The FM comments that (p.6):

“The possible costs associated with the Board therefore range from £50,000 to £70,000. We would expect these annual costs to recur at broadly this level into the future. Further discussions with the EMB and UK Government are planned to determine the most appropriate arrangement or funding. The Interim Board has expressed a preference for option 1 and considers it the most practical means of providing the required support. As explained in paragraph 25, the cost allocation will also need to be agreed between the Scottish Government and the UK Government in order to reflect the Board's statutory role for local government elections and advisory role for UK, Scottish and European Parliament elections and the division of legislative responsibility between Holyrood and Westminster Parliaments”.

EXTENSION OF ELECTORAL COMMISSION REMIT: FUNDING

As noted above, electoral stakeholders were generally content for the remit of the Electoral Commission to be extended to cover local government elections. The Financial Memorandum to the Bill sets out how the Scottish Government would meet the cost of this. Many of the functions which the Electoral Commission will be required to undertake have previously been fulfilled by the Commission on a non-statutory basis at the request of the then Scottish Executive. In 2007, the FM states that the then Scottish Executive paid approximately £1.2 million for the information and awareness campaign for the local government election. The FM comments that if the Commission's remit was not extended then:

“the Scottish Government would have to continue to fund public information campaigns etc and so would be likely to continue to incur costs at approximately this level. Without the Bill the Government would also be required to prepare, fund and provide guidance to electoral administrators, candidates and parties for the 2012 local government elections” (p.8).

The FM notes that expenditure on elections is cyclical and peaks in the year of an election. The total cost for the Electoral Commission, which the Scottish Government would have to meet, is estimated as being between £1.62 million and £2.89 million between 2011-12 and 2013-14. This expenditure would cover the provision of electoral administration guidance, an advisory service, extending the Commission's Observer scheme, a public awareness campaign, reporting on the administration of local government elections, implementing the Commission's performance standards and staffing and facilities. However, as noted above, not all of this expenditure is new as the Scottish Government have previously been funding some of these activities in previous local government elections.

The cost to local authorities arising from the Bill is expected to be minimal. The FM comments (p.10):

“There will be minimal costs to local authorities arising from this legislation. Electoral Management Board members' travel and subsistence costs incurred as a result of attending meetings would, as now, be met by their parent authority but these are likely to be low”.

PARLIAMENTARY SCRUTINY

The Local Government and Communities Committee has been designated the lead Committee on the Bill. The Bill will also be considered by the Finance and Subordinate Legislation Committees.

ANNEX A – NORTHERN IRELAND MODEL

SUPPLEMENTARY EVIDENCE FROM THE SCOTTISH GOVERNMENT

THE CHIEF ELECTORAL OFFICER FOR NORTHERN IRELAND

Background

Northern Ireland is comprised of 18 Parliamentary constituencies with an eligible electorate of around 1.4m. Of these 85% are currently registered. Elections to the Northern Ireland Assembly are run using the Parliamentary constituencies with six members being elected for each on a STV basis. For elections to the European Parliament Northern Ireland is one region and elects three MEPs on a STV basis. There are 26 District Councils in Northern Ireland elections to which are also held on a STV basis.

Broadly speaking electoral law in Northern Ireland mirrors that in GB with the following main exceptions –

- individual rather than household registration
- annual canvass replaced by continuous registration
- robust counter-fraud measures both at registration and at voting
- no absent voting on demand
- independent Chief Electoral Officer
- Electoral Commission has no power to set standards.

History

The office of Chief Electoral Officer for Northern Ireland (CEO) was created in 1972 as part of the extensive changes made to local government on account of the civil unrest. At that time there was a widespread perception that local government functions were performed in a discriminatory manner. All the important functions of local government were transferred either to central government or to newly created NDPBs such as the Northern Ireland Housing Executive. The electoral law functions were transferred to the new office of CEO which was created under section 14 of the Electoral Law Act (Northern Ireland) 1962 as substituted by Article 6 of the Elected Authorities (Northern Ireland) Order 1972.

Shortly thereafter the CEO was allowed to employ his own staff who came to be known as the Office of the Chief Electoral Officer. In 2001 the collective name was changed to the Electoral Office for Northern Ireland. This “body” has no statutory or legal persona. In law the individuals are simply employees of the CEO.

Functions of the CEO

The CEO is the electoral registration officer and the returning officer for all 18 Parliamentary constituencies in Northern Ireland. He is the returning officer for elections to the Northern Ireland Assembly and for elections to the 26 District Councils in Northern Ireland. By law the council Chief Executives are the deputy returning officers but curiously the CEO has no statutory power to direct them in their duties or to take action if they fail to perform them in a satisfactory manner. In practice there is a good working relationship and the CEO’s staff carry out tasks at District Council elections such as the processing of absent votes on behalf of the DROs. The current unsatisfactory arrangements are to be reviewed as part of the proposed

reorganisation of local government in Northern Ireland. The CEO is the returning officer for the electoral region of Northern Ireland for elections to the European Parliament. He is also the counting officer for any Northern Ireland only referendum and for the electoral region of Northern Ireland at any UK wide referendum.

By virtue of section 9 of the Northern Ireland (Miscellaneous Provisions) Act 2006 the CEO is required to submit an annual report to the Secretary of State who must lay it before Parliament. The report must in addition to narrating how he is discharging his functions over the year contain an assessment of the extent of which the relevant registration objectives have been met.

These objectives are set out in section 10ZB of the Representation of the People Act 1983 and can be summarised as follows

- every person entitled to be registered is registered
- no one not entitled to be registered is registered
- all the information held by the CEO is correct

The information concerned is the name, address, nationality, national insurance number, date of birth and signature of all electors.

By virtue of section 10ZA of the 1983 Act the CEO must, by 15 April each year, give written advice to the Secretary of State on whether a canvass should be held. This provision was introduced as a result of the replacement of the annual canvass by the process known as continuous registration.

By law the CEO is an assessor to both the Parliamentary Boundaries Commission and the Local Government Boundaries Commissioner for Northern Ireland. He attends all their meetings.

Apart from his statutory functions the CEO is responsible for the effective management of the Electoral Office.

Another valuable role is to assist the Secretary of State's officials in dealing with electoral law issues and ensuring that Ministers are provided with appropriate advice.

Electoral Office for Northern Ireland

The Electoral Office (EONI) is the collective name for the staff who support the CEO in the performance of his duties. They are not civil servants but enjoy terms and conditions of service which mirror almost exactly those of the Northern Ireland Civil Service. There are around 45 full time staff but for an election nearly 4,000 casual staff are employed to staff polling stations and count centres.

The permanent staff are located at the Headquarters in Belfast and at eight Area Electoral Offices across Northern Ireland. Each Area Office is headed by an Area Electoral Officer (B2/SO equivalent) who is supported by two or three other staff. Each Area Electoral Officer has responsibility for either 2 or 3 Parliamentary constituencies. The remainder of the permanent staff are located at the Headquarters building and are comprised mainly of those engaged in providing the IT, finance and personnel functions. There is also a centralised Helpline function for public enquiries of which approximately 450 are received during a normal week. At peak periods, such as elections, that figure is very much higher.

Tenure

The CEO is an independent statutory office holder and is not a civil servant. The appointment is by open competition supervised by OCPA. The appointment is for a period of five years which can be extended up to a maximum of ten years.

The CEO can be dismissed by the Secretary of State only on the very limited grounds set out in section 8(5) of the Northern Ireland (Miscellaneous Provisions) Act 2006.

The CEO salary is negotiated on appointment and reviewed each year in line with the SSRB recommendation. There is no performance pay.

Funding

The CEO salary costs are met from the consolidated fund. He is provided with a budget (£2.7m in 2007/08) for the running and capital costs of the Electoral Office. This includes the costs of continuous registration which replaced the annual canvass. A proportion of this amount is recovered from District Councils.

The budget does not cover the cost of elections which are funded separately. Each Northern Ireland wide election costs around £2.9m.

If an annual canvass was to be ordered it would be funded separately and would cost around £1.6m.

Advantages

The opinion in Northern Ireland is that these arrangements for management of the electoral function bring the following benefits –

- one central authority responsible for both registration and elections
- Northern Ireland wide standards can be set and monitored
- consistency of approach across Northern Ireland
- easier for political parties and other stakeholders who have only one person to talk to
- facilitates authoritative approach to Ministers for changes to the law
- easier to exploit the media to publicise new initiatives/reminders to the public
- the independence and secure tenure enables the post holder to take a robust attitude in dealing with central Government and the Electoral Commission
- a single IT database of electors and a Northern Ireland wide electoral register
- easier to implement changes to legislation and practice
- full time professional staff
- the independence of the post gives confidence to political parties and the public that the law

ANNEX B – ELECTORAL COMMISSION PROPOSED REMIT FOR ELECTORAL MANAGEMENT BOARD

Membership

Membership of the Electoral Management Board should include all statutory officers with operational responsibility for the administration of elections and electoral registration in Scotland, including Returning Officers and Electoral Registration Officers.

Representatives from the UK and Scottish governments, the Electoral Commission or relevant professional associations would not be members of the Board, but may be invited to provide information or advice to the Board.

Role

The role of the Electoral Management Board would be to provide a forum for the coordination of all aspects of electoral administration in Scotland, including the following:

- Establish a project plan for the delivery of all elections held in Scotland other than local by-elections. This would provide the strategic plan from which local operational plans would be developed.
- Develop and deliver any centralised aspect of an election e.g. procurement of e-counting solutions.
- Advise government on new legislation and policy development regarding elections.
- Establish training levels provided to election staff locally by Returning Officers and Electoral Registration Officers.
- Establish requirements for documentation/forms based on Electoral Commission guidance, implemented by local Returning Officers and Electoral Registration Officers.
- Advise the Electoral Commission on required public information nationally and Returning Officers and Electoral Registration Officers locally.
- Develop plans for the continued professional development of Returning Officers, Electoral Registration Officers and their staff.
- Support the development of performance standards for electoral administration in Scotland.

The Electoral Management Board would be a statutory consultee and adviser to all relevant ministers with the responsibility for electoral administration in Scotland. All formal advice offered by the Board should be made public.

Convener

The Electoral Management Board should select a Convener from among its membership, following an open and transparent appointment process. The Convener would provide leadership both within the membership of the Board and externally among other relevant stakeholders, including the UK and Scottish governments. In exercising these responsibilities, the Convener would be obliged to consult and take account of the views of the Election Management Board.

The Convener should be empowered (through statutory recognition and appointment by ministers) to issue directions, coordinating and overseeing all aspects of the electoral process, whilst the delivery of the election locally remains with the relevant local Returning Officer.

The Convener's power to issue directions should be subject to a requirement to have first consulted the membership of the Board and the Electoral Commission on the nature and content of any direction.

Process and procedures

The Electoral Management Board and post of Convener should be adequately funded with a small Secretariat able to support it (and act as an interface with other stakeholder organisations) on a permanent basis. The Secretariat should be independent of the UK and Scottish governments.

The Convener might also seek to establish internal management structures and processes to ensure the effective management of the Board's activities.

To ensure public confidence, meetings of the Electoral Management Board should be open and transparent. As a minimum this would require publication of the minutes of discussions. It might also involve periodic public meetings.

Sub-groups could be established to advise the Electoral Management Board, and involve non-election bodies which have an interest in elections such as disability groups etc.

ANNEX C – COMPOSITION OF THE IEMB: JANUARY 2009

Members (representing the four professional bodies)

Tom Aitchison (RRO for Scotland at the 2009 European Parliament election and RO, City of Edinburgh)

Anne Laird (DRO, West Dunbartonshire)

Billy Pollock (DRO, South Ayrshire)

Gordon Blair (DRO, West Lothian)

Bob Jack (DRO, Stirling)

Brian Byrne (ERO, Central Scotland)

Joan Hewton (ERO, Lothian)

Mary Pitcaithly (RO, Falkirk)

Nigel Stewart (RO, Argyll and Bute)

Sue Bruce (RO, Aberdeen)

Support Staff

Alex Thomson (DRO, City of Edinburgh Council)

Jeff Hawkins (Consultant, Elections Shared Services Project)

Chris Highcock (Business Manager, Corporate Services, City of Edinburgh Council)

Advisers

Jon Harris (COSLA)

Sheila Scobie (Scotland Office)

Andy O'Neill (Electoral Commission)

David Rogers (Scottish Government) or substitutes

Source: Edinburgh City Council (2009) p.11

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