Passage of the

Local Electoral Administration (Scotland) Bill 2010

SPPB 163
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Local Electoral Administration (Scotland) Bill 2010
SP Bill 57 (Session 3), subsequently 2011 asp 10
SPPB 163
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
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- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

Annexes D and E of the Local Government and Communities Committee’s Stage 1 Report were originally published on the web only. This material, incorporating the written and oral evidence taken by the Committee, is included in full in this volume.

As only one amendment was lodged at Stage 3, no Groupings of Amendments were produced.
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Local Electoral Administration (Scotland) Bill

[AS INTRODUCED]


PART 1

ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Establishment of Board etc.

1 Electoral Management Board for Scotland

(1) There is established a committee to be known as the Electoral Management Board for Scotland.

(2) The Board has the general function of co-ordinating the administration of local government elections in Scotland.

(3) That function includes—

(a) assisting local authorities and other persons in carrying out their functions in relation to local government elections,

(b) promoting best practice in local government elections by providing information, advice or training (or otherwise).

2 Membership

(1) The Board is to have—

(a) a convener, who must be a returning officer,

(b) 8 other members of whom—

(i) 5 are to be returning or depute returning officers,

(ii) 3 are to be electoral registration officers.

(2) The Scottish Ministers are to appoint the convener.

(3) The convener is to appoint the other members.
(4) When appointing members, the convener is to have regard to the desirability of the membership taken as a whole having a broad range of experience in relation to different local authority areas (including different kinds of areas) throughout Scotland.

3 Duration of appointment

(1) A person is to be appointed to the Board for a period of 4 years.

(2) A person may be reappointed to the Board (once or more).

4 Procedure etc.

(1) It is for the Board to regulate its own procedure (and quorum).

(2) The convener may (with the agreement of the other members of the Board) invite a person to attend a meeting of the Board for the purpose of providing advice or otherwise assisting the Board in carrying out its functions.

Directions

5 Directions to returning officers

(1) The convener may give directions in writing to returning officers about the exercise of their functions in relation to—

(a) local government elections generally, or

(b) a particular local government election.

(2) A direction may require a returning officer to provide the convener with information.

(3) A returning officer to whom a direction is given must comply with the direction.

6 Directions to electoral registration officers

(1) The convener may give directions in writing to electoral registration officers about the exercise of their functions in relation to a particular local government election.

(2) But a direction is of no effect if it is inconsistent with any direction given under section 52 of the 1983 Act.

(3) An electoral registration officer to whom a direction is given must comply with the direction.

7 Consultation before giving direction

Before giving a direction under section 5 or 6, the convener must consult—

(a) the other members of the Board,

(b) the Electoral Commission.

Annual report

8 Annual report

(1) The convener must, as soon as practicable after the end of each financial year, prepare a report on the carrying out of the Board’s functions during the year.
(2) After securing the Board’s approval of the report, the convener must—
   (a) lay the report before the Scottish Parliament, and
   (b) send a copy of the report to the Scottish Ministers.

Interpretation

9 Interpretation of Part 1
In this Part—
   “the 1983 Act” means the Representation of the People Act 1983,
   “convener” means the convener of the Board,
   “depute returning officer” means a person appointed under section 41(2) of the
   1983 Act,
   “electoral registration officer” means an officer appointed under section 8(3) of
   the 1983 Act,
   “local government election” has the meaning given in section 204(1) of the 1983
   Act,
   “returning officer” means an officer appointed under section 41(1) of the 1983
   Act.

Part 2
Electoral Commission: Local Government Elections etc.

Functions of Commission

10 Reports on elections
In section 5(2) of the 2000 Act (elections which must be reported on), after paragraph
(e) insert—
   “(f) an ordinary election of councillors for local government areas in
   Scotland.”.

11 Electoral Commission representatives and observers
(1) In section 6A(5) of the 2000 Act (elections which may be attended by Commission
representative), after paragraph (e) insert—
   “(ea) a local government election in Scotland;”.
(2) Section 6B(3) of that Act (observation of local government elections in Scotland not
permitted) is repealed.
(3) In section 6C(3) of that Act (accredited observers: individuals), after “6F” insert “or, in
relation to a local government election in Scotland, section 6G”.
(4) In section 6D(4) of that Act (accredited observers: organisations), after “6F” insert “or,
in relation to a local government election in Scotland, section 6G”.
(5) In section 6F of that Act (code of practice)—
(a) in subsection (1), after “6A” insert “(other than a local government election in Scotland)”;  
(b) in subsection (10), after “section” insert “and section 6G”.  

(6) After section 6F of that Act insert—

6G Code of practice on attendance of observers at local government elections in Scotland

(1) The Commission must prepare a code of practice on the attendance of—

(a) representatives of the Commission;  
(b) accredited observers; and  
(c) nominated members of accredited organisations,  
at local government elections in Scotland.

(2) The code must in particular—

(a) specify the manner in which applications under section 6C(1) and 6D(1) are to be made to the Commission;  
(b) specify the criteria to be taken into account by the Commission in determining such applications;  
(c) give guidance to relevant officers (within the meaning of section 6E) as to the exercise of the power conferred by subsection (1) of that section;  
(d) give guidance to such officers as to the exercise of the power mentioned in subsection (2) of that section as it relates to a person having the permission mentioned in subsection (1) of that section;  
(e) give guidance to such officers as to the exercise of any power under any enactment to control the number of persons present at any proceedings relating to an election as it relates to a person having such permission;  
(f) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations on the exercise of the rights conferred by sections 6A, 6B, 6C and 6D.

(3) The code may make different provision for different purposes.

(4) Before preparing the code, the Commission must consult the Scottish Ministers.

(5) The Commission must lay the code before the Scottish Parliament.

(6) The Commission must publish the code (in such matter as they may determine).

(7) The following persons must have regard to the code in exercising any function conferred by section 6A, 6B, 6C, 6D or 6E—

(a) the Commission;  
(b) representatives of the Commission;  
(c) relevant officers (within the meaning of section 6E).

(8) The Commission may at any time revise the code.

(9) Subsections (4) to (7) apply in relation to a revision of the code as they apply in relation to the code.”.
(7) Sections 8 to 11 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

12 Consultation on changes to electoral law

In section 7(2) of the 2000 Act (instruments to be consulted upon), after paragraph (i) insert—

“(j) an order under section 3(1) of the Local Governance (Scotland) Act 2004.”.

13 Performance standards

(1) In section 9A(6) of the 2000 Act (setting of performance standards), after paragraph (e) insert—

“(f) a local government election in Scotland.”.

(2) Sections 1 to 3 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

14 Advice and guidance

(1) Section 10 of the 2000 Act (giving of advice and assistance) is amended as follows.

(2) In subsection (7), the words “other than a local government election in Scotland” are repealed.

(3) Subsections (8) to (10) are repealed.

15 Education about electoral and democratic systems

(1) Section 13 of the 2000 Act (promotion of public awareness of electoral and government systems) is amended as follows.

(2) In subsection (3), for the words from the beginning to the second occurrence of “subsection” substitute “In subsection (1)(b)”.

(3) Subsection (7) is repealed.

(4) In subsection (8), for “by virtue of an order made by the Scottish Ministers under subsection (7)” substitute “in relation to local government elections, or local government, in Scotland”.

Financing and reports

16 Financing of Commission

(1) The 2000 Act is amended as follows.

(2) In section 13—

(a) in subsection (8), the words from “but” to “Ministers” are repealed,

(b) subsections (9) to (11) are repealed.

(3) After section 13 insert—
“13A Reimbursement of costs by Scottish Ministers etc.
(1) The Scottish Ministers must reimburse the Commission for any expenditure incurred by them which is attributable to the exercise of the functions mentioned in subsection (2).
(2) The functions are the Commission’s functions under this Part in relation to local government elections in Scotland.
(3) The total expenditure incurred in any financial year by the Commission in performing the functions mentioned in subsection (2) must not exceed such sum as is for the time being specified by an order made by the Scottish Ministers.
(4) The power to make an order under subsection (3) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4) In paragraph 14(1)(a) of Schedule 1, for “13(9)” substitute “13A”.

17 Reports on Commission’s functions
(1) Schedule 1 to the 2000 Act is amended as follows.
(2) In paragraph 20 (reports), after sub-paragraph (2) insert—
“(3) The functions referred to in sub-paragraph (1) do not include the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.
(3) After paragraph 20 insert—
“20A(1) The Commission must, as soon after the end of each financial year as may be practicable, prepare and lay before the Scottish Parliament a report about the performance of the functions mentioned in sub-paragraph (3) during that financial year.
(2) On laying the report, the Commission must publish the report in such manner as they may determine.
(3) The functions are the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

Interpretation

18 Interpretation of Part 2
In this Part, “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000.

Part 3
General

19 Ancillary provision
(1) The Scottish Ministers may by order made by statutory instrument make such incidental, consequential, transitional, transitory, or saving provision (including by modifying an enactment) as they consider necessary or expedient for the purposes of or in connection with this Act.
(2) Subject to subsection (3), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) A statutory instrument containing an order under this section which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

20 Commencement

(1) This Act (except this section and sections 19 and 21) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act.

21 Short title

The short title of this Act is the Local Electoral Administration (Scotland) Act 2010.
Local Electoral Administration (Scotland) Bill
[AS INTRODUCED]


Introduced by: John Swinney
On: 7 October 2010
Bill type: Executive Bill
These documents relate to the Local Electoral Administration (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 7 October 2010

LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Local Electoral Administration (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010:

   • Explanatory Notes;
   • a Financial Memorandum;
   • a Scottish Government Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 57–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. Following the 2007 joint Scottish Parliament and local government elections, Ron Gould, former Assistant Chief Electoral Officer of Canada and an electoral administration expert, was appointed by the Electoral Commission to carry out an independent review of the problems which had arisen during the elections. Gould made a number of recommendations to improve electoral administration and this Bill continues the process of implementing these.1

5. The Bill establishes the Electoral Management Board for Scotland on a statutory basis for its work in relation to local government elections in Scotland and extends the statutory remit of the Electoral Commission to cover local government elections in Scotland.

COMMENTARY ON SECTIONS

Part 1 – Electoral Management Board for Scotland

6. Part 1 of the Bill contains provisions relating to the Electoral Management Board for Scotland. Section 1 establishes the Board and defines its general function which is to provide a forum for co-ordinating the administration of local government elections in Scotland. Section 2 defines the membership of the Board and provides for the convener of the Board to be appointed by Scottish Ministers. Members of the Board will be returning officers, depute returning officers and electoral registration officers and will be appointed by the convener.

7. Section 3 sets out the duration of the convener’s and other members’ appointments. Appointments will be for a period of four years and the Bill also allows for the possibility of reappointment. 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.

8. Section 4 will enable the Board to determine its own operating procedures. Subsection (2) will enable the convener, with the Board’s agreement, to invite advisers to its meetings.

9. Sections 5 and 6 provide for the convener to have the power of direction over local government returning officers and electoral registration officers. The power of direction over returning officers is similar to that given to the Regional Returning Officer for European Parliamentary elections. Such directions must relate to the exercise of the returning officers’ functions. Previous directions for European elections have included, for example, requirements in relation to the opening of postal votes and the timing of the count. The Bill contains a more limited power of direction over electoral registration officers in relation to local government elections in Scotland. This power of direction would be limited to functions relating directly to the preparation for a particular election. Possible uses of this power of direction could include the supply of data to returning officers at a particular time, the requirement to use an agreed style of form or to confirm specific dates for making available updated electoral registers.

10. Section 7 provides that the convener must consult the Electoral Commission and the Board before giving a direction.

11. Section 8 sets out the reporting requirements of the Board. The Board will provide an annual report on the performance of its functions in relation to local government elections to the Scottish Parliament as soon as practicable after the end of the financial year.

Part 2 – Electoral Commission: local government elections etc.

12. Local government elections in Scotland are the only statutory governmental elections in the UK which currently fall outwith the remit of the Electoral Commission. Part 2 of the Bill extends the statutory powers and responsibilities of the Electoral Commission so that these can be exercised in relation to elections to Scottish local authorities.

13. Sections 10 to 15 contain provisions to enable the Electoral Commission to:
   • report on administration of local government elections (section 10);
   • include local government elections in Scotland within the 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).

14. Section 16 sets out the mechanisms for financing the Commission. It requires the Commission to be reimbursed by the Scottish Government for expenditure incurred by the Commission on carrying out their functions in relation to local government elections in Scotland subject to a maximum specified by the Scottish Government.
15. Section 17 sets out the reporting requirements of the Commission. Subsection (3) will require the Commission to prepare and lay before the Scottish Parliament a report on the performance of their functions in relation to local government elections in Scotland as soon as practicable after the end of each financial year. The report should also be published.

Part 3 – General

16. This Part sets out powers for the Scottish Ministers to make ancillary provision and provides for the commencement of the Act. It also gives the short title of the Act.

17. Section 19(1) confers on Ministers a power to make by order further provisions to support the implementation of the Bill or to ensure a smooth transition from the current law to that in the enacted Bill.

18. Section 20 of the Bill provides for Ministers to make an order specifying that the Bill will come into force on a day or days determined by them.

FINANCIAL MEMORANDUM

INTRODUCTION

19. This document relates to the Local Electoral Administration (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Scottish Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

20. The Bill continues the process of improving electoral administration following the difficulties faced in the 2007 joint local government and Scottish Parliament elections. The Bill provides for the Electoral Management Board for Scotland (“the Board”) to be placed on a statutory basis for local government elections, makes the convener a Ministerial appointment and gives the convener a power of direction.

21. The Bill also confers the same functions on the Electoral Commission in relation to local government elections in Scotland as it has for other elections (Scottish Parliament elections, UK general elections and European Parliament elections and local government elections in England, Wales and Northern Ireland). There will be costs associated with this Bill and these are estimated below.

COSTS ON THE SCOTTISH ADMINISTRATION

Electoral Management Board

22. The Interim Electoral Management Board for Scotland was established in the wake of the Gould Report into the problems encountered in the 2007 joint local government elections and
elections to the Scottish Parliament. In working with the electoral community in Scotland to establish the Interim Board the Scottish Government and the Scotland Office both agreed to provide funding of £11,000 per year as a contribution to the secretariat functions of the Interim Board.

23. The Scottish Government acknowledges, following discussions with the Interim Board about the development of this legislation, that placing the Board on a statutory basis, giving the convener a power of direction over local returning officers and electoral registration officers and imposing reporting obligations on the Board will impose additional costs on the Board. The current level of funding will therefore not be sufficient given the proposed statutory responsibilities of the Board. The Board will have the general function of coordinating the administration of local government elections in Scotland including assisting local authorities and other persons in carrying out their functions in relation to local government elections and promoting best practice in local government elections by providing information, advice or training.

24. 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.

25. 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 1 – A Dedicated Secretariat and Policy Function

26. The Board will need to develop its role and working practices to ensure continuing improvement in the management of the electoral process in Scotland. The Electoral Commission, among others, has called for the Board to be established on a statutory basis. Along with this the Commission has outlined ways in which the Board could enhance its role and increase its effectiveness. The Interim Board currently comprises returning officers, electoral registration officers and other electoral professionals, along with advisers from the Scottish and UK Governments and the Electoral Commission. The Interim Board is serviced by a small secretariat provided by Edinburgh City Council.

27. The development of the Board introduced by, and consequential to, the Bill will require additional support capacity. The current, essentially part time, support for the Board will need to
be enhanced. Two possible options have been identified in discussion with the Interim Board. The first of these would involve a small number of dedicated administrative and policy staff located either in local authority premises or at an alternative location (e.g. the Electoral Commission or COSLA).

**Estimated annual cost:**

- Administrative support post       £20k
- Policy development post       £40k
- Accommodation (based on serviced office let £400 per person per month) £10k
- **Total** £70k

**Option 2 – Portfolio Model**

28. An alternative to employing dedicated Board support staff would be to make use of Board members to carry out specific tasks and functions. Under this model the individual member of the Board and any necessary support staff (in practice already employed by the members’ parent local authority) would be reimbursed for the work undertaken.

**Estimated annual cost:**

- Administrative support (assuming 10 hours per meeting, monthly meetings, £40 per hour)       £5k
- Policy development (assuming 175 hours per year, five individuals, £40 per hour)       £35k
- Accommodation (proportion of equipment, accommodation etc.) £10k
- **Total** £50k

29. 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.

**Electoral Commission**

**Arrangements for local government elections in 2003 and 2007**

30. The Electoral Commission was established by the Political Parties, Elections and Referendums Act 2002 (“PPERA”). The Act gave the Electoral Commission a range of functions in relation to elections to the Scottish, Westminster and European Parliaments and for local government elections in England, Wales and Northern Ireland. In the absence of a statutory responsibility for the Electoral Commission the then Scottish Executive carried out a similar role to the Commission for the local government elections in Scotland in 2003 and 2007 (which were combined with elections to the Scottish Parliament). In both years the Scottish Executive worked closely with the Electoral Commission to ensure that the processes for the
local and Parliamentary elections fitted as seamlessly as possible. The aim was to ensure the smooth administration of both elections and the most effective use of public funds and to raise voter awareness about the combined elections in the most efficient way.

31. Co-operation between the Executive and the Commission covered reporting on the administration of the elections, providing training and advice to electoral administrators and promoting public awareness of the elections. In working in these areas it was agreed that the following tasks would be undertaken:

- the Commission would, at the request of the Executive under the terms of section 10 of PPERA, provide advice and assistance on the conduct of the local government elections. Any additional costs incurred by the Commission in carrying out this function were to be agreed with and reimbursed by the Executive.
- training material provided by the Commission for electoral administrators would deal with the conduct of the Parliamentary elections. It would also include training material from the Executive relating to the local government elections. Any additional costs associated with including the material on local government elections in the training pack were to be agreed with and reimbursed by the Executive. The Commission and the Executive each retained rights over the nature and manner of their respective training material.
- in consultation with the Executive, the Commission would take the lead in developing the concepts to be used for the voter awareness campaign. Where the advertising material referred to both elections the advertising costs were agreed and met equally. The material was jointly branded with content, scope and delivery acceptable to both parties. Both the Executive and the Commission contracted directly with the PR and creative agencies and the website designers. Where the advertising material referred to both elections the costs were agreed and met equally.

32. The Electoral Commission’s post election reports included the local government elections. Additional costs associated with including the material on local government elections were to be agreed with and reimbursed by the Executive.

33. Other areas of co-operation included researching public awareness and understanding of the electoral process and systems, providing guidance and advice to electoral administrators, directing candidates and political parties to appropriate sources of guidance and advice, promoting public awareness of the elections and reporting on the administration of the elections. Additional costs associated with including the material on local government elections in the Commission’s documents covering Parliamentary elections were agreed with and reimbursed by the Executive. Guidance material provided by the Commission for electoral administrators dealt with the conduct of Parliamentary elections. Additional costs associated with including the material on local government elections were to be agreed with and reimbursed by the Executive.

Cost implications of the Bill

34. The Bill confers additional statutory functions on the Electoral Commission in relation to local government elections in Scotland and the Commission will incur expenditure in exercising these functions. These costs will be reimbursed by the Scottish Government. As noted above, though, some of these new statutory functions have in practice previously been carried out on a
non-statutory basis by the Commission and so not all of the costs incurred will be additional costs. For example, in 2007 the Scottish Executive paid approximately £1.2 million for the information and awareness campaign for the local government election. The joint nature of the 2003 and 2007 elections mean that other specific (non-publicity related) Commission expenditure on local government elections is difficult to quantify. Even if the Bill changes were not made 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.

35. The Scottish Government has discussed the general approach taken in this Financial Memorandum with the Electoral Commission and sought its input into estimating the additional costs likely to be associated with the extension of the Commission’s functions. The extra costs associated with these functions will vary depending on whether a Scottish local government election is taking place in a particular year. In the financial year leading up to a Scottish local government election and the year in which it takes place resources required would be significantly greater than in a year in which no such election took place. It is difficult to produce an annual budget which shows activity in an election year and non-election year, because the precise year in which costs may fall is not known in advance. The costs in this Memorandum are broken down into costs per activity.

36. The Commission will be required to provide an electoral administrative guidance and advisory service. This will relate to the production of guidance materials, briefing and an advisory service to returning officers, electoral registration officers and their staff. The call on the advisory service by the Commission is greater in an election year. The estimated cost for the provision of this service and associated products in an election period is £100,000. It is likely that in a non-election year the resource necessary to provide advice in relation to local government elections would be covered by current staffing within the Commission’s Scotland Office, and would therefore lead to no material increase in costs.

37. The Commission will be required to provide a guidance and advisory service to candidates and agents. Hard copy guidance and briefing services could be provided for £15,000. Outwith an election year any costs would be included within the existing staff costs of the Commission’s Scotland Office.

38. The Commission’s Observer Scheme could be extended to include local government elections in Scotland for £2,000.

39. Costs relating to public awareness activities in an election year can vary greatly depending on how and what activities are undertaken and what medium is used to deliver messages. If the Commission were to deliver an awareness campaign similar to those used in recent elections (including, for example, leaflets, billboards and radio and TV advertising) and using creative material from an earlier campaign thus saving the costs of developing new material, we estimate that it would cost in the region of £1,200,000. Alternatively, a new stand-alone creative campaign with extra TV, a household leaflet drop, development of a Scottish local government section of the About my Vote website and increased use of other media to boost the messages around how to vote could see this cost rise to £2,400,000.
40. The Commission will be required to produce a report on the general administration of local government elections across Scotland. Local government elections will take place in 2012, 2017 and every four years after that. Local government elections in Scotland are run using the STV system and are counted electronically. The Commission’s reports will cost around £80,000 based on the cost of undertaking similar activities in the past in Scotland and in London where e-counting has been used.

41. The Commission’s performance standards framework for returning officers could be extended to cover local government elections for £3,000.

42. The Commission’s staffing and associated facilities costs will rise as a consequence of the additional work involved in relation to local government elections. These costs, including for example equipment, accommodation and stationery, are likely to be around £150,000 in an election year and £70,000 in other years. Staffing costs in election years are higher due to the likely need for additional members of staff or longer hours worked by existing staff.

43. Expenditure on elections and related activity is cyclical. Subject to the successful Parliamentary passage of this Bill the Scottish Government could start to incur costs in this area from the start of 2011-12. The next local government elections in Scotland will be held on 3 May 2012. As outlined above, certain expenditure in this area will fall in election years only (e.g. guidance to administrators and candidates and public awareness campaigns). Staffing costs will also be higher in election years. Given that the election takes place in the first quarter of 2012-13 we have assumed for the purposes of the Memorandum that the expenditure in these areas will fall 50/50 in the 4th quarter of 2011-12 and the 1st quarter of 2012-13. Expenditure in non-election years will be restricted to some staffing and facilities costs. In summary, estimated expenditure is set out below.

<table>
<thead>
<tr>
<th>Estimated expenditure for the Electoral Commission</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guidance</td>
<td>£000s</td>
<td>£000s</td>
<td>£000s</td>
</tr>
<tr>
<td>Public awareness/information</td>
<td>60</td>
<td>60</td>
<td>–</td>
</tr>
<tr>
<td>Report on 2012 election</td>
<td>–</td>
<td>80</td>
<td>–</td>
</tr>
<tr>
<td>Staffing and facilities</td>
<td>70</td>
<td>150</td>
<td>70</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>730 – 1,330</strong></td>
<td><strong>890 – 1,490</strong></td>
<td><strong>70</strong></td>
</tr>
</tbody>
</table>

44. The total cost over the period from 2011-12 to 2013-14 is between £1.62 million and £2.89 million. However as explained in paragraph 34, not all of this expenditure is new. At least £1.2 million was spent in relation to the 2007 local government elections.

45. The Bill provides that the Scottish Government will fund this activity using the precedent set by section 13(9) of the Political Parties, Elections and Referendum Act 2000 which provides for Scottish Ministers to reimburse the Commission for any expenditure incurred by them which is attributable to the exercise of any of its functions. The maximum expenditure in this area will be subject to a limit set by Scottish Ministers.
COSTS ON LOCAL AUTHORITIES

46. Returning officers are currently responsible for the administration of local government elections and are funded by local authorities themselves. Electoral registration officers prepare and maintain the Register of Electors and Absent Voters List and are also employed by local government. An electoral registration officer may cover more than one local authority area. The Bill does not seek to change these administrative or financial arrangements.

47. 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.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

48. The Scottish Government does not consider that the measures in the Bill will create additional costs for other bodies, individuals or businesses.

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

49. On 7 October 2010, the Cabinet Secretary for Finance and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Local Electoral Administration (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

50. On 5 October 2010, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Local Electoral Administration (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Local Electoral Administration (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 57–EN.

POLICY OBJECTIVES OF THE BILL

Electoral Management Board

2. The Local Electoral Administration (Scotland) Bill continues the process of improving electoral administration following the difficulties faced in the 2007 joint local government and Scottish Parliamentary elections. The Bill establishes the Electoral Management Board for Scotland (“the Board”) on a statutory basis for its work in relation to local government elections in Scotland, provides for the convener of the Board to be appointed by Scottish Ministers and creates a power of direction for the convener over local returning officers and electoral registration officers. The Bill provides that the Board must prepare and submit to Parliament an annual report on the carrying out of its functions.

3. The Electoral Commission’s 2008 report into Electoral Administration in Scotland recommended the establishment of an Electoral Management Board for Scotland. The Board (and the co-ordination of electoral activity in Scotland) will be led by returning officers and electoral registration officers.

Membership

4. 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. The Board will make reports on election planning and delivery progress to Parliament. The Board will also be expected to provide expert professional advice on legislative proposals.

5. The Electoral Commission recommended that the Board should comprise representatives of statutory officers with operational responsibility for the administration of elections and electoral registration officers. A Board constituted in this manner will represent a move away from current arrangements where the Interim Electoral Management Board for Scotland includes representatives of the various professional associations. The new arrangements under which members will derive their position on the Board from the post they hold will help to improve the direct accountability of members. Once established, the Board and its members will need to establish the necessary arrangements to ensure a relationship between those returning officers and electoral registration officers on the Board and their colleagues. Board members will be required to represent and act on behalf of those not on the Board.

6. 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.

7. The Scottish Government acknowledges that secretariat or some other form of support arrangements will be required to allow the Board to carry out its statutory functions. Given the current split in legislative responsibility between the Scottish Parliament and Westminster, the Scottish Government can only place the Board on a statutory footing in relation to local government elections in Scotland. The Scottish Government will work with the Board and the Scotland Office to determine what these support arrangements should be and which elements fall to be funded by the Scottish Government and which by the UK Government.

Functions

8. In general terms the Bill provides that the purpose of the Board will be to co-ordinate the administration of local government elections in Scotland. The detailed remit and terms of reference will be determined by the Board and may reflect the Interim Board’s principles of promoting a consistent national approach and simplifying decision making, both helping to ensure that the interests of voters are kept at the heart of all electoral activity. It is expected that the Board will develop a five year work programme. The Electoral Commission has previously recommended that the Board should adopt more generic aims and purposes. Appendix A of the report Electoral Administration in Scotland sets these out for consideration.

9. The role of the Board will be to support and encourage greater co-ordination and a more consistent approach to electoral administration among returning officers and electoral registration officers. The convener will not have direct responsibility for managing the administration of elections at a local authority level (other than in relation to his or her own authority).

10. The convener and the Board will fulfil the role of overseeing the delivery of those aspects of the electoral process where central co-ordination would be beneficial. Where necessary to
ensure co-ordination the convener will have the power of direction over local returning officers and electoral registration officers. 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.

**Reporting**

11. 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.

12. 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.

**Electoral Commission**

13. The Bill also extends the statutory remit of the Electoral Commission to cover local government elections in Scotland. Among other things, this will enable the Commission to report on the administration of local government elections, run public awareness and information campaigns on elections and the local government system and provide advice and information to returning officers, candidates and political parties. It will also allow the Commission to apply performance standards to returning officers for local government elections and include local government elections in Scotland within the Commission’s Observers Scheme.

14. There is a strong argument for extending the statutory powers of the Commission. This will reflect the spirit of the Gould Report and, in particular the recommendation that steps should be taken to remove the fragmentation in responsibilities and processes from the electoral landscape. Involvement in local government elections will not be a new task for the Commission and will provide continuity and consistency across all elections.

15. Given the devolved control of local government elections in Scotland, Scottish Ministers will reimburse the Commission directly for any expenditure incurred in the exercise of functions in relation to local government elections in Scotland. The Commission will, however, remain independent of Ministers and as a result the Bill provides that the Commission must prepare and submit to Parliament an annual report about the performance of its functions in relation to local government elections. The proposals for the Electoral Commission will help to ensure effective and consistent oversight for electoral matters across Scotland. The bodies representing electoral administration professionals in Scotland have expressed their support for the extension of the Commission’s role in relation to local government elections in Scotland.

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BACKGROUND

16. Following the 2007 joint Scottish Parliament and local government elections, Ron Gould, former Assistant Chief Electoral Officer of Canada and electoral administration expert, was appointed by the Electoral Commission to carry out an independent review of the problems which had arisen during the elections.

ALTERNATIVE APPROACHES

Chief Returning Officer

17. There are a number of alternative approaches which could have been taken. The Gould Report recommended that the post of Chief Returning Officer for Scotland (CRO), along the lines of the arrangements in Northern Ireland, should be established. Gould recommended that the CRO would be responsible for “issuing directions, coordinating and overseeing all aspects of the electoral processes for Scottish parliamentary and local government elections where consistency or centralisation of Returning Officer responsibilities arise”.

18. The Scottish Government consulted on the CRO proposal in December 2008\(^2\). In the light of responses to the consultation the Government decided to enhance the existing electoral co-ordination arrangements rather than establish a new office of Chief Returning Officer as this was rejected by respondents to the consultation\(^3\). The Local Electoral Administration (Scotland) Bill will give effect to this decision by establishing the Electoral Management Board for Scotland on a statutory basis and giving the convener a power of direction.

19. The Chief Electoral Officer for Northern Ireland, supported by the Electoral Office for Northern Ireland, administers all elections and compiles the register of electors with operating costs of around £2.6 million annually.

Non-statutory electoral co-ordination

20. In the wake of the Gould Report, the Elections Steering Group which had co-ordinated administrative arrangements for the joint 2007 elections was reconstituted as the Interim Electoral Management Board for Scotland. The interim designation of the Board was in recognition of the fact that longer term, and possibly more substantial, changes to the co-ordination arrangements for elections were likely to be put in place in due course. The Interim Board held its first meeting in December 2008 and has been operating on a non-statutory basis since.

21. The Board’s initial focus was on the co-ordination, planning and administration of the 2009 European Parliamentary elections. It would have been an option to continue working in this relatively informal or voluntary manner but there are risks with this approach. The lack of a power of direction is considered to be a key limitation and stakeholders’ strong preference is for the Board to be placed on a statutory footing.

\(^2\) http://www.scotland.gov.uk/Publications/2009/01/06105804/0
\(^3\) http://www.scotland.gov.uk/Publications/2009/05/13132313/0
22. In October 2009, the Electoral Commission prepared a paper which set out the observations on the development of the Interim Board. In this paper the Commission stated “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 (I)EMB 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”. The Commission also considered that the post of convener and the power of direction were important as they provided “leadership, co-ordination and consistency in electoral administration.”

23. In its 2009 report the Commission found that the Interim Board had relied on the Convener’s personal position as Regional Returning Officer for European Parliamentary elections and that role’s power of direction. No such power exists in relation to other elections and there is a danger of returning to an elections steering group position with all the potential shortcomings that were identified in the Gould Report. Without the statutory recognition of the Board and an elections convener with a power to direct, the Board would essentially remain a steering group.

24. The Interim Board continued its co-ordination function for the 2010 UK General Election. The Electoral Commission’s report on the administration of the 2010 UK General Election published on 27 July 2010 repeated their concern that the Interim Board remained on an “interim” basis three years after the Gould Report and urged early legislative action.

**Electoral Commission**

25. Local government elections in Scotland are the only statutory elections in the UK which fall outside the remit of the Electoral Commission. The Commission has statutory responsibilities for elections to the Scottish, Westminster and European Parliaments and for local government elections in England, Wales and Northern Ireland. 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.

26. 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.

27. An alternative to conferring functions on the Electoral Commission for local government elections would be to establish a separate commission to carry out the functions which this Bill will confer on the Commission. The Scottish Government rejected this option on the basis of cost and the risk of duplication. It would also lead to the creation of a new public body which would run counter to the Government’s policy on reducing the number of such bodies.
28. Legislative provision already exists in the Local Electoral Administration and Registration Services (Scotland) Act 2006 (“LEAR S”) and the Political Parties, Election and Referendums Act 2000 (“PPERA”) which would enable Scottish Ministers to confer certain functions on the Electoral Commission and to undertake other related functions themselves. However, these provisions do not cover the full range of the Commission’s statutory responsibilities in relation to other elections.

29. Provision was made in section 10 of PPERA to permit the Electoral Commission to give advice to returning officers at local elections in Scotland, with the consent of Scottish Ministers. Similar provision exists in section 13 to allow Scottish Ministers to invite the Commission to promote public awareness of current electoral systems and systems of local and national government. Sections 1 to 3 of LEARS provide that Scottish Ministers may introduce performance standards for returning officers. Sections 8 to 11 of LEARS contain provisions giving Ministers the power to establish an observer scheme for Scottish local government elections.

30. Scottish Ministers have not exercised the powers under LEARS, nor have they invited the Commission to exercise the functions provided for in PPERA. 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.

CONSULTATION

31. The Scottish Government consulted on the creation of a Chief Returning Officer, as recommended by Gould, in December 2008. The organisations which responded to this consultation considered it was an overly bureaucratic and expensive model and was not necessary for Scotland and that instead existing arrangements should be enhanced. Respondents concluded that there was no need to establish a specific new post of CRO to improve the planning and delivery of elections in Scotland. Those who favoured strengthening the current arrangements also supported the principle of a power of direction.

32. There has been no formal consultation on the Bill. However, discussions have been held with electoral administrators, the Interim Board and the Electoral Commission on the proposals in the Bill and no substantive issues have been raised. We have also had discussions with representatives of the Association of Electoral Administrators, SOLAR and the Scottish Assessors Association which have helped to inform the content of the Bill and accompanying documents.

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

Equal opportunities

33. The Bill’s provisions are not discriminatory on the basis of age, gender, race, disability, marital status, religion or sexual orientation.
34. Existing requirements to support people with disabilities or for whom English is not their first language to participate in elections will continue to be met and are not affected by these proposals.

**Human rights**

35. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights and that it does not raise substantive issues in this area.

**Island communities**

36. The Bill does not have a negative impact on island communities and island communities will benefit from the improved electoral administration in the same manner as other communities.

**Local government**

37. Returning officers and electoral registration officers are employed by local authorities to administer elections and to prepare and maintain the Register of Electors. The Bill does not seek to change these administrative arrangements and there will be minimal impact on local authorities.

**Sustainable development**

38. The Bill will have no impact on sustainable development.
LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Local Electoral Administration (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Local Electoral Administration (Scotland) Bill has two purposes. First, to establish an Electoral Management Board for Scotland and, secondly, to confer functions on the Electoral Commission in relation to local government elections in Scotland. Both of these purposes are intended to further the process of improving electoral administration in respect of Scottish local government elections, as recommended following the difficulties experienced at the 2007 polls.

OUTLINE OF BILL PROVISIONS

4. The Bill is structured in three Parts:

- **Part 1** establishes an Electoral Management Board for Scotland, which will have a role, independent of the Scottish Ministers, in assisting local authorities and others in running elections. The Board will also promote best practice at local government elections. This Part of the Bill contains no delegated powers.

- **Part 2** extends the statutory remit of the Electoral Commission so that it covers local government elections in Scotland. This will enable the Commission to use its existing powers in relation to these elections, with appropriate adaptations to recognise the role and oversight of the Scottish Ministers and the Scottish Parliament in relation to those polls. The remit will include reporting on the administration of the elections, running public awareness and information campaigns, and providing advice and information to returning officers, candidates and political parties.
• Part 3 sets out ancillary and final provisions.

APPROACH TO USE OF DELEGATED POWERS

5. When deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has had regard to:
   • the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
   • the need to make proper use of valuable Parliamentary time; and
   • the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

DELEGATED POWERS

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

PART 2 - ELECTORAL COMMISSION

Section 16(3) – Limit on Commission expenditure

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

7. The additional responsibilities being given to the Electoral Commission will incur costs, and section 16 inserts a new section 13A into the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) to provide that the Scottish Ministers must reimburse the Commission for these costs. However, it will be for the Commission, as an independent body, to determine what expenditure it incurs. Section 13A of the 2000 Act will allow the Scottish Ministers to prescribe by order a maximum amount that the Commission may incur in carrying out the additional responsibilities.

Reason for taking power

8. The costs incurred by the Commission will fluctuate, for example more expenditure will be incurred in the period leading up to a local government election than following it. However, there is a need to ensure that expenditure on the Commission’s activities fits appropriately within wider public spending priorities. These priorities will change, and any maximum expenditure figure will need to be adjusted to take account of the level of activity that is needed, inflation and any general changes to the activities that the Commission requires to undertake. This matter is appropriately dealt with by an order-making power rather than primary legislation.
Choice of procedure

9. The Scottish Government does not consider that the maximum figure for the purposes of this provision should merit a higher degree of Parliamentary scrutiny than negative resolution procedure. By comparison, section 13(8) of the 2000 Act contains a power for Scottish Ministers (which would be repealed by the Bill) to impose a similar maximum figure, should the Scottish Ministers use other powers in the 2000 Act to give the Commission a public awareness role in relation to local government elections, or local government, in Scotland. That existing 2000 Act power is subject to negative resolution procedure. That procedure seems appropriate for the power that is included in the Bill.

PART 3 - GENERAL

Section 19– Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative or negative resolution of the Scottish Parliament

Provision

10. Section 19(1) confers on Ministers a power to make by order such incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, the Bill. Such an order may modify any enactment.

Reason for taking power

11. Ministers may need to make provision by order to support the implementation of the Bill. This will ensure that the policy intentions of the Bill are achieved. Also, whilst a number of consequential modifications to the 2000 Act have been identified in Part 2 of the Bill, it may be that there are consequences for other legislation that have not been identified. The Scottish Government considers the order making power to be necessary to allow for flexibility to address these issues.

12. Provision may also be needed to ensure a smooth transition from the current law to that in the enacted Bill. Unforeseen issues may arise at the time of implementation which require transitional or transitory provision or the saving of repealed or amended provisions.

13. Without the power, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of resources by Parliament or the Scottish Government.

Choice of procedure

14. 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
This document relates to the Local Electoral Administration (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 7 October 2010

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.

Section 20 – Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None

Provision

15. Section 20 of the Bill provides that the provisions of the Bill (except the provisions in Part 3, which come into force on Royal Assent) will come into force on the day determined by Order, made by Ministers. The power includes the ability to make such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with commencement of provisions.

Reason for taking this power

16. It is considered that the Bill should be commenced at such times as Ministers consider appropriate or expedient. It is standard practice for such commencement provisions to be dealt with by subordinate legislation. Commencement may require to make transitional, transitory or saving provision, for example in relation to section 11, where an observer scheme that is currently operated by individual returning officers under the Local Electoral Administration and Registration Services (Scotland) Act 2006 will be replaced by a new scheme operated by the Electoral Commission. It is likely to be expedient to save the current scheme in connection with any by-election arrangements that are ongoing at the time of commencement. It is possible that other circumstances may be identified to make transitional, transitory or saving provision necessary or expedient.

Choice of procedure

17. The procedure is in line with general practice.
Local Government and Communities Committee

3rd Report, 2011 (Session 3)

Stage 1 Report on the Local Electoral Administration (Scotland) Bill

Published by the Scottish Parliament on 25 January 2011
Local Government and Communities Committee

3rd Report, 2011 (Session 3)

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ANNEXE D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

17 November (27th Meeting, 2010 (Session 3))

Written Evidence

Electoral Commission

Oral Evidence

Mary Pitcaithly, Chair, Interim Electoral Management Board; Tom Aitchison, Former Chair, Interim Electoral Management Board; Chris Highcock, Secretary, Interim Electoral Management Board; William Pollock, Deputy Returning Officer, South Ayrshire Council, Association of Electoral Administrators; John McCormick, Electoral Commissioner, Electoral Commission; Andy O'Neill, Head of Office, Scotland, Electoral Commission.

Supplementary Written Evidence

Interim Electoral Management Board

8 December (30th Meeting, 2010 (Session 3))

Oral Evidence

Bruce Crawford MSP, Minister for Parliamentary Business, Scottish Government; Stephen Sadler, Head of Elections Team, Scottish Government; Fiona Campbell, Policy Executive - Elections Team, Scottish Government.

ANNEXE E: OTHER WRITTEN EVIDENCE

Fairshare
McKenzie, Colin - Returning Officer for Aberdeenshire Council
Secretary of State for Scotland
Local Government and Communities Committee

Remit and membership

Remit:

To consider and report on (a) the financing and delivery of local government and local services and planning; and (b) housing, regeneration, anti-poverty measures and other matters falling within the responsibility of the Minister for Housing and Communities.

Membership:

Bob Doris (Deputy Convener)
Patricia Ferguson
Alex Johnstone
Duncan McNeil (Convener)
Alasdair Morgan
Mary Mulligan
Jim Tolson
John Wilson
David McLetchie (Member from 13/06/2007 until 22/12/2010)

Committee Clerking Team:

Clerk to the Committee
Susan Duffy

Senior Assistant Clerk
Katy Orr

Assistant Clerk
Ian Cowan

Committee Assistant
Fiona Sinclair
Stage 1 Report on the Local Electoral Administration (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Local Electoral Administration (Scotland) Bill (SP Bill 57) (“the Bill”) was introduced to the Scottish Parliament on 7 October 2010 by John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth. The Bill was accompanied by Explanatory Notes (SP Bill 57-EN), a Financial Memorandum, a Delegated Powers Memorandum (SP Bill 57-DPM) and a Policy Memorandum (SP Bill 57-PM) as required by the Scottish Parliament’s Standing Orders. On 11 October 2010, the Parliamentary Bureau agreed by correspondence that the Local Government and Communities Committee (“the Committee”) should be designated the lead committee in consideration of the Bill. Under Rule 9.6 of the Standing Orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.


3. The Committee agreed its approach to evidence-taking at its meeting on 27 October 2010, having previously agreed to issue a general call for evidence. The Committee’s general call for evidence was issued on 9 October 2010 and four responses were received and can be viewed at Annexes D and E.

4. The Committee undertook three oral evidence sessions and took evidence from the following witnesses—

17 November 2010

Panel 1

Mary Pitcaithly, Convener, Tom Aitchison, Former Convener, and Chris Highcock, Secretary, Interim Electoral Management Board;

1 The Bill and supporting documents can be viewed here:- The Scottish Parliament: - Bills - Local Electoral Administration (Scotland) Bill (SP Bill 57)
William Pollock, Deputy Returning Officer, South Ayrshire Council, Association of Electoral Administrators.

Panel 2


8 December 2010

Bruce Crawford MSP, Minister for Parliamentary Business, Scottish Government;

Stephen Sadler, Head of Elections Team, and Fiona Campbell, Policy Executive, Elections Team, Scottish Government.

5. The Committee expresses its thanks both to those who submitted written evidence and to those who took part in the oral evidence sessions.

BACKGROUND

6. Since the problems encountered with the ballot in the 2007 local government and Scottish Parliament elections, which were held jointly, a number of measures have been introduced to improve electoral administration in Scotland. These measures have implemented recommendations made by Mr Ron Gould, an international expert in electoral administration, who was asked by the Electoral Commission to undertake an independent review of the 2007 elections due to a range of issues during the election, including the higher than normal level of rejected ballots.

The Gould report

7. The Gould report reviewed the administration of the 2007 elections and made several recommendations for changes to the electoral administration of Scottish elections to address the issues that arose during the elections, and to improve the management of future elections. In particular, the report expressed concern over the piecemeal nature of electoral administration in the UK generally and highlighted the additional complexity faced in Scotland in 2007 due to the use on the same day of the single transferable vote system for local government elections and the first past the post system and the Additional Member System for Scottish Parliament elections.

8. The report highlighted the complex and fragmented nature of electoral law in the United Kingdom and noted that there was further complexity in the Scottish electoral scene due to the split in responsibilities between the UK Government and the Scottish Government. Under the devolution settlement, elections to the Scottish Parliament, the UK Parliament and the European Parliament are reserved

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matters while local government elections in Scotland are a devolved matter except in relation to the electoral franchise.

9. The Gould report made a series of recommendations to improve electoral administration in Scotland. Those relevant to the development of this Bill were to—

- Establish a Chief Returning Officer for Scotland
- Rationalise the role of the Electoral Commission and other stakeholders in relation to the proposed Chief Returning Officer.

10. The Gould report also recommended the statutory separation of the local government and Scottish Government elections and this was provided for when the Scottish Parliament passed the Scottish Local Government Elections Act 2009.

The Scottish Government Consultation

11. The Scottish Government conducted a consultation in 2008 on the establishment of a post of a Chief Returning Officer. The responses to the consultation did not support this approach, with the professional associations indicating that it would be preferable—

“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; such as the RRO’s directional powers … the recently established Interim Electoral Management Board for Scotland provides a working example of this approach.”

12. As a result of the weight of the negative responses to the proposal to establish the post of a Chief Returning Officer, the Scottish Government decided to take forward an alternative proposal of setting up an Electoral Management Board based on the model of the Interim Electoral Management Board, initially established to oversee the preparations for the 2009 European Parliament elections.

13. The Scottish Government’s consultation also sought views on the extension of the role of the Electoral Commission in local government elections in Scotland. This received a favourable response in the consultation and is included in the Bill as one of the Bill’s main provisions.

14. The Committee recognises that the Scottish Government’s consultation on the proposal to create the post of a Chief Returning Officer took place in 2008 and that there has been no other formal consultation on the Bill. However, the Scottish Government has indicated that discussions have taken place on the proposals in the Bill with electoral administrators, the Interim Electoral Management Board and the Electoral Commission. None of these stakeholder groups raised any concerns.

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3 Joint response to Scottish Government consultation from SOLACE (Society of Local Authority Chief Executives) SOLAR (Society of Local Authority Lawyers and Administrators) AEA (Association of Electoral Administrators) SAA (Scottish Assessors Association): Available at http://www.scotland.gov.uk/Resource/Doc/272483/0081184.pdf

4 Policy Memorandum, paragraph 32.
on the proposals. The Committee therefore considers that there has been sufficient consultation on the provisions in the Bill and that the Scottish Government has been responsive to the views of key stakeholders.

THE POLICY OBJECTIVES AND PURPOSE OF THE BILL

15. The Bill is divided into three parts and has two main purposes. As noted previously, the Scottish Parliament does not have legislative competence for elections to the Scottish Parliament, the House of Commons or European Parliament elections so the Bill’s provisions are therefore restricted to local government elections in Scotland.

16. The provisions in Part 1 provide for the first purpose, which is to establish an Elections Management Board for Scotland (“the EMB”) on a statutory footing to oversee and co-ordinate Local Government Elections in Scotland. The Bill provides for the appointment of a convener of the EMB to be made by the Scottish Ministers and for the convener to have a power of direction over local returning officers and electoral registration officers. The convener is given the power to appoint the members of the EMB.

17. Local government elections are the only elections in Scotland for which the Electoral Commission has no formal remit to provide support. The second purpose of the Bill is to extend the remit of the Electoral Commission to include local government elections in Scotland. The Bill’s provisions in Part 2 would amend the Political Parties, Elections and Referendums Act (2000) (“the 2000 Act”) to provide for the Electoral Commission’s remit to be extended to include local government elections in Scotland. Part 2 also contains provisions on the funding of the Board and a requirement for the Electoral Commission to produce an annual report. Part 3 of the Bill contains a number of general provisions.

18. The following section of this report, on the general principles of the Bill, considers the provisions of the Bill contained in Part 1, Part 2 and Part 3 sequentially. There is then a consideration of the reports of the Finance Committee and Subordinate Legislation Committee.

THE LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE’S CONSIDERATION OF THE GENERAL PRINCIPLES OF THE LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) BILL

Part 1 – Electoral Management Board for Scotland

19. Part 1 of the Bill provides for the establishment of an Electoral Management Board for Scotland (EMB) on a statutory basis, with the general function of co-ordinating the administration of local government elections in Scotland. Since 2008 an Interim Electoral Management Board (IEMB) has operated on a non-statutory basis, initially to oversee the preparations for the 2009 European Parliament elections. The provisions of the Bill allow for the EMB to assist local authorities and other persons in carrying out their functions in relation to local government elections and to promote best practice by providing information, advice and training in local government elections.
20. In the evidence heard and received by the Committee, there was widespread support for the establishment of the EMB and calls for its remit to be extended to include other elections in Scotland.

21. The Committee sought the views of the Scotland Office on the Bill. In a written submission to the Committee, the Secretary of State for Scotland observed that the statutory establishment of the EMB in relation to local government elections was a matter for the Scottish Government and that he therefore considered it inappropriate to comment on the proposals. However, he did confirm that the Scotland Office had been in discussion with the Scottish Government and the UK Cabinet Office on the role of the EMB—

- “Officials of the Scotland Office and Scottish Government have discussed the future role and remit of the EMB across all elections.
- “There have been discussions with the Cabinet Office on the EMB, because responsibility for the European and General Elections rest with them.”

22. There was also support for the EMB amongst those responsible for managing elections. For example, Colin Mackenzie, the Returning Officer for Aberdeenshire, supported the establishment of the EMB in a written submission—

“...I would wish, in brief terms, to add my support to the principal provisions contained within the Bill. In respect of the formalisation of the position of the Electoral Management Board for Scotland, this will be a long awaited and significant step forward in terms of enhancing the consistency of approach to the delivery of elections in Scotland.”

23. The Electoral Commission gave its support to the principle of establishing the EMB in a written submission and called on the EMB’s powers to be extended to other elections taking place in Scotland—

“We welcome the Scottish Government’s commitment to establishing the EMB in presenting this Bill to the Scottish Parliament. The Bill does not, and cannot, give statutory recognition in relation to Scottish, UK and European Parliamentary elections as policy responsibility for these elections are reserved to the UK Government. However, we hope that this Bill will provide a robust framework for extending the EMB’s powers to these other elections in the near future.”

24. In evidence to the Committee, the Electoral Commission clarified that it would like the EMB’s powers to be extended to other elections as soon as possible. It explained that, “It would ... be in the best interests of everyone – voters, in

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5 Secretary of State for Scotland. Written submission to the Local Government and Communities Committee, 25 Nov 2010.
6 Electoral Commission. Written submission to the Local Government and Communities Committee, 10 Nov 2010.
25. Mary Pitcaithly, the Convener of the IEMB confirmed that this was “the direction of travel that we want to go in.” She stated that, “it would be helpful if, in time, the board had responsibility for all the elections in Scotland.” Tom Aitchison, the former Convener of the IEMB, also stated that if elections to health boards developed into a national policy, it would “make sense to bring it all to bear in one place.” He argued that “elections are complex and involve a lot of complex legislation and logistics” and that therefore “the more the expertise is concentrated, the better.” He also acknowledged that there were a range of elections that fall outwith the major statutory elections, including those to the Crofting Commission and for the National Parks, and that “there is a prima facie case for considering whether it could form part of an enlarged remit for the board in due course.”

26. The Secretary of State for Scotland set out the position of the UK Government in relation to any extension of the EMB’s remit—

“As you are aware we are currently passing a Bill which will, amongst other things, implement the recommendation of the Commission on Scottish Devolution to devolve the administration of elections to the Scottish Parliament. The UK Government has no immediate plans to extend the remit of the proposed EMB to cover the remaining UK wide statutory elections.”

27. In oral evidence to the Committee the Minister for Parliamentary Business acknowledged that it was for the UK Cabinet Office to legislate to provide a statutory role for the EMB in relation to other elections, but that the Scottish Government was considering “the mechanisms that are available to enable the board’s remit to include the Scottish Parliament elections once the responsibility for them is transferred to the Scottish Government.”

28. The Committee welcomes the proposal to establish the Electoral Management Board on a statutory basis and considers from the evidence that it will be a positive step in improving the administration of local government elections in Scotland.

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12 Secretary of State for Scotland. Written submission to the Local Government and Communities Committee, 25 Nov 2010.
29. The Committee considers that it would be logical for the Electoral Management Board to have wider responsibilities for co-ordinating the administration of other elections in Scotland given the expertise that it will have in administering elections. The Committee welcomes the Secretary of State for Scotland’s comments on the devolution of the administration of elections to the Scottish Parliament and the Minister for Parliamentary Business’s indication that the Scottish Government is considering how the EMB’s remit can be expanded to cover elections to the Scottish Parliament. However, the Committee calls on the UK Government to further consider extensions to the EMB’s remit which would allow it to cover elections to the House of Commons, European Parliament elections and referenda.

30. The Committee is also of the view that the Electoral Management Board’s expertise may be valuable in the administration of elections to other institutions such as Health Boards and the Crofting Commission and calls on the Scottish Government to consider this in the future.

Membership of the Electoral Management Board
31. Section 2 of the Bill gives the Scottish Ministers the power to appoint the convener of the EMB, who must be a returning officer. The convener then has the power to appoint the other eight members of the board, five of whom must be returning or deputy returning officers and three electoral registration officers. When appointing Board members, the convener is required to have regard to “the desirability of the membership taken as a whole having a broad range of experience in relation to different local authority areas (including different kinds of areas) throughout Scotland.” Members are appointed to the EMB for a period of four years and may be re-appointed once or more.

32. Once established, it is for the EMB to regulate its own proceedings and quorum. Should the convener, with the agreement of the board members, consider it appropriate, the EMB can invite persons to attend a meeting of the Board to provide advice or otherwise assist the Board in carrying out its functions.

33. In evidence to the Committee, the Electoral Commission expressed concerns over the appointment to the EMB of deputy returning officers as they would not ultimately be legally accountable for their actions in the same manner as returning officers. Andy O’Neill voiced the Electoral Commission’s view, saying—

“We are looking for clarity of responsibility and accountability for various roles. We see the ROs [Returning Officers] and the EROs [Electoral Registration Officers] as being responsible and accountable for their respective duties. We recognise that depute returning officers have a great wealth of experience, which is why we recommended that they should be advisers to the board, but they should not be responsible to it as full members. In our view, if they are members, it means that they are involved in something for which they are not accountable to the courts.”

34. In oral evidence, Mary Pitcaithly, Convener of the Interim Electoral Management Board, was questioned as to whether she had encountered any

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14 Section 2.4 of the Bill.
difficulty arising from the legal status of deputy returning officers when serving on the IEMB. She stated—

“On the contrary. People who are designated as deputy returning officers have made a significant contribution to the board over the years. I understand the Electoral Commission’s position on the matter in relation to accountability, but DROs are likely to continue to play an important role … people who do not necessarily carry the responsibilities of returning officers but who nevertheless have a huge amount of experience and expertise to bring to the table will always be welcome around the board table.”

35. This view was supported by Tom Aitchison, former Convener of the IEMB—

“In law, each returning officer in Scotland still has, and will continue to have, the current legal responsibilities… The legal position is clear in law. You are talking about people coming together to plan, to administer and to think ahead strategically. Therefore, a range of skills—a range of backgrounds—adds to that rather than detracts from it.”

36. William Pollock of the Association of Electoral Administrators and a depute returning officer, who has served as a member of the Interim Electoral Management Board, observed that—

“The deputy returning officer’s input is usually much more at the practitioner level… someone who is appointed as a chief executive and is then appointed as returning officer might have no, or very little, election experience. Deputy returning officers tend to have come through the ranks, if I can put it in that way, and gained practical experience of the day-to-day operational side of election management.”

37. In oral evidence the Minister for Parliamentary Business also rejected the Electoral Commission’s concerns on this issue, when he said—

“I am aware of the Electoral Commission’s concerns and have obviously thought carefully about them, but I do not think that they are valid. We believe that, within the body of DROs in Scotland, there is a considerable level of expertise and knowledge of practical information that could be shared and taken into account when planning elections. When DROs do their work, they are doing it on behalf of returning officers who are, ultimately, accountable to the courts. However, I do not see that as a barrier to their having full membership.”

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38. The Committee concurs with the approach taken in the Bill to allow both returning officers and depute returning officers to be eligible for membership of the Electoral Management Board. The Committee recognises the experience of administering elections that depute returning officers will bring to the Electoral Management Board.

**Power of direction**

39. Sections 5 and 6 of the Bill give the power to the convener of the EMB to give directions in writing to both returning officers and electoral registration officers. The power of direction to returning officers is in relation to local government elections generally or a particular local government election and a direction may require the returning officer to provide information to the convener. In the case of electoral registration officers, directions may concern the exercise of their functions in relation to a particular local government election. Any directions to electoral registration officers are of no effect if they are inconsistent with any direction, given under section 52 of the Representation of the People Act 1983, by the Secretary of State with respect to the arrangements to be made by the electoral registration officer for carrying out his or her functions.

40. The Bill’s provisions would require that both returning officers and electoral registration officers to whom a direction is given must comply with the direction. Before giving a direction under section 5 and 6, the convener must consult other members of the EMB and the Electoral Commission.

41. An example of the occasions when the power of direction might be required was provided by Chris Highcock of the IEMB in relation to two directions issued by Tom Aitchison in his capacity as regional returning officer in the last elections to the European Parliament—

“One direction was about ensuring that postal votes were not opened on polling day, which was meant to simplify electoral administrators’ duties, and the other was to have a Royal Mail sweep on election night to ensure that everyone in Scotland had the full complement of postal votes.”

42. The Electoral Commission expressed a concern in its written submission that, while it supported the proposal for the convener of the EMB to give directions, it had reservations that there would be no sanction available for non-compliance with a direction.

43. The Bill does not provide for a sanction for the non-compliance by a returning officer with a direction issued by the convener of the EMB. When questioned about how a situation would be handled when a returning officer disagreed with a direction, Tom Aitchison set out the context in which he had issued two directions as Convener of the Interim Electoral Management Board in relation to elections to the European Parliament. He said—

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20 Electoral Commission. Written submission to the Local Government and Communities Committee, 10 November 2010.
“You have to take a decision pretty much there and then... we simply have to rely on our colleagues' good sense and the fact that we have planned everything together. There might have to be a fairly robust discussion about a matter, but I suppose that it would depend on how utterly important it was.”

44. Tom Aitchison also indicated that while situations could arise in elections which required a quick response, there “should, if at all possible, be no surprises.” He also stated that if direction after direction were issued “we would have failed, but we need the power as a backstop against unforeseen eventualities.”

45. Mary Pitcaithly, the Convener of the IEMB, expressed her view on the lack of formal sanctions for failing to comply with a direction—

“Ultimately, if a returning officer has done something contrary to the convener's direction, he or she would stand on his or her own. In any court action, for example, the convener would be jointly responsible for decisions or actions that were taken by a returning officer only if those actions were in accordance with the directions. If they were not, the returning officer would have to answer for that themselves... The bill also requires the board to come up with its own way of working, its own processes and its own procedures. We will have to take into account what opportunity there would be for a returning officer who was concerned about a proposed direction to feed in his or her view and how that view would be taken into account.”

46. Section 7 of the Bill requires the convener of the EMB to consult its members and the Electoral Commission before issuing a direction. The Committee heard in evidence from Tom Aitchison that, “Elections take place in a very concentrated period of time and there is no time to hang around and have a long academic debate on such matters.” When questioned by the Committee about the practicalities of conducting such a consultation in a short period of time, Mary Pitcaithly - the current Convener of the IEMB - confirmed that the existing IEMB had no difficulty in contacting its members by e-mail and that she was confident that it would be possible to contact without delay, and if necessary, bring the members of the EMB together quickly to discuss any major issue.

47. In his evidence the Minister for Parliamentary Business explained that directions would relate primarily to administrative issues. He argued that the lack of a sanction did not undermine the provisions of the Bill—

“Although the bill cannot require that a direction be followed, we do not believe that the lack of a sanction weakens the power in any way. If a

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direction is issued but not followed and there is a subsequent court action, that could be taken into account should the petitioner consider that ignoring the direction provided by the EMB convener affected the result in some way. . . The power of direction will be exercised only where every other option has been explored or exhausted."26

48. The Committee questioned the Minister about a situation occurring whereby a grievance in a petition concerning electoral administration arose as a result of a direction that a returning officer had followed. In these circumstances the convener of the EMB would not be petitionable although the regional returning officer is deemed to be petitionable in such cases in relation to elections to the European Parliament. The Minister pointed out that “there is a distinction between the regional returning officer, who is the returning officer, and the convener of the board, who will ensure that the administrative processes are co-ordinated and that good practice is followed and will be able to issue directions about that.”27 Nevertheless, the Minister made a commitment to consider the issue, saying, “We will look at that.” 28

49. The Committee is of the view that effective planning should reduce the need to resort to the use of directions, but that the power to issue a direction is a useful one in the context of unforeseen events and the need to take a consistent approach across Scotland. The Committee considers that compliance by a returning officer with a direction issued by the convener of the EMB will be dependent on a consensual approach being adopted by returning officers and electoral registration officers. The Committee recommends that the Scottish Government monitor the effectiveness of the power of direction should this provision be enacted in its current form.

50. The Committee welcomes the Minister’s commitment to consider the issue of whether the convener of the Electoral Management Board should be petitionable when a grievance arose as a result of a direction issued by the convener and calls for the Minister to address this issue in the Stage 1 debate on the Bill.29

Annual report of the Electoral Management Board
51. Section 8 of the Bill requires the convener of the EMB to produce an annual report on its functions as soon as practicable after the end of the financial year. The report is to be approved by the members of the EMB and the convener must lay the report before the Scottish Parliament and send a copy to the Scottish Ministers. The Policy Memorandum accompanying the Bill notes the importance of maintaining the EMB’s independence in the reporting process—

“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.”

52. The Minister, in oral evidence, stressed the importance of the independence of the EMB—

“If there is one thing that we must ensure, it is the independence of the electoral management board for Scotland—that is important for the process. We certainly do not wish the electoral management board to come under undue political pressure … We need to ensure the board’s independence and the best way to do that is to ensure that its reports come to the Parliament, not to the Government.”

53. An annual report would provide an opportunity for the EMB to make any recommendations or proposals to improve the electoral administration process, arising from its policy function, to the Parliament. The Electoral Commission commented—

“[I]t is important that the EMB has a policy role...At the moment they have no mechanism to develop and articulate their view. We welcome the development of the EMB’s policy role.”

54. The Committee welcomes the requirement for the Electoral Management Board to produce an annual report on its administrative and policy functions. It considers that it is appropriate for it to be laid before Parliament to ensure that all elected members can consider how the Electoral Management Board has fulfilled its administrative and policy functions.

Administrative Support

55. The Financial Memorandum contained within the Explanatory Notes suggests two possible operational arrangements for the EMB and provides estimated costs for both options for the administrative support for the EMB.

56. The Financial Memorandum indicates that discussions are underway between the Interim Electoral Management Board and the Scottish Government to implement the changes contained in the Bill and that the Scottish Government was seeking to “identify and agree firmer costs for the future operation of the Board.”

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30 Policy Memorandum, paragraph 11.
33 Explanatory Notes, paragraphs 26-29.
34 Financial Memorandum, page 5.
57. Regarding the level of the funding contribution from the Scotland Office, the Minister said, “We have also had positive discussions with the Scotland Office around its contribution to the funding of the board, in recognition of the joint nature of its functions.”

58. The first option proposed is for the establishment of a small dedicated administrative and policy secretariat that could be located in local authority premises or at a suitable alternative location such as the Electoral Commission or COSLA. The estimated costs for this option are £70k.

59. The second option proposed would be to make use of EMB members and their support staff, already employed by a member’s local authority, to carry out the duties and functions on behalf of the EMB and to be reimbursed for any work undertaken. The estimated costs of this option are £50k.

60. There was strong support among the witnesses for the first option of a dedicated secretariat. William Pollock of the Association of Electoral Administrators said, “My colleagues and I prefer option 1, which is to have a dedicated secretariat and policy function.” Similarly, Tom Aitchison told the Committee, “I handed the board over to Mary Pitcaithly a few months ago… but I certainly recall that we were strongly in favour of option 1.” Mary Pitcaithly confirmed that this was still her preferred option, saying, “Such permanent secretariat support will be critical in allowing whoever will be convener to discharge his or her duties.”

61. The Minister for Parliamentary Business shared this view and confirmed to the Committee that a secretariat was the preferred option of the Scottish Government. He went on to say that progress was being made in discussion with the Scotland Office on the sharing and apportioning of costs and it had indicated that the option of a dedicated secretariat was also its preference. The Minister explained that in deciding between the two options—

“I do not think that the portfolio model had any particular disadvantage. What decided the issue was the strength of the secretariat model, because the nature of support will be much closer to the electoral management board than a portfolio-holding might have been.”

62. With regard to the accountability of the EMB and the accessibility of its administrative records, it was suggested in written evidence to the Committee that the EMB should aim to be as transparent and accessible to the public as possible in its operations. Fairshare Voting Reform expressed the hope that—

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“[T]he Electoral Management Board would be open and transparent in all its workings and that, in particular, the agendas and minutes would be posted promptly on a dedicated website. We would also hope that the EMB would publish on its website all working papers, documents and reports.”

63. Tom Aitchison told the Committee that only lack of resources had mitigated against the development of a website to provide transparency and accessibility to the work of the Interim Electoral Management Board when he was convener. He went on to say, “I am very keen to do that, but this takes us back to the earlier questions about resources...There is no lack of determination on our part; it is a simple question of having resources to get the job done.”

64. On the basis of the evidence heard, the Committee considers that the preferred model for the administrative support for the Electoral Management Board should be option 1, with a dedicated secretariat and policy function.

65. The Committee is content that the costs estimated for both options for the administrative support of the Electoral Management Board are as accurate and detailed as possible.

Part 2 – Electoral Commission: Local Government Elections

Functions of the Commission


67. The Electoral Commission was established by the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) which gave the Electoral Commission a range of functions in relation to elections to the Scottish, Westminster and European Parliaments and for local government elections in England, Wales and Northern Ireland. The local government elections in Scotland are the only elections over which the Electoral Commission has no formal remit although in past elections - in 2003 and 2007 - the Electoral Commission was contracted by the then Scottish Executive to provide certain services for the local government elections where they were providing the same service for the Scottish Parliament elections. The provisions in Part 2 of the Bill would provide for the extension of the remit of the Electoral Commission to cover local government elections in Scotland by a series of amendments to the 2000 Act.

68. The Scottish Ministers could have given the Electoral Commission a formal role in local government elections through secondary legislation as the necessary powers exist in 2000 Act and the Local Electoral Administration and Registration Services (Scotland) Act 2006. These powers have never been exercised by the Scottish Ministers. However, the Scottish Government considers that the powers available in these Acts would not confer the full range of functions proposed by the Bill on the Electoral Commission, and to avoid further fragmentation of electoral

40 Fairshare. Written submission to the Local Government and Communities Committee, 11 November 2010.
legislation, the Scottish Government intends to provide for the extension of the Electoral Commission’s remit within the provisions of this Bill.

69. Sections 10 to 15 of the Bill detail the amendments to the appropriate sections of 2000 Act required to give effect to the extension of the Electoral Commission’s remit to cover local government elections in Scotland. The Minister stated that the changes to the statutory remit of the Electoral Commission would—

“...enable the commission to report on the administration of local government elections, run public awareness and information campaigns on them and the local government system, and provide advice and information to returning officers, candidates and political parties. It will also allow the commission to apply performance standards to returning officers for local government elections that will cover areas such as planning, organisation, integrity and participation. The bill requires both the electoral management board and the commission to report annually to the Scottish Parliament on the exercise of their functions.”

70. The Electoral Commission confirmed its support for the Scottish Government’s approach of extending its powers through the provisions of the Bill rather than by secondary legislation—

“This ensures that the full range of functions that we have for other elections are conferred on us rather than the limited set of functions that could have been transferred through Orders.”

71. The Electoral Commission indicated that the extension to its statutory remit provided greater accountability and transparency to its role. More specifically, it would also allow performance standards for returning officers in relation to local elections to be covered and for a system of international observers and other observers to be used at local government elections.

72. While the Electoral Commission was content with the extension of its remit, in its written submission to the Committee it called on the Scottish Government to address a reservation that it had concerning whether the Bill as drafted would achieve the objective of enabling the Electoral Commission to provide guidance to candidates at Scottish local government elections. The Electoral Commission also suggested an amendment at Stage 2 would be required should the Bill progress.

73. In his oral evidence to the Committee the Minister for Parliamentary Business stated strongly that this concern was unfounded—

“I was a bit mystified when I read that comment because we were quite clear that the Electoral Commission's concern related to candidates. We were quite clear about our direction in that regard ... Section 14 of the bill will

43 Electoral Commission. Written submission to the Local Government and Communities Committee, 10 November 2010.
44 Electoral Commission. Written submission to the Local Government and Communities Committee, 10 November 2010.
repeal the provisions in the Political Parties, Elections and Referendums Act 2000 that exclude local government elections in Scotland. Once we bring those elections within the scope of the 2000 act, section 10(3)(b) of that act will be brought into play, which enables the commission to

"provide advice and assistance to other persons which is incidental to, or otherwise connected with, the discharge by the Commission of their functions."

“We believe that that provides what the commission requires as regards its interaction with candidates and the advice that it can give them, but I would be happy to discuss that further with the commission. I hope that we will be able to satisfy it. If we cannot, I am sure that we would be prepared to consider what else we could do in the bill to address its concerns."45

74. Section 17 of the Bill sets out amendments to the 2000 Act which require the Electoral Commission to report on the performance of its functions regarding local government elections as soon as practicable after the end of each financial year. The Electoral Commission responded positively to this requirement in its written submission to the Committee—

“We welcome the opportunity to open a regular dialogue directly with the Scottish Parliament through an annual report. We hope that this will be the beginning of a formal and strong working relationship between the Commission and the Scottish Parliament building upon the relationship we have developed with the Parliament to date.”46

75. The Committee welcomes the extension of the remit of the Electoral Commission, as proposed in Part 2 of the Bill, to cover local government elections in Scotland and considers that the provisions in Part 2 of the Bill will benefit electoral administration in Scotland by promoting consistency and good practice.

76. The Committee is of the view that the Scottish Government has taken the appropriate approach by amending the 2000 Act as this allows for a full range of functions to be added to the Electoral Commission’s remit.

77. The Committee considers that the Bill will ensure that the Electoral Commission is accountable and transparent in performing its functions and welcomes the requirement for the Electoral Commission to lay an annual report before the Scottish Parliament.

78. The Committee welcomes the Minister’s undertaking that he will further consider whether the Bill as drafted confers adequate powers on the Electoral Commission to provide advice to candidates during local government elections campaigns and calls on the Minister to address this issue in the Stage 1 debate.

46 Electoral Commission. Written submission to the Local Government and Communities Committee, 10 November 2010.
Financing the Electoral Commission

79. Section 16 of the Bill details the amendments required to the 2000 Act to provide for the reimbursement of costs to the Electoral Commission for expenditure incurred in the exercise of the functions required by the extension of its remit to cover local government elections in Scotland.

80. The Financial Memorandum that accompanied the Bill explains that expenditure on elections is cyclical and peaks during the year in which an election is held. A further consideration in estimating costs is that much of the work to be carried out by the Electoral Commission on a statutory basis, should the Bill be enacted, had been met in the past by the then Scottish Executive as the required work had been contracted out to the Commission on a non-statutory basis. Further variation is introduced as the costs of running public awareness campaigns are highly dependent on the type and format of the campaign to be run.

81. The Financial Memorandum, in taking account of this variability, estimates costs of between £1.2m and £2.4m for the three year period from 2011-2014. Additional staffing and facilities costs during election years, guidance before elections and post-election reporting costs add to the total estimated above for public awareness campaigns, giving an estimated total expenditure for 2011-2014 of £1.69m to £2.89m.\(^47\)

82. These estimated costs are not all new costs, as explained earlier, some of this work had been contracted to the Electoral Commission in the past – in 2007 at least £1.2m was spent in relation to the local government elections. As explained in the Financial Memorandum that accompanied the Bill, “[T]he 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 [£1.2 million]. 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.”\(^48\)

83. Bruce Crawford, Minister for Parliamentary Business, when questioned on the financial settlement required for the Electoral Commission to undertake new responsibilities that would arise from an extended remit, told the Committee—

“I think that we have come to a pretty reasonable position with the Electoral Commission in that regard … [T]he financial memorandum lays out a range of costs from about £1.62\(^49\) million to around £2.89 million … The cost that is incurred will depend on the Government of the day and in particular, on whatever public awareness programme it might want to involve itself in, We estimate that the cost of that could be anything up to £2.4 million. That explains the potential variation in cost, which is being discussed with the commission. We should not forget that although the commission was not involved in the 2007 local government elections on a statutory basis, it still carried out work for the then Scottish Executive on those elections and the

\(^47\) Financial Memorandum, pages 8-9.
\(^48\) Financial Memorandum, page 8.
\(^49\) The discrepancy between the figure of £1.62 million quoted by the Minister and the actual figure of £1.69 million is due to an arithmetical error in the Financial Memorandum.
Scottish Parliament election … The Scottish Executive had a strong relationship with the Electoral Commission, which the Scottish Government has maintained. I am not aware that the commission has any concerns about funding issues.”50

84. The Committee recognises that the calculation of costs is subject to variable factors and that this has resulted in a range of costs being suggested in the Financial Memorandum. However the Committee is content that on the basis of the evidence it is reasonable to conclude that the total costs for the period 2011-2014 will be contained within the range £1.69 million to £2.89 million.

85. The Committee considers that the estimates of the range of costs accurately reflect the cost of the additional duties required to be performed by the Electoral Commission.

Part 3

86. Part 3 of the Bill contains sections 19, 20 and 21 which confers the power to Scottish Ministers to make secondary legislation in respect of the Bill and details the format for any ancillary provisions; confirms the Scottish Minister’s power of commencement on a day they may appoint by statutory instrument and confirms the short title of this Act would be the Local Electoral Administration (Scotland) Act 2010.

POLICY MEMORANDUM

87. The Committee is content with the Policy Memorandum that accompanied the Bill.

SUBORDINATE LEGISLATION COMMITTEE REPORT

88. The Subordinate Legislation Committee considered the delegated powers provisions in the Local Electoral Administration (Scotland) Bill and its report can be found at Annexe C.

89. The Committee notes that the Subordinate Legislation Committee did not consider it necessary to draw the attention of the Parliament to the delegated powers in sections 6(1), 11(6), 16(3), 19 and 20.

90. The Committee notes that the Subordinate Legislation Committee wrote to the Scottish Government in relation to section 5(1) - that provides for the Convener of the Electoral Management Board to give directions to returning officers in relation to the exercise of their functions - to establish whether this power could be more appropriately exercised as a power to make subordinate legislation.

91. The Scottish Government’s response explained that that the proposed power of direction would be used by the Convener of the Electoral Management Board to support returning officers in the performance of their duties. The response

explained that as the directions would arise from operational and administrative issues they might be required at short notice. Further, any directions issued by the Convener in relation to an election would be issued independently of the Scottish Government.

92. **The Committee concurs with the Subordinate Legislation Committee that the power contained in section 5(1) is acceptable to be exercisable in the form of directions.**

**FINANCE COMMITTEE REPORT**

93. The Finance Committee agreed to adopt a level one scrutiny in its consideration of the Financial Memorandum of the Bill. At this level of scrutiny, no report is produced or formal evidence taken, but the Finance Committee does seek written evidence from affected organisations.

94. In a letter to the Convener of the Local Government and Communities Committee, the Convener of the Finance Committee said that a written submission had been received from the Electoral Commission. The Committee notes that the Electoral Commission confirmed that it was content with the estimated costs contained in the Financial Memorandum.

95. The Committee has commented on the costs of establishing the Electoral Management Board at paragraphs 55 to 65 above and on the costs of extending the remit of the Electoral Commission at paragraphs 79 to 85 above.

96. **The Committee is content that the Scottish Government has attempted to estimate, as accurately as possible, the respective costs of establishing the Electoral Management Board and extending the remit of the Electoral Commission.**

**GENERAL PRINCIPLES OF THE BILL**

97. The Committee considers that the establishment of an Electoral Management Board on a statutory basis for its work in relation to local government elections in Scotland and the extension of the remit of the Electoral Commission to cover local government elections in Scotland will improve electoral administration in Scotland.

98. **The Committee has sought clarification in relation to some parts of the Bill in this report. With these caveats, the Committee supports the general principles of the Bill and recommends to the Parliament that the Bill be approved.**
ANNEXE A: EXTRACTS FROM THE MINUTES OF THE LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

24th Meeting, 2010 (Session 3), Wednesday 27 October 2010

1. Decision on taking business in private: The Committee agreed to take item 4 in private. The Committee also agreed to consider the evidence heard and its draft reports on the Private Rented Housing (Scotland) Bill, Local Electoral Administration (Scotland) Bill and the Draft Budget 2011-12 in private at future meetings.

5. Local Electoral Administration (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1. The Committee also agreed to delegate to the Convener the responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses during the Stage 1 scrutiny of the Bill.

27th Meeting, 2010 (Session 3), Wednesday 17 November 2010

Local Electoral Administration (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Mary Pitcaithly, Chair, Tom Aitchison, Former Chair, and Chris Highcock, Secretary, Interim Electoral Management Board;

William Pollock, Deputy Returning Officer, South Ayrshire Council, Association of Electoral Administrators;


Local Electoral Administration (Scotland) Bill (in private): The Committee discussed the main themes arising from the evidence heard to date.

30th Meeting, 2010 (Session 3), Wednesday 8 December 2010

Local Electoral Administration (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Bruce Crawford MSP, Minister for Parliamentary Business, Stephen Sadler, Head of Elections Team, and Fiona Campbell, Policy Executive - Elections Team, Scottish Government.

Local Electoral Administration (Scotland) Bill (in private): The Committee discussed the main themes arising from the evidence heard to date.

1st Meeting, 2011 (Session 3), Wednesday 12 January 2011

Local Electoral Administration (Scotland) Bill (in private): The Committee considered and agreed a draft Stage 1 report.
ANNEXE B: CORRESPONDENCE FROM THE FINANCE COMMITTEE

As you are aware, the Finance Committee examines the financial implications of all legislation, through the scrutiny of Financial Memoranda. The Committee agreed to adopt level one scrutiny in relation to the Local Electoral Administration (Scotland) Bill. Applying this level of scrutiny means that the Committee does not take oral evidence or produce a report, but it does seek written evidence from affected organisations.

The Committee received one submission on the FM, which is attached to this letter. If you have any questions about the Committee’s scrutiny of the FM, please contact the clerks to the Committee via the contact details above.

Yours sincerely

Andrew Welsh MSP,
Convener

8 December 2010
SUBMISSION FROM THE ELECTORAL COMMISSION

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Scottish Government carried out a consultation on the creation of a Chief Returning Officer in early 2008. The Electoral Commission submitted written evidence as part of that consultation. In February 2002 the Commission also provided the Scottish Government with indicative costs related to extending the Commission’s remit to cover local government elections in Scotland.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

We believe that the financial memorandum accurately reflects the indicative costs which we provided to the Scottish Government.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

We believe that the financial memorandum accurately reflects the indicative costs which we provided to the Scottish Government.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Bill provides for the Commission to be reimbursed by the Scottish Government for any expenditure incurred which is attributable to the exercise of our functions in relation to local government elections in Scotland. In light of this we do not anticipate that we will need to meet any additional financial costs from our own resources.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes. Costs relating to public awareness activity comprise the biggest area of expenditure in relation to elections for the Electoral Commission. Public awareness costs can vary depending on external factors such as advertising and
printing costs, and also on whether costs savings can be made by sharing user testing, creative research and call centre procurement with other elections taking place in other parts of the UK. We have supplied the Scottish Government with a range of costs related to public awareness activities which take into account the factors listed above. We are satisfied that the financial memorandum accurately reflects these margins of uncertainty.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

N/A

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We would not anticipate there being any future costs to the Bill, in respect to the Electoral Commission’s remit, which have not been covered in the financial memorandum.
INTRODUCTION

1. At its meetings on 16 and 30 November 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Local Electoral Administration (Scotland) Bill at Stage 1. The Committee submits this report to the Local Government and Communities Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Local Electoral Administration (Scotland) Bill ("the Bill") was introduced in the Parliament on 7 October 2010 by the Cabinet Secretary for Finance, John Swinney MSP.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM").

4. Correspondence between the Committee and the Scottish Government is reproduced in the Annexe.

5. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in sections: 6(1), 11(6), 16(3), 19 and 20.

Delegated powers provisions

Section 5 – Directions to returning officers

Power conferred on: Convener of the Electoral Management Board
Power exercisable by: Directions
Parliamentary procedure: None

6. Section 5(1) provides that the convener of the Electoral Management Board established by the Bill may give directions in writing to returning officers about the exercise of their functions in relation to—

   (a) local government elections generally, or

   (b) a particular local government election.

7. A direction may require a returning officer to provide the convener with information. The direction is binding on the returning officer.

8. The Board has the general function of co-ordinating the administration of local government elections in Scotland.

51 Local Electoral Administration (Scotland) Bill Delegated Powers Memorandum
9. Because this delegated power is not a power to make subordinate legislation, there is no comment on it in the DPM. (None is required). The Explanatory Notes explain for section 5 that this power to direct is modelled on that given to the Regional Returning Officer for European Parliamentary elections.

10. The Committee can properly consider whether a power of direction (not subject to Parliamentary procedure) could more appropriately be exercised as a power to make subordinate legislation (subject to procedure) (SO Rule 6.11 (d)). The Committee therefore asked for further information on this direction power.

11. The response from the Scottish Government clarifies that there are no existing powers of direction to returning officers at local government elections. The response also explains that the proposed power of direction would be used by the Convener of the Electoral Management Board to support returning officers in the administration of their functions to conduct elections, and ensure consistency, where necessary, in their delivery across Scotland. For example, directions setting out requirements on returning officers to conduct a final postal vote sweep for ballot papers in sorting offices on the day of the poll, or arrangements for the opening of postal votes, were issued for the 2007 European elections. The directional power could be used by the Convener on similar types of issues.

12. The response also explains that the directions envisaged will be on administrative and operational issues. The directions may be required at short notice. The Committee also notes that any directions issued by the Convener of the Electoral Management Board in relation to an election would be issued independently of the Scottish Government.

13. The Committee is content that the power in section 5(1) is acceptable to be exercisable in the form of directions.
Correspondence with the Scottish Government

Local Electoral Administration (Scotland) Bill at Stage 1

Letter from the Subordinate Legislation Committee to the Scottish Government

Section 5 – Directions to returning officers

The Committee has a remit to assess whether the power of direction in section 5(1) may be more appropriately exercisable as a power to make subordinate legislation. To assist that assessment, the Committee asks the Scottish Government for the following information—

(a) examples of how this power could be used, and how it would relate to existing law on the functions of returning officers for local government elections (including any other powers of direction),

(b) why it is considered appropriate to have this power of direction (not subject to Parliament procedure) rather than enabling powers to make subordinate legislation, given that the power could extend to local government elections generally?

Response from the Scottish Government

Thank you for your letter of 16 November to Elspeth MacDonald regarding Section 5(1) of the Local Electoral Administration (Scotland) Bill.

The Committee sought examples of how the power of direction in section 5(1) could be used and how it would relate to the existing functions of returning officers for local government elections (including any existing power of direction).

There is no existing power of direction to returning officers at local government elections. The proposed power of direction in the Local Electoral Administration (Scotland) Bill is based on that available to Regional Returning Officers in elections to the European Parliament.

As the Committee will be aware, returning officers are appointed under the terms of the Representation of the People Act 1983. Returning officers are generally responsible for the conduct of elections in their area. They do not have a role in the preparation and maintenance of the electoral register, which is the role of electoral registration officers. Returning officers will continue to carry out the functions set out within the 1983 Act.

The proposed power of direction would be used by the Convener of the Electoral Management Board to support returning officers in the administration of these
functions and ensure consistency, where necessary, in their delivery across Scotland. For example, directions setting out requirements on returning officers to conduct a final postal vote sweep for ballot papers in sorting offices on the day of the poll or arrangements for the opening of postal votes were issued for the 2007 European elections. We anticipate that the directional power within the legislation would be used by the Convener on similar types of issues.

We have proposed a power of direction rather than powers to make subordinate legislation for a number of reasons. As the examples given above demonstrate, the directions envisaged will be on administrative and operational issues which will not require the scrutiny of parliament, particularly because the conduct of elections should be independent of the political process. Also, directions may be required at short notice and the time needed to follow a Parliamentary process for subordinate legislation could result in the requirements not being issued in advance of an election.
1. The Electoral Commission’s evidence to the Local Government and Communities Committee on the Local Electoral Administration (Scotland) Bill.

2. The Electoral Commission welcomes the opportunity to provide written evidence on the Local Electoral Administration (Scotland) Bill to the Local Government and Communities Committee of the Scottish Parliament.

3. We were established in 2000 with the enactment of the Political Parties, Elections and Referendums Act 2000 (PPERA) as an independent UK wide public body.

Background
4. As the Committee will be aware, we invited Mr Ron Gould to conduct a review of the 2007 Scottish Parliamentary and local government elections following the high profile problems that occurred. The review’s remit covered all aspects of those elections and we published ‘The independent review of the Scottish Parliamentary and local government elections 3 May 2007’ (also known as the Gould report) in October 2007.

5. The report made a series of recommendations, which included options for ensuring clear lines of responsibility and accountability. These options included appointing a Chief Returning Officer for Scotland and rationalising the role of the Electoral Commission so that it focussed on providing advice and regulating the system but not being responsible for operational matters such as public awareness campaigns.

6. In 2008, we undertook a consultation on the way electoral administration is conducted in the UK to identify an effective and sustainable electoral administration structure or structures which can best serve the interests of electors and those standing for election. Two of our recommendations, which are the subject of this Bill, are to provide a legislative basis for an Electoral Management Board (EMB) for Scotland and extending our remit to include Scottish local government elections.

7. We maintain that there must be clarity over the roles and responsibilities of those who deliver aspects of an election. Governments and legislatures are responsible for electoral policy and legislation, the Commission is responsible for providing advice and reporting on the conduct of elections, and Returning Officers (ROs) and Electoral Registration Officers (EROs) are responsible for managing elections and electoral registration in accordance with legislation.

8. We support the general principles of the Bill to establish the EMB for Scotland in statute and to extend our remit to include Scottish local government elections.

**Part 1 – Electoral Management Board for Scotland**

9. Our report, *Electoral administration in Scotland*\(^2\), published in August 2008 recommended that there should be greater co-ordination and consistency in the delivery of elections and referendums. This should be led by an EMB made up of the ROs and EROs who have operational responsibility for delivering an electoral event. The EMB should be led by a senior serving RO as its Convener. The Elections Convener should have a power of direction to require a consistent approach where this is beneficial for voters in particular, and the conduct of the election in general.

**Remit**

10. We welcome the Scottish Government’s commitment to establishing the EMB in presenting this Bill to the Scottish Parliament. The Bill does not, and cannot, give statutory recognition to the EMB in relation to Scottish, UK and European Parliamentary elections as policy responsibility for these elections are reserved to the UK Government. However, we hope that this Bill will provide a robust framework for extending the EMB’s powers to these other elections in the near future.

**Membership**

11. We welcome the provision for an Elections Convener to lead the EMB, and their appointment by Scottish Ministers following an open and transparent selection process. This mirrors the appointment of European Regional Returning Officers by UK Ministers. The appointment process for the 2009 European Parliamentary elections was undertaken as an open and competitive process under the Nolan principles for public appointments. We would be happy to assist the Scottish Ministers in establishing their appointment process for the Elections Convener.

12. We want to ensure that there is clarity over who is responsible for each aspect of an election. This means that, as far as the operational management of an election is concerned, ROs and EROs are personally responsible. We therefore question why the Bill allows Depute Returning Officers (DROs) to be members of the EMB. DROs can only exercise the functions conferred on them by their RO. The RO is personally liable to the courts for any actions taken by their DROs. We believe this clause of the Bill should be changed so that only ROs and EROs can be members of the EMB. We would also suggest that consideration is given to appointing a representative(s) of each professional association as an adviser to the EMB as we proposed in *Electoral administration in Scotland*, thereby ensuring that the valuable expertise of DROs and other electoral administrators is utilised.

13. We, along with the Scotland Office, Scottish Government and CoSLA, have been a standing adviser to the interim EMB. As an adviser, it is clear that we are not operationally responsible for the management of an election but we are able to inform and discuss the EMB’s plans. We believe that this has worked well both in terms of successfully delivering an election for voters and for ensuring the delineation of roles and responsibilities.

**Power of direction**

14. We support the Elections Convener having a power of direction over ROs and EROs. We believe this is a necessary tool to ensure national coordination and consistency of key parts of the electoral process. This mirrors the power that a Regional Returning Officer has over Returning Officers at a European Parliamentary election. It also gives effect to the Gould report recommendation that a Chief Returning Officer should have a power of direction as well as a co-ordinating and oversight role.

15. We do not, however, believe that the Bill adequately addresses the accountability of the Elections Convener to the courts for their actions in a local government election. At a European Parliamentary election, the Regional Returning Officer is deemed to be a respondent to an election petition if the petition complains about their conduct. We believe the Bill should amend the rules for questioning a local election in the Representation of the People Act 1983 in respect of Scotland so that the Elections Convener is a co-respondent to a petition if the action complained of arises from a direction they have issued.

**Accountability**

16. The Bill requires the Elections Convener to lay an annual report before the Scottish Parliament and to send a copy to the Scottish Ministers. We believe that it is imperative for the impartiality of our electoral administrative system that ROs and EROs are free from the possibility of political interference in the execution of their duties. However, we recognise that the role of legislatures and governments is to set the policy and legal framework for elections and make sure that these are implemented properly. It is appropriate that the Scottish Parliament discusses the management of local government elections with the Elections Convener and also to seek their views on any new policy or legislation.

17. The relationship of the EMB with the officers it represents and to the wider public is as important as its relationship with the Scottish Parliament. We have recommended that the EMB holds an annual meeting with all ROs and EROs in Scotland to ensure that they are kept up to date with the work of the EMB. The EMB will need to develop a profile with the general public and key stakeholder groups so that it is a recognisable authority in the field of electoral administration.

18. We also recommended in *Electoral Administration in Scotland* that the EMB adopts a general set of aims that look at the strategic development of
electoral administration in the long-term. The Government’s policy memorandum expects that the EMB would develop five-year work plans. We would support this level of activity for the EMB to achieve a strategic view and not focus solely on the tasks for the next electoral event.

**Part 2 – Electoral Commission: Local government elections**

19. When the Electoral Commission was established in 2000, our role and responsibilities in relation to local government elections in Scotland were limited, reflecting the devolution of responsibility for local government matters to the Scottish Parliament. Provision was made in PPERA for Scottish Ministers to establish a formal role for us through secondary legislation. To date, no such orders or regulations have been made, which means that Scottish local government elections are the only set of elections in Great Britain in which the Commission does not have a formal role.

20. Prior to the 2003 and 2007 combined elections, we were contracted by the Scottish Executive to deliver a number of its functions for the local government elections where we were undertaking the same tasks in respect of the Scottish Parliamentary election.

21. As we stated earlier in our evidence, we believe there are three key roles in relation to elections; policy and legislation, operational management and delivery, and provision of advice and guidance. Scottish local government elections currently do not have a body undertaking the latter role. We should have the duty to undertake the following tasks in an impartial manner in the best interests of the electorate, as we do for other elections:

- provide public education on Scottish local government and its electoral system
- provide advice to local government candidates and agents
- provide advice and assistance to local government Returning Officers
- set and monitor performance standards for local government Returning Officers
- be a statutory consultee on any changes to the election rules
- administer an election observers scheme
- report on local government elections

22. We have asked the Scottish Government to consider whether the Bill as currently drafted achieves the intention set out in the accompanying policy memorandum, of enabling us to provide guidance to candidates at Scottish local government elections, or whether an amendment may be needed to achieve this.

23. We support the extension of our remit through this Bill, rather than by secondary legislation. This ensures that the full range of functions that we have for other elections are conferred on us rather than the limited set of functions that could have been transferred through Orders.
24. We welcome the opportunity to open a regular dialogue directly with the Scottish Parliament through an annual report. We hope this will be the beginning of a formal and strong working relationship between the Commission and the Scottish Parliament building upon the relationship we have developed with the Parliament to date.

The Electoral Commission

10 November 2010
Local Electoral Administration (Scotland) Bill: Stage 1

The Convener: Under agenda item 3, we will take evidence on the Local Electoral Administration (Scotland) Bill. On our first panel of witnesses, we have three people from the interim electoral management board for Scotland: Mary Pitcaithly, the board’s chair; Tom Aitchison, the former chair; and Chris Highcock, the secretary. We also have William Pollock, the deputy returning officer in South Ayrshire and member of the Association of Electoral Administrators.

As previously agreed, we will move directly to questions.

Bob Doris: I welcome the fact that the bill will put the electoral management board on a statutory footing and will implement a couple of the recommendations that Mr Gould put in his report a few years ago. Of course, in the form that is set out in the bill, the board can have statutory responsibility only for local government elections. However, a wide group of stakeholders believes that it should have statutory responsibility for elections in Scotland to the European, United Kingdom and Scottish Parliaments. The Electoral Commission also suggests that the board be given responsibility for referendums that take place in Scotland.

Would extending the responsibilities of the board in that way be desirable?

Mary Pitcaithly (Interim Electoral Management Board): Yes. That is the direction of travel that we want to go in. It would be helpful if, in time, the board had responsibility for all the elections in Scotland. We understand that that is within your power at the moment.

Tom Aitchison (Interim Electoral Management Board): As far as the European elections are concerned, regional returning officers are appointed across the UK, and Scotland is one of the regions. In a sense, therefore, the power of direction for European elections sits with the RRO. What we are discussing here is whether something similar should apply to all other elections in Scotland.

Mary Pitcaithly: Just to supplement that, the regional counting officer for the referendum that is due to be held next year will also have a power of direction.

Bob Doris: That point is worth picking up on. If the board is put on a statutory footing, will it have any degree of responsibility for any referendum that might be held next year?
Mary Pitcaithly: No, not formally, but it will operate in the same way as it did during the general election this year, when it helped to co-ordinate the approach that was taken by returning officers and electoral registration officers throughout Scotland. It will provide support and guidance for the referendum, and there will be an opportunity to develop training.

Tom Aitchison: Bob Doris began by referring to the Gould report of 2007. In many respects, that and other factors began the process that led to the interim electoral management board. Essentially, there was a desire among serving Scottish returning officers never again to go through what happened in 2007. I guess that that is the view of all parliamentarians and of others, too.

There is a good co-operative spirit among the returning officers in Scotland at present; when I was RRO for the European election, I had the power of direction. We can discuss and debate that this morning, but it will certainly help the situation. It is not as if we have to impose something on our colleagues; they want to work together and ensure a consistent approach for political parties throughout the country. They want to put as much professional expertise into election planning and management as possible.

Bob Doris: I am encouraged by that, because the reason for my line of questioning relates to concerns about fragmentation given the different responsibilities. It is positive that, although the electoral management board’s responsibility will not be on a statutory footing outwith local government, you are actively working with partners to ensure co-ordination.

To progress things further, we could give the board responsibility for community council or health board elections. That would be within the gift of the Parliament. Would that be desirable or would you distance yourself from that?

Tom Aitchison: It is something that we have not rehearsed. It would be going a bit too far to think about community council elections in that regard, as they are a local matter. We have had elections to health boards in the past year or so, which are an innovation. If that was to develop into a national policy, it would make sense to bring it all to bear in one place.

There were some initial concerns about elections to health boards, which were sorted out. One part of the Scottish Government was dealing with them as a health issue and another part was dealing with elections, so it is important that it all comes together. I do not need to tell anyone in the room that elections are complex and involve a lot of complex legislation and logistics. The more the expertise is concentrated, the better.

Alasdair Morgan (South of Scotland) (SNP): Presumably the same would apply to the new crofting commission.

Tom Aitchison: There has been some talk about crofting and national parks. A range of elections fall outwith the major statutory elections. Crofting relates more to one part of the country than to other parts and, as an Edinburgh-based returning officer, it has not been high on my list of priorities in the past but, wearing my national hat, I recognise that there is a prima facie case for considering whether it could form part of an enlarged remit for the board in due course.

Chris Highcock (Interim Electoral Management Board): We have certainly been asked by returning officers and depute returning officers in the Highlands about our responsibility for crofting boards, community land buy-outs and national park elections.

The Convener: You mentioned the spirit of cooperation and co-ordination that now exists, and the wish to avoid a repeat of 2007. What is the collective view of the challenges that we face from any proposed referendum that coincides with the Scottish Parliament elections? If there is such a view, whom have you passed it to?

11:15

Mary Pitcaithly: The board has been discussing it since the potential for combined polls was mentioned. In the past month or so, we have had quite extensive discussions with the chief counting officer, who is the chair of the Electoral Commission, about some of the specific issues that will arise out of combining the polls on 5 May. We have been given plenty opportunity to highlight for the chief counting officer some of our concerns. Those have been listened to and the most recent draft direction from the chief counting officer has taken into account some of the comments that were submitted on the board’s behalf. The board will now have the opportunity to contribute to a more formal consultation process in relation to the direction that the chief counting officer is minded to take for 5 May for counting and so on, and the deadline for that is 25 November. We will discuss it at the board’s meeting this afternoon.

Tom Aitchison: Generally speaking, the board does not express a view on decisions of the Scottish or Westminster Parliaments. We have not said that having both elections on the one day is either good or bad per se. As Mary Pitcaithly said, we are focusing on the practical issues that will arise.

We submitted advice to the Scotland Office not long after the Westminster election earlier this year and, as Mary said, that has been followed up with consultative papers from the Electoral
Commission and other bodies that are trying to pull together the range of issues if the Scottish Parliament elections and the referendum take place on the same day, and we appear to be heading towards that.

**The Convener:** You raised a number of concerns. Do you feel that some of them have been addressed?

**Mary Pitcaithly:** Yes.

**The Convener:** So the Government has not just listened; it has acted.

**Mary Pitcaithly:** Yes, indeed.

**Chris Highcock:** One of our initial concerns was that the referendum is on a UK-wide franchise, whereas the Scottish parliamentary elections are on the Scottish parliamentary and local government franchise in Scotland. We made representations to ensure that the referendum is undertaken using the boundaries for the Scottish parliamentary elections, which will allow us to rationalise a lot of our planning for polling and other factors. The UK Government agreed to that and it has now been enacted for the referendum.

**The Convener:** What concerns are still outstanding?

**Mary Pitcaithly:** The current issue is the arrangements for the count and when it will take place. The current consultation with the chief counting officer relates to whether there should be a time at which all regional counting officers and counting officers across the UK should begin the count of the referendum ballot papers. There is a clear understanding that the results of the national election should not be delayed by the referendum count. That is the basis of the discussions that we have been having. What would be an appropriate start time, for example, if the chief counting officer is to determine and set a time, so that we can be absolutely sure that the results of the national elections in Scotland, Wales and Northern Ireland are not delayed by having to do both counts?

The fiscal consolidation period that we are now dealing with is a year swifter than the Conservatives argued for in opposition, and it is a year swifter again than the approach that the Labour Party took. So there are choices about how we can deliver the fiscal consolidation without creating the disruption to public services that the Conservative and Liberal Democrat Government has created.

**Tom Aitchison:** That is the key point, convener. There is a question about the sequence of the counts, but there is also a question about scale. To put it in context, we are talking about something that is three times the size of the Westminster election that took place earlier this year. There will be three ballot boxes—two for the Scottish Parliament and one for the referendum. One or two colleagues here are local MSPs. Some time ago, I decided to move our count from Meadowbank to Ingliston because Meadowbank has insufficient space to accommodate the count.

If you wish, we can develop the subject further. I can give my knowledge of my favourite “Mastermind” subject: overnight counts versus daytime counts. There is a lot to be thought through. The boxes will arrive and will have to be rummaged to sort out misplaced papers. Then there is a requirement to verify the initial tallies, which will take most returning officers until 1 or 2 in the morning. As Mary Pitcaithly said, the current planning assumption seems to be that we will go on then to count the Scottish Parliament papers, although there is some debate about whether the count might be stopped at 2 in the morning and started again at 9 am. There might be instructions about when to start the referendum count; it could be at 4 o’clock in the afternoon. We need to think about the number of staff that will be involved in the count, the management of those staff and the weight of responsibility on people such as myself, Mary Pitcaithly and others who will go for 24 to 36 hours without sleep. I know that the idea is not popular but we need to have a proper debate and discussion for next May about the sequencing of the counts and how it will all roll out.

**The Convener:** As a committee, we have taken an interest in the matter for quite a considerable time. You emphasise the point that we need to have a much more open debate about what will happen in 2011. We look forward, I hope, to other evidence sessions in which we can focus on the issues. I note that there will be a debate on the 2011 elections in the Parliament this week, so maybe we can make some of those points individually as well.

**Alasdair Morgan:** In its written evidence, the Electoral Commission makes a point about deputy returning officers and their membership of the electoral management board. I know that we have a depute returning officer with us. First, will you clarify whether there are any deputies on the current interim electoral management board?

**Mary Pitcaithly:** Yes, there are.

**Alasdair Morgan:** Have you found that to be a problem? You do not have a statutory responsibility, of course, but has that thrown up any issues?

**Mary Pitcaithly:** On the contrary. People who are designated as depute returning officers have made a significant contribution to the board over the years. I understand the Electoral Commission’s position on the matter in relation to accountability, but DROs are likely to continue to play an important role. There is an issue about
whether they should be full members of the board, as the bill suggests, or whether they should be advisers to the board, which is the Electoral Commission’s position. Either way, people who do not necessarily carry the responsibilities of returning officers but who nevertheless have a huge amount of experience and expertise to bring to the table will always be welcome around the board table.

Alasdair Morgan: I ask Mr Pollock whether he feels that his lack of ultimate legal responsibility would inhibit him should he be appointed to a future board.

William Pollock (Association of Electoral Administrators): It would not. The depute returning officer’s input is usually much more at the practitioner level. As has been said, someone who is appointed as a chief executive and is then appointed as returning officer might have no, or very little, election experience. Depute returning officers tend to have come through the ranks, if I can put it in that way, and gained practical experience of the day-to-day operational side of election management and delivery, so they can usually contribute details to any debate that is going on. I do not think that the accountability side would be difficult.

Alasdair Morgan: Are you saying that, in some cases, we are getting to the situation in England? Down there, the returning officer is just a guy with a chain who reads out the results, usually badly. Someone else does all the work. Does that happen in Scotland?

William Pollock: Not at all. For a start, they read perfectly. [Laughter.] That situation was abolished in Scotland under the Returning Officers (Scotland) Act 1977, but the same did not happen in England, where the situation continues. Returning officers have practical and—dare I say it?—strategic oversight of the election process and expect their deputies to deliver the detail. That is generally how it works.

Tom Aitchison: I did not kick him under the table, convener. [Laughter.]

I have a couple of points to add. In the past five or six years, when I carried on behalf of all local authority chief executives a portfolio responsibility for elections, I emphasised strongly to all colleagues how seriously they should take their responsibilities for elections. There has been a huge turnover of council chief executives in the past four or five years and I think that everybody has now had a fairly major wake-up call. On a day-to-day basis, as your question implied and Mr Pollock said, a lot of the work falls heavily on deputies. That is appropriate. However, ROs understand their responsibilities and take them seriously.

Billy Pollock is a good example of someone who is both a depute returning officer and a prominent member of a professional electoral association. Sometimes we get a double benefit because, through our staff, we can lock into a network. In his case, it is the Association of Electoral Administrators, but lawyers and others also have professional associations. Our people have real practical experience and they are also locked into a wider professional network where they can learn, share experience, discuss issues and so on.

Alasdair Morgan: Should the fact that the ultimate legal responsibility does not lie with Mr Pollock, or with somebody in a similar position, be a bar to their being a member of the management board in their own right, rather than representing their association on it?

Tom Aitchison: No. I agree with Mary Pitcaithly. It has been of benefit to have people such as Billy Pollock sitting on the board. In law, each returning officer in Scotland still has, and will continue to have, the current legal responsibilities, unless some future electoral convener chooses to exercise a power of direction. The legal position is clear in law. You are talking about people coming together to plan, to administer and to think ahead strategically. Therefore, a range of skills—a range of backgrounds—adds to that rather than detracts from it.

Jim Tolson: I want to ask Mary Pitcaithly and William Pollock about the financing of the electoral management board. The bill’s financial memorandum suggests two possible funding options: a dedicated secretariat and policy function and a portfolio model. What are the pros and cons of those models? Are they fit for purpose? Is electoral administration in Scotland adequately funded at present?

Mary Pitcaithly: Administration of local government elections is a matter for local authorities. These days, local authorities are finding things difficult—we will perhaps know just how difficult later today. We are all under pressure to be as efficient as possible; that applies to elections.

To date, I have never had a returning officer mention to me anything specific about a lack of funding for elections in their councils. We take the responsibility seriously and we are able to call on resources and so on, but that is an increasing pressure on us. Tom Aitchison may want to add to that.

Tom Aitchison: I would add a qualification to that. What Mary Pitcaithly says is correct. However, for many years, there has been a view among Scottish returning officers that councils are subsidising non-council elections such as the Scottish Parliament and UK elections. Some
examples were tested a few years ago, although I may not have the figures in my head. In Edinburgh, we reckon that a major election costs in the order of several hundred thousand pounds. There are not really sufficient moneys flowing in to returning officers to discharge their responsibilities.

In Edinburgh, where until a few years ago salaries tended to be high, it was difficult to recruit people to man the stations or to count overnight—you have to pay market rate to achieve that. That has led to a view that has been held for some years that there is insufficient recognition of the cross-subsidy from councils to non-council activity.

Jim Tolson: That is a fair point but we are trying to focus on finance and the electoral management board rather than on the delivery of elections.

I will come back to Mr Pollock. Of the two models that have been suggested for funding the electoral management board, which do you think is more suitable and why?

William Pollock: My colleagues and I prefer option 1, which is to have a dedicated secretariat and policy function. Compared with the original proposals for the establishment of a chief counting officer, with the inevitable secretariat and accommodation costs and so on that that would involve, it is a much less expensive option. There would be no payments to be made to any of the people on the board—they will be salaried by their local authority once they have been appointed. There is perhaps a small question about who should foot the bill for the expenses that board members will incur. It is suggested that that responsibility should fall on local authorities, but that might act as a deterrent to someone in Inverness or Aberdeen, for example, becoming a member of the board. Everyone is always trying to chop budgets as best we can, so it might make the board central-belt centric, if I can put it that way.

In option 1, the other eight members would be appointed to the board by the convener on the basis of their ability, experience and professional association connections, and would attend the meetings. The funding costs would be fairly low in comparison to what was originally proposed by the Gould report. Obviously, the convener, whoever that would be, would have to meet the additional expenses of attending UK-wide meetings, and at some point that should be factored in to the financial arrangements for administration of the board.

What changes, if any, should be made to the funding of electoral administration? This might be a question for Mr Aitchison and Mr Highcock. Are there enough current resources and, if not, how much more might be required? In any case, should we not have some blue-sky thinking on from where extra funding might come? Given that in dealing with both policy direction and implementation of elections in Scotland the electoral management board will take some responsibility away from returning officers, should the extra funding that returning officers receive for managing elections be given instead to the board?

Tom Aitchison: The simple answer is no. I handed the board over to Mary Pitcaithly a few months ago, so I am slightly out of touch with the detail of all this, but I certainly recall that we were strongly in favour of option 1, which is direct funding. As Mr Pollock has said, we are trying very hard to keep our request as modest as possible. I will get the figures from my colleague in a second, but I think that we are talking about one or one and a bit policy officers and some administrative support.

Over the past three years, my council—the City of Edinburgh Council—has quite happily carried the costs of the interim board, but I think that any move to put it on a statutory footing must be recognised by setting aside some resources. We are not making an extravagant bid for more authority or power; we are making just a modest request to ensure that the board has a staffing resource to discharge its responsibilities. I know that the financial memorandum will be discussed. As I said earlier, the money that goes to returning officers might be described as adequate, but certainly not as generous, and I would be concerned if it were to be top sliced in some way to fund the board’s work.

Chris Highcock: As was said earlier, the interaction that chief counting officers have had with the Electoral Commission on the logistics for next year’s referendum illustrates the huge input that is required from practitioners of elections in Scotland. Given what the board has at its disposal, it is difficult to resource that sort of work, so a permanent secretariat would ensure continuity and make the board more able to deliver those requirements.

Mary Pitcaithly: Such a move would be enormously important. Under the legislation, returning officers would have exactly the same responsibility for elections that they have always had, and any payments should recognise that. Indeed, as well as his or her responsibility to the board, the board’s convener would be responsible for his or her own elections, so that person should, at the very least, be entitled to expect some form of support.
The financial memorandum proposes very modest support amounting to about £70,000 and, given that the chief returning officer alternative was costed at between £1 million or £2 million, we are very much at the modest end of the spectrum. Time will tell whether that amount is sufficient, but I think that it is the minimum that would be required. Such permanent secretariat support will be critical in allowing whoever will be convener to discharge his or her duties.

**Jim Tolson:** I am glad that you are looking at the modest end of the scale. However, if this proposal is taken forward and results in a reduction of the overall responsibility of returning officers, who are generally chief executives of the individual local authorities, the public might well conclude that officers do not need that level of extra payment.

**Tom Aitchison:** Let me be clear: if the bill goes through, there will be no reduction in the responsibility of any returning officer. Instead, the future convener of the board will essentially get the power of direction. For example, if a returning officer was doing something incredibly stupid with the nomination process, the person who would carry these responsibilities could intervene and say, “You’re doing it the wrong way. Do it this way instead” and try to ensure that the same approach was taken in all 32 councils in Scotland. The responsibility would still sit firmly and squarely at local level.

This is partly about co-ordination and trying to plan and think ahead. Everyone in this room will know what the calendar to 2015 is like; there is only one year in which a major event is not taking place. I realise that this is not the time for it, but at some point we need a debate on the various elements of elections that, in my view, smack almost of Victorian—indeed, Dickensian—ways of working, and about how they might be switched over in the coming years. The proposal to give the power in question to one person will improve and build on the co-ordination that has been in place roughly since the time of the Gould report, but if people co-operate with each other it should be exercised quite rarely. If, in extremis, the power is needed, it will exist, but it will not diminish the legal responsibilities of individual returning officers.

**Mary Mulligan:** I was going to ask about the very issue that Mr Aitchison has raised. He said that the power of direction, which the bill proposes to give to the electoral management board convener, would be used rarely. However, the bill contains no sanction against those who do not follow such directions. Is that a good or a bad thing?

**Mary Pitcaithly:** It is difficult to think what such a sanction might be. The process has worked well so far; the power of direction was vested in Tom Aitchison as regional returning officer for the European elections and, if my memory serves me right, he issued two directions in the last election. It would never have occurred to any returning officer not to follow those directions, so I am not sure that sanctions would make any difference.

The electoral and local government community is anxious to deliver transparent and fair elections that set the best possible example for the rest of the world, and we would all want to avoid the need for directions. However, something might arise fairly late in the day and instead of having to enter into a huge debate, returning officers would welcome a direction that made it clear that a particular course of action should be followed, which would give us the comfort of knowing that everyone was taking the same approach. After all, a key tenet of the board is to ensure consistency throughout the country.

**Tom Aitchison:** Mary Pitcaithly is right. Situations can arise in elections in which you have to act quickly, but in essence there should, if at all possible, be no surprises. We—by whom I mean returning officers, deputies and all those involved in elections in Scotland—plan, train and rehearse together, which is key to ensuring consistency. That is why I said that I do not think that people will suddenly start issuing direction after direction. Quite frankly, if we had to do that, we would have failed, but we need the power as a backstop against unforeseen eventualities.

**Mary Mulligan:** What were the two directions that you issued?

**Tom Aitchison:** I thought that you would ask me that, but I cannot remember.

**Mary Pitcaithly:** I know that there were two of them.

**Chris Highcock:** One direction was about ensuring that postal votes were not opened on polling day, which was meant to simplify electoral administrators’ duties, and the other was to have a Royal Mail sweep on election night to ensure that everyone in Scotland had the full complement of postal votes.

**Mary Mulligan:** It helps to hear examples of what the power might encompass. I acknowledge Ms Pitcaithly’s point that if we get the process right and reach agreement we should not have to go down the sanctions route. However, how would you handle a situation in which someone did not agree with a direction? I am assuming, Mr Aitchison, that everyone followed your word and did as they were directed. Would there have been any opportunity for someone to question either of those directions?

**Tom Aitchison:** I have just been reminded that there was no sanction per se when I held that
responsibility in the European elections. Your question is interesting. Elections take place in a very concentrated period of time and there is no time to hang around and have a long academic debate on such matters. You have to take a decision pretty much there and then. I realise that at one level that response sounds a bit weak, but I do not think that it is weak: we simply have to rely on our colleagues’ good sense and the fact that we have planned everything together. There might have to be a fairly robust discussion about a matter, but I suppose that it would depend on how utterly important it was.

Chris Highcock mentioned a Royal Mail sweep. Royal Mail sorting centres are important, but perhaps not critical. If Mary or I get a phone call to say that a returning officer has done something incredibly stupid at nominations, for example, we have to try to exercise the full weight of authority of the convener’s position. We may all need to give a bit more thought to that. There is no point in having a sanction six months after the election has gone wrong. We have to be able to deal with it on the day.

Mary Pitcaithly: Ultimately, if a returning officer has done something contrary to the convener’s direction, he or she would stand on his or her own. In any court action, for example, the convener would be jointly responsible for decisions or actions that were taken by a returning officer only if those actions were in accordance with the directions. If they were not, the returning officer would have to answer for that themselves.

Alasdair Morgan: You were talking about the urgency with which directions might be given. I wonder how that fits with section 7, which says:

“Before giving a direction under section 5 or 6, the convener must consult—

(a) the other members of the Board,

(b) the Electoral Commission.”

Mary Pitcaithly: In practical terms, my preferred mode of communicating with the board outwith board meetings would be e-mail. An example of that happened last week, when I was trying to communicate with members of the board about their views on the combined referendum and Scottish Parliament elections, and issues of count timing and so on. E-mail is a wonderful way of contacting a group of people and getting immediate responses from most of them.

However, I am sure that if there was a major issue it would be possible to bring the board together quickly. We have a schedule of meetings, but we can come together quickly when required. We could carry out a form of consultation that would not require issuing a draft. We can videoconference, as well. We have various ways of contacting each other. We would not consult by saying, “Here’s a written suggestion for a direction. You have 14 days to give me your comments.” During elections, it all moves much more quickly than that.

Alasdair Morgan: That does not really put any qualification on what the directions could be. I am not a lawyer, but it may be that directions have to be in accordance with existing law. What happens if the person being directed says that what they are doing is in accordance with the Representation of the People Acts, but you say that it is not and that you are interpreting it correctly?

Mary Pitcaithly: I like to think that we would not be giving directions that would ask anyone to act contrary to any legislation. However, as we know electoral legislation is extremely fragmented—that was mentioned in one of the key recommendations from Gould—so there can often be different interpretations. As a local returning officer, I would always set great store by what the experts on the board thought might be an appropriate interpretation. However if, at the end of the day, one returning officer took a different view, there would be an opportunity for that returning officer to put his or her case to the board. We would ensure that that was factored into any discussions by the board on whether to approve the direction that was to be issued.

Section 7 is an additional safeguard, I suppose, against capricious conveners of the board issuing directions willy-nilly. Tom Aitchison has never had to consult the board formally prior to issuing a direction. However, I always, as a previous board member, felt that I was included in his decision making, although not in a terribly formal way. I do not envisage the provisions in the bill requiring a great deal of formality, either.

The bill also requires the board to come up with its own way of working, its own processes and its own procedures. We will have to take into account what opportunity there would be for a returning officer who was concerned about a proposed direction to feed in his or her view and how that view would be taken into account.

John Wilson: I want to pick up on the issue of direction from the convener. Who would the board or the convener envisage would deal with an issue in relation to the administration of elections? You are talking about a board or convener being made aware that there may be an issue in relation to the administration of ballot papers or voting procedures or whatever. Who would be able to go to the board or convener about those issues?

11:45

Mary Pitcaithly: Anyone could do that. Matters can be brought to the attention of individual returning officers, the regional returning officer or
the convener of the board by political parties, individual MSPs, members of the public or concerned electors—whoever. There is a range of opportunities for concerns to be brought to our attention. Most often, however, it is the returning officer simply wanting to check that what he or she is doing is right. There is a great deal of concern to be right and to do things properly. We are anxious to take on board any questions that people might have about whether the law is being followed in an area.

Tom Aitchison: I have a little point to add. The main professional contact is between the board and returning officers, but we should not forget the electoral registration officers, because EROs have an important role to play in election planning. Those are the two principal professional groups with whom the board will interface.

John Wilson: I was just trying to clarify how, if an individual or member of the public had a complaint about the process, they would be able to take that on if they felt that they had hit a buffer with the local returning officer, and whether they would be permitted to take an issue to the convener or the electoral management board.

Tom Aitchison: I do not think that we have discussed having the board as a complaints forum—maybe the committee would want to think about that. In essence, any local complaint in a part of Scotland should be addressed to the local returning officer, who should deal with it. We are talking about the board having a strategic and directive emphasis more than it being the place to go for somebody who has a particular issue with the way in which an election has been organised locally.

William Pollock: In the first instance, candidates are more likely to complain to the Electoral Commission, because it has helplines and so on. The commission would then put the complaint to the local returning officer or the electoral registration officer, as appropriate, to resolve. The board does not have a high public profile in that sense.

John Wilson: I thank the panel for their answers on that question. I wanted to get the issue on the record.

One other issue that has been raised with us is the transparency and openness of the board. In its written evidence, Fairshare Voting Reform states that it would like the electoral management board to make its agendas, minutes and decisions more widely available. Has there been any decision or discussion on making that information publicly available on a website or in other formats?

Tom Aitchison: I am very keen to do that, but this takes us back to the earlier questions about resources. The easiest way to make that information available is through a website, but somebody has to put money up front to develop and maintain a website. It is another example of what we were talking about: if we received a fairly modest resource allocation to support the board’s work, we could post the minutes of meetings and other information about the board—what we would expect to find on any modern website in the public sector. I am certainly keen to do that, but we have been inhibited so far. As I said earlier, until I handed the responsibility to Mary Pitcaithly, it by and large fell to my council to keep the board going—Mr Highcock works with me in the City of Edinburgh Council. There is no lack of determination on our part; it is a simple question of having resources to get the job done.

John Wilson: Thank you.

The Convener: Thank you all the witnesses for their attendance and the evidence that they have provided this morning.

We will suspend for a moment while we change panels.

11:48

Meeting suspended.

11:50

On resuming—

The Convener: I welcome our second panel of witnesses, who are John McCormick, electoral commissioner, and Andy O’Neill, head of office, Scotland, from the Electoral Commission. As previously agreed, we will go directly to questions.

Bob Doris: I will start with a question that is similar to one that I asked the previous panel. In your written submission, you point out the need to put the management board on a statutory footing. At paragraph 10 of your submission, you say:

“we hope that this Bill will provide a robust framework for extending the EMB’s powers to ... other elections in the near future.”

Will you expand on why that is important and whether by “the near future” you mean before any future referendums?

John McCormick (Electoral Commission): The near future would be as soon as possible. We see the electoral management board as a Scottish solution for Scotland. It would therefore be in the best interests of everyone—voters, in particular—for there to be a one-stop shop with responsibility for the conduct of all elections in Scotland.

As Tom Aitchison said, the power of direction is already vested in the regional returning officer for the European elections, and we envisage that the regional returning officer is likely to be the
convener of the management board. Under the bill, the management board will have the power of direction for local government elections. If activities come to this Parliament so that it has control of its own elections under the Calman proposals and the Scotland bill, the power of direction could come with that—as I understand it from the lawyers, it would require just an amendment to this bill. We already have statutory responsibility for the Scottish Parliament elections. That travels with this bill, and a small amendment would bring the power of direction as well.

That leaves the UK elections. The previous Labour Government issued a statement at the same time as the Scottish Government minister to say that it supported putting the electoral management board on a statutory basis for the UK elections. That has not happened yet, and we have to have discussions with the new UK Government on whether it shares the same view.

Bob Doris: We have the possibility of the alternative vote referendum taking place on the same day as the Scottish election next year; if the Calman powers are passed, this place will be in charge of the Scottish parliamentary elections; and in 2015 we could have the UK elections on the same day. Sitting with that, the management board will have the power of direction. Do you envisage the management board having the power of direction in such cases—the AV referendum or what may happen in 2015—to decide, for example, when the counts happen, whether they are overnight and which count takes place first? Should it have the power to stop a count if it feels that counters are getting too tired or there is a glitch, or should those decisions come from another place? In other words, how independent should the electoral management board be for all tiers of elections that take place in Scotland, particularly when we are dealing with a referendum on the same day as the Scottish elections or Scottish elections on the same day as the UK elections?

John McCormick: As was said earlier, if the AV referendum takes place, that will be under the Political Parties, Elections and Referendums Act 2000, which set up the commission and under which the chair of the commission is or appoints the chief counting officer. That set-up would still pertain.

Like Tom Aitchison and Mary Pitcaithly, we envisage that, as it would be in existence, the electoral management board would naturally have an interest in all electoral events—as we call them—and therefore in the referendum. As the counting officer for Scotland in the forthcoming proposed AV referendum, Mary Pitcaithly would consult her colleagues across the management board and the electoral community, as she is doing just now with the consultation paper about counts.

The decision on counting in the referendum is for the chief counting officer because, under existing legislation, the chief counting officer is responsible for the administration of referendums. Wisely, she is consulting electoral professionals across the country, because of the coincidence of the other elections in Scotland, Wales and Northern Ireland and the local elections in England, to see what is in the best interests. The underpinning principle is that the elections to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly take priority and should be the first to declare, so the question is what the best order is to put in place for counting on the referendum.

Bob Doris: How smoothly do you expect that to go?

John McCormick: After the events of 2007, I would be very careful about talking about anything that implied complacency in any aspect of electoral administration. We in the commission, the wider electoral community and members are sensitive about that.

The problems that occurred in some polling places in England this year affected only about 1,200 voters, but it is clear from our research that confidence in the process of that election and its outcome dropped among everybody in the UK. In 2009, 96 per cent of people across the UK—including people in Scotland especially—said that they would have confidence in the outcome of the election. Our report after May this year said that specially commissioned research showed that the confidence level had fallen to 69 per cent in England and to 70 per cent in Scotland, although the report said that the UK election was a smooth operation in Scotland.

As a result of that and the situation in 2007, we are aware of the fragility of people's confidence. When they see something going wrong, they realise that the system is not foolproof. We do not regard it as foolproof. As all of us in the room know, elections are complex. If two events take place on the same day, that is very complex. We will monitor the situation, as will the management board. My colleague Andy O’Neill will be an adviser to the board right up to 5 May next year.

Bob Doris: I will allow my colleagues to explore the tensions in joint elections in later questioning. I notice that it is hoped that the elections convener will have secretariat support and a policy remit. Is the policy remit a positive aspect of the management board? Returning officers and other professionals on the board could offer expertise outwith the political sphere. Is that a key part of the elections convener’s remit?
John McCormick: You mentioned that the Gould report talked about the fragmentation of accountability. The commission is clear about the fact that the electoral management board will bring strength, accountability and transparency to the voter and give the voter confidence that the administration of elections, policy and strategy are outlined in one place.

We see a clear delineation between the three roles. Making electoral policy is the right, duty and responsibility of the Parliaments. The administration and the delivery of elections are for the electoral management board. The commission sets the standards, offers guidance and reports on the effectiveness of the delivery of elections. The three separate responsibilities are important but, of course, they overlap. The responsibility and experience in the electoral management board can contribute strongly to policy development.

Bob Doris: My reading is that the electoral management board will report to the Scottish Parliament. If it has a policy remit, it can make recommendations in its reporting to the Scottish Parliament, which could fuel further legislation to improve processes. I am trying to get at whether that is a key aspect of the bill.

Andy O’Neill (Electoral Commission): You are right—it is important that the EMB has a policy role. We recommended that it should have that in our observations on the first nine months of the interim board’s activities.

Much expertise exists among ROs and DROs. Until recently, they were very much event focused—they focused on elections and EROs focused on annual canvasses. The EMB will allow them to come together, to debate and to have the vision thing about where elections should be in five, 10 or whatever number of years’ time. At the moment, they have no mechanism to develop and articulate their view. We welcome the development of the EMB’s policy role.

The Convener: I am interested that your submission refers to “extending the EMB’s powers”. You could have left it at that, so why did you feel it necessary to emphasise extending the powers “in the near future”? What right do you have to create the expectation that we can extend the EMB’s powers to cover European and UK elections? Have informal or formal discussions with UK ministers and officials given you the expectation that we will be able to proceed with that quickly?

12:00

John McCormick: In their initial welcome to the proposal when it was announced, which was before the UK general election, the UK and Scottish Governments felt that it was right to put the EMB on a statutory basis. It was not a matter of political contention; there seemed to be broad consensus. Additionally, the forthcoming Scotland bill will bring Scottish Parliament elections under the administration of the Scottish Parliament. That is what is behind it.

The Convener: Perhaps I am overegging the pudding, but you said in your submission:

“we hope that this Bill will provide a robust framework for extending the EMB’s powers to these other elections”.

You could have left it at that, but you added the words “in the near future”. You are exciting my expectation that some discussion has taken place online or offline with officials or ministers. Has that happened?

John McCormick: We have made representations about it to the new UK Government—to the Scotland Office. In the House of Commons last week, Ann McKechin MP asked specific questions about it. The Parliamentary Under Secretary of State for Political and Constitutional Reform, Mark Harper, said that there were no plans yet to extend the EMB’s powers, but that he would keep the matter under review. We will continue to make the case that the electoral management board is strengthened if it has responsibility for all elections in Scotland. At the moment, there does not seem to be any movement, but we would like to see some.

The Convener: So there have been no meetings on the matter with ministers or officials.

John McCormick: In a formal meeting with the Secretary of State for Scotland, we outlined why we felt that extending the EMB’s powers would be advantageous all round.

The Convener: And what was his response?

John McCormick: He reminded us, as the minister did, that it was the responsibility of the Cabinet Office and, as he said in the House this week, he had no responsibility for the matter. It is with the Cabinet Office, which said that it would keep the matter under review.

Alasdair Morgan: I come back to the question that you probably heard me ask the previous panel, which was about your recommendation in evidence that the five members of the board who can be depute returning officers or returning officers should only be returning officers. You will have heard the returning officers say that they did not agree with that. Will you expand on your comments on your comments?

Andy O’Neill: That was one of our recommendations in the 2008 report and Mr Gould also talked about it in his independent report in 2007. We are looking for clarity of responsibility and accountability for various roles. We see the
ROs and the EROs as being responsible and accountable for their respective duties. We recognise that depute returning officers have a great wealth of experience, which is why we recommended that they should be advisers to the board, but they should not be responsible to it as full members. In our view, if they are members, it means that they are involved in something for which they are not accountable to the courts. That is why we want to ensure that the ROs and the EROs are taking a full part in discussions about the EMB.

Alasdair Morgan: But surely the returning officers are responsible to the courts for the conduct of the election only in their own area. The fact that they serve on a separate board that covers all Scotland makes no difference to their legal responsibility in their own area. If it is your argument that it is important that they are legally responsible for their own area, surely you would have to have all the returning officers on the board.

Andy O’Neill: We said in 2008 that we wanted some connection between the EMB group of 10 people and the rest of the 32 returning officers and 15 electoral registration officers. The EMB will discuss policy that will impact on the actions of returning officers and the administration of elections in local areas. We see it as vital that the returning officers, who are accountable for electoral administration, are involved in those discussions.

Alasdair Morgan: I must admit that I am not convinced. I am sure that we could go through local authorities and find various instances where groups get together and have some responsibility yet the people sitting on them are not the people who have the ultimate legal responsibility for decision making back at their own ranch. However, let us leave the point for now.

You said in your evidence that you felt that it was okay that the Scottish ministers should appoint the convener, provided that that was done under the Nolan principles, but the bill also says that the convener is to appoint the other members. I will leave aside how else it could be done, which is maybe a difficulty, and I know that these are all going to be professionals dealing with largely technical matters, but is that not a bit cosy? The ministers appoint the convener and the convener appoints everyone else. I know that the First Minister does that in the Cabinet, but I do not know whether there are many other similar examples.

John McCormick: Our view was that this is an electoral community. I think, as you saw from Mary Pitcaithly and Tom Aitchison, that it works very well on a consensual model. We felt that the convener, who would by then be primus inter pares, could exercise the power to assemble a range of talents around the table to ensure that rural and urban areas are represented; that there are people with different experiences and backgrounds; and that future conveners can be brought on. There are many ways of doing it, but we felt that that is an acceptable way of building up the strength of the board and having the right experience of different parts of Scotland around the same table.

Alasdair Morgan: That approach sounds as if it will work okay when everyone is singing from the same hymn sheet but, when we put something in legislation, we have to think about what happens when things go pear shaped. Should dissension or different camps emerge within the family of returning officers, such an approach might be an issue and there would be no checks on it.

John McCormick: That is a fair point. We have said from the outset that we see the electoral management board as formally being the 32 returning officers and the 15 electoral registration officers, with the smaller group running it from day to day. It is important that there is an annual general meeting and that the group comes together as a professional group.

On the earlier point about the DROs, it is a fine point and we would not go to the wall on it as a matter of principle. The Scottish Government’s representative and Andy O’Neill sit on the interim management board as advisers. We would not seek to have a formal role because of where accountability lies, but I do not think that there is any sense in the way that the interim board works that the Electoral Commission representative or the Scottish Government representative is not listened to because they do not have formal accountability. In that case, we would see the Association of Electoral Administrators being represented as an adviser, so that DRO experience would be round the table. It is simply the fine point of true accountability, and we took the message from the Gould report that the line of accountability or thread of accountability should run through the process.

David McLetchie: Good afternoon. I would like to ask you where voter registration and voter information sit in this revised structure and who bears the funding responsibility for those functions. If I recall correctly from the reports and inquiries that we did back in 2007 and 2008, issues to do with voter registration and a sense that it was not capturing as many people as it should were highlighted in evidence to the committee. There was also an issue with information for voters on where to vote, when to vote, how to vote—either postally or in person at a polling station—and how to understand the electoral system. How do you see the division of
responsibilities between you, the EMB and local authorities for those functions and for funding them?

Andy O'Neill: I think that it is a joint responsibility, as the local returning officers and the local electoral registration officers have powers and duties under various acts to undertake electoral registration drives, to try to make people understand how to fill in ballot papers and to encourage people to participate. The Electoral Commission has a national duty to undertake public awareness campaigns on registration and how to vote—you have seen the things that we do. The EMB’s role is to encourage the ROs and the EROs to prosecute those policies and awareness campaigns. We have assisted with that in the past. Three years ago, we established a public awareness network of public relations officers and other electoral administrators throughout Scotland. We have handed that on to the interim electoral management board, while still providing support by way of advice from our professional public awareness people. The handover means that the board can encourage its members to undertake those duties.

David McLetchie: Mr McCormick, do you have anything to add?

John McCormick: No. Between the electoral registration officers, the interim electoral management board, the returning officers and us, the system works smoothly. There is a great network of experience around there and a lot of consultation and discussion. It all seems to work very well. It is important that that continues to be embedded in the electoral management board structure.

David McLetchie: Is there any evidence to suggest that registration rates are improving as a result of the co-ordinated effort that is being made?

John McCormick: It is too early to say. Earlier this year, we published a major piece of research on electoral registration. It pointed up a number of issues that need to be addressed and showed where the vulnerabilities are in registration, and the sectors. As a result of that research, we know that electoral registration officers, for whom we also set the performance standards, have taken on board some of the issues. They are now looking at vulnerable communities and putting extra effort into that. We know that Glasgow has made a particular effort since the report was published to try to address some of the issues. A lot of activity is taking place within electoral registration.

On the strategic basis, the commission is charged with advising the Government on the progress towards individual electoral registration, for which the new Government has brought forward the target from 2015 to 2014. We have been advocating that since 2003 and we are glad that it has been taken up. That will be a major change. We hope that it will lead to improvements in both the completeness and the accuracy of the registers.

The Convener: We know that your present role does not cover local government. Does the cooperation extend informally to local government elections? I refer to the exchange of information, assistance and so on. If it does, why do we need to formalise the process? I assume that some cost will be involved in doing that.

John McCormick: In the past two local elections in Scotland, the commission was asked by the then Scottish Executive to give help and support, which we did. We were happy to do that. There is a section in the Political Parties, Elections and Referendums Act 2000, which founded us, that allows us to go beyond our statutory remit and to offer advice in elections. We also gave advice on the conduct of the pilot health board elections, and were glad to do so.

The difficulty in continuing in that way— inconsistency apart—is found in the conclusion of the Gould report. If we have consistency, accountability and a one-stop shop, the voter can see more clearly where accountability and transparency lie. In future local elections, it is possible that the Scottish Parliament may decide not to ask us for help. If so, the experience that we have built up over the past 10 years would not be applied to those elections.

I should mention two specific areas. First, since the passage of the 2000 act, which gave us the powers, we have introduced performance standards. The performance standards for returning officers in relation to local elections would not be covered—we would be barred from applying them unless the bill that is before us was passed.

Secondly, we have introduced a system of international observers and other observers at elections. We would not be allowed to apply that to local elections without the explicit authority of the Parliament and the bill.

Those two specific areas, albeit that they are not major or world shattering, mean that the administration of local elections would be different from that of other elections. That is not in the interest of voters. We want them to see consistency and transparency.

Although the electoral management board would be a strategic body, we think that, post Gould, there is a clear line of accountability to the public for the elections convener. We cannot see anything in future other than that the convener of
the electoral management board would become a public figure who was recognised as being connected to and responsible for the delivery of elections. We would like to see such a role across all elections in Scotland. It would make it easier for people to know that there was a one-stop shop that they could go to. At the moment, they have the commission, but having a person who was embedded in the delivery of the elections would ensure that a voter with a query could take it quickly to the right place. We see that as an advantage.

12:15

**John Wilson:** On the role of the convener of the electoral management board, Alasdair Morgan raised the issue of legal responsibility. If a direction from the convener or the board to a local returning officer is subject to a legal challenge, who picks up the board’s—or indeed the convener’s—legal costs? Am I right in assuming that it would be a further cost to the public purse?

**John McCormick:** That is an interesting question. When we discussed with Mr Morgan the possibility of someone resisting a direction, we suggested that that would raise the issue of breach of a returning officer’s official duty. Like our colleagues in the previous evidence session, I do not think that it would ever come to that because of the consensual basis on which elections are run. However, the convener would have a recognised public responsibility to issue a direction and, if it came to it, he or she would carry that responsibility. Is that your view, Andy?

**Andy O’Neill:** Yes. I presume that if there were a legal challenge to an action that was based partly on a direction from the convener of the electoral management board, the convener and the local returning officer would be co-respondents in the case and there would be a cost to the public purse. The parallel, I suppose, is with the regional returning officer in the European parliamentary elections. As you know, Tom Aitchison, who was the regional returning officer for Scotland at the last election, issued two directions. Had they been subject to legal challenge, he would have been in the dock along with the local returning officer.

**John Wilson:** In the previous evidence session, we discussed how the electoral management board would deal with complaints from the public, political parties or candidates on the conduct of a local returning officer. How many complaints or issues that were raised with the commission during the 2007 elections or in the Westminster elections earlier this year resulted in communication with local returning officers?

**Andy O’Neill:** I cannot answer that question offhand. I could send the information to the committee, but I imagine that the number would be very small.

**John Wilson:** I am just curious about the processing of complaints either by the commission or, in future, by the board. Of course, it might not be appropriate for the commission to comment on whether local returning officers had received complaints from the public about their participation, or their wish to participate, in the election process. We can raise that question later.

With regard to the conduct of elections, I believe that Mr O’Neill said that there was 97 per cent confidence in the result of the 2007 elections and 64—or perhaps 62—per cent confidence in the 2010 elections. I have to say that I am not sure whether that indicates confidence in the process or the actual result.

**John McCormick:** I should clarify for the record that I made that comment. I was trying to compare and contrast people’s confidence in the 2009 European elections and their confidence in the outcome of the 2010 election. My point was that, when a problem occurs in another place, it seems to come back home to every voter in the country and influence their confidence.

**John Wilson:** Thank you for that clarification.

**The Convener:** You said that, bearing in mind the need for impartiality, balance and other such matters, the convener could lay a report before the Scottish Parliament. Could the convener be more accountable to the public, either through Parliament or in some more direct form? We have heard that there would be more openness in the board’s workings. In any case, given earlier comments about developing capacity and confidence in future elections, should all that not be part of the public debate?

**John McCormick:** As we said earlier, we think that that is one of the advantages of the electoral management board. Indeed, Tom Aitchison and Mary Pitcaithly mentioned, for example, website development and the electronic publication of papers, minutes and agendas for meetings to ensure that everyone is aware of the board’s business. The annual report that would be laid before Parliament would emphasise where accountability lay, but I hope that it would be very publicly and openly distributed and become a focus for public and voter discussion across the country. The board must be accountable to the Parliament for what it has done, but it should also make its activities over the year as public as possible. As we know from our own experience, people access websites and find them useful; websites present great possibilities that were not there before.

**The Convener:** According to comments made at the weekend, the commission will—over the
coming months, I believe—consult and carry out work on how to deal with the operation of next year's AV referendum and Scottish elections. When will the results of that work be shared with the public and its representatives, and how can we ensure the public gets put at the heart of the 2011 Scottish parliamentary elections?

John McCormick: When the Parliamentary Voting System and Constituencies Bill was published at Westminster, we issued an extensive statement that set out not only the conditions that should be applied if the referendum were to be held on the same day as the elections for the National Assembly for Wales and the Scottish Parliament, but our concerns in that respect. In summary, we gave the proposal an amber light; we said that it was doable, but that certain concerns had to be addressed if it was to happen smoothly.

When the bill left the House of Commons on 3 November, we said that the various conditions had been addressed in the bill. Those conditions were: that the conduct rules for the referendum be made clear six months in advance; that the planning assumptions be made clear; that the funding for public awareness be made clear and voted on; that the funding for the administration of the election and the referendum be made clear; and that the Scottish Parliament election and the referendum be legally combined to make the processes easier to administer and communication easier from the voter’s perspective. We also said that we would look very closely at the bill’s passage through the House of Lords to ensure that it was not derailed. If that happens, we will speak out as clearly as we did last week, when the bill left the House of Commons. We are closely monitoring the situation but, as I say, all our points have been addressed.

The Convener: I suppose that my point is that, when the electoral management board is set up, we, too, should be included in the elections community—as bad neighbours, perhaps, but included nevertheless. Although the commission, the board, the profession and indeed the Parliament have been carrying out work, the process has not been open and accessible. How do we avoid the proposed board taking a similar approach and simply saying to the public, “We’re the experts here, we know all the issues, and this is what we’re going to do”? Everyone who has given evidence this morning has discussed these matters, but the fact is that there has been no real openness. I cannot, for example, go on a website and confirm when certain meetings took place. We in the Parliament are complicit in all this—the Presiding Officer, the Deputy First Minister, the First Minister and all sorts of people have been discussing the issue, but there simply has been no openness or transparency. How do we build a board around the elections community without continually repeating those mistakes?

John McCormick: That is a salutary reminder that the commission’s work is not making the right impact or being as open or as transparent as it should be. All our work is published on our website. Sometimes our statements do not receive the sort of broadcast coverage and front-page headlines that we would like, but we have been working very hard to encourage public debate about issues that we have raised, including the referendum. As I say, you have given me a salutary reminder that we in the commission have to work harder to make our views better and more widely known, and we would certainly want the electoral management board, on which Andy O’Neill sits, to make its work public. To some extent, communicating things more widely is within our gift; to some extent, it is within the gift of others. However, following your comments, we will do more.

The Convener: I do not want to pursue the matter too far, but I point out that I had to ask three questions before you would confirm that you met David Mundell this morning to discuss these issues. I realise that the issue might well be sensitive, but—

John McCormick: I did not mean to avoid the question, convener.

The Convener: Do you wish to add anything, Mr O’Neill?

Andy O’Neill: I just wanted to point out that, as the bill requires the electoral management board to report annually to Parliament, it will be in your gift to ask the board why it is not being transparent, why it does not have a website and why it has not published this, that or the other. I acknowledge Tom Aitchison’s point that it does not have the resources to do these things at the moment but when in October 2009 we looked at the first nine months of the interim board’s existence we recommended that they be done. As advisers to the board, we will be encouraging it in that direction when it is formally set up.

The Convener: As members have no other questions, I thank the witnesses for their attendance this morning and their evidence.
SUPPLEMENTARY EVIDENCE FROM THE INTERIM ELECTORAL MANAGEMENT BOARD

1. I write further to your email of 23 November, concerning the above, in which you referred to the evidence that I had given to the Committee on 17 November. One of the points that I made referred to my view that local authorities routinely subsidise non-council elections and thus funds intended for local authority activities are used to cross-subsidise non-council activities. On behalf of the committee you requested that I supply any further evidence in support of this assertion.

2. An analysis was completed in 2005 which attempted to identify the scale of the support that was given to non-local authority statutory elections by the City of Edinburgh Council over and above the funds that are able to be claimed from Central Government, (the Scotland Office), under the Fees and Charges Order. (Local Government elections are funded wholly by the local authority).

3. The current regime is such that the Charges Order specifies an overall maximum recoverable amount available for each constituency which must not be exceeded. It also sets maximum recoverable amounts for specified services and specified expenses. However, many of the costs which are incurred by a local authority in support of the Returning Officer’s duties are not thus specified and are not therefore recoverable from the Government.

4. Prime among these are the costs of staff involved in the planning and administration of the election, tasks including the recruitment of polling and count staff, the booking and set up of polling places, the preparation of ballot papers and election materials and the interaction with candidates and agents. Local authorities are obliged under legislation to make staff resources available to the Returning Officer to run the election. For example article 15 in The Scottish Parliament (Elections etc.) Order 2010 states that

5. 15. –(1) Every local authority in Scotland shall place at the disposal of the CRO for a constituency wholly or partly situated in their area, for the purpose of assisting the CRO in the discharge of any functions conferred on the CRO in relation to a Scottish parliamentary election, the services of officers employed by the authority.

6. However the costs associated with releasing these staff to the Returning Officer are not recoverable. An estimate that was prepared in 2005 identified that over £108,000 of staff time, in the Edinburgh Elections Management Team, was devoted to elections administration in preparation for that year’s UK Parliamentary Election. These officers were transferred from their normal duties to work full time on the preparation of the election, with no funds available to finance their secondment to the team. This staff team also required accommodation for the period leading up to the election which, in 2005, was costed at over £10,000. Again this cost was not recoverable.

7. The Election Management Team has grown since 2005, mainly to cope with the increasing complexity of elections including, for example, the processing of the 55,000
postal votes that are dispatched to electors in this city. There are now at least 14 officers seconded to the Team for the 10-12 weeks leading up to an election and I would estimate that the equivalent costs for the May 2010 elections, in terms of accommodation and staff time, would have been over £150,000.

8. Postal Voting is now a major discrete element of the elections that requires significant resourcing with staff, much of which again is not recoverable. For the General Election in May, in the City of Edinburgh Council 25 staff worked over 8 days on the opening and verification of postal votes. These staff were seconded from their normal duties and no recompense was made to departments for the loss of their time.

9. Many other elements of support are provided to the election effort by the Council which are not reclaimed, from IT systems to Communications work. Unfortunately, without a detailed costing of time, I can only provide estimates, but I would be happy to assert that the City of Edinburgh Council would subsidise the administration of UK, Scottish and European elections to the extent of at least £175,000 - £200,000 per election.

10. To give a scale to these costs, the table below notes the gross costs which are costed for the last few elections. The additional estimate of staff time, accommodation and IT are over and above these costs.

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<tr>
<th>Elections</th>
<th>Gross Costs Before Recovery of any contribution from Government</th>
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<tbody>
<tr>
<td></td>
<td>2003</td>
</tr>
<tr>
<td>The City of Edinburgh Council</td>
<td>£399,071</td>
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<tr>
<td>The Scottish Parliament</td>
<td>£673,180</td>
</tr>
<tr>
<td>The UK Parliament</td>
<td>£567,528</td>
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<tr>
<td>The European Parliament</td>
<td>£531,547</td>
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</tbody>
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11. I trust that this analysis is useful. Should you require any further detail on these costings or the challenges that are faced in financing elections in a context of increasingly scare funds, then I would be happy to provide further information through Chris Highcock, one of the Depute Returning Officers in Edinburgh.

12. Chris also serves as Secretary to the Interim Electoral Management Board for Scotland and in that role also gave evidence to the Committee on 17 November.

Tom Aitchison
Returning Officer

7 December 2010
Local Electoral Administration (Scotland) Bill: Stage 1

10:01

The Deputy Convener: Under agenda item 2, the committee will take oral evidence on the Local Electoral Administration (Scotland) Bill. I welcome to the committee our three witnesses: Bruce Crawford is the Minister for Parliamentary Business; Stephen Sadler is head of the Scottish Government’s elections team; and Fiona Campbell is policy executive in the Scottish Government’s elections team. I thank all of you for coming along, and invite the minister to make an opening statement.

The Minister for Parliamentary Business (Bruce Crawford): Thank you, convener. I am pleased to be here to give evidence on the Local Electoral Administration (Scotland) Bill on behalf of the Scottish Government. To maximise the time for members to ask questions about the content of the bill, I will take only a few moments to make some opening remarks.

As members will be aware, the bill has two main objectives, one of which is to establish the electoral management board for Scotland on a statutory basis for its work relating to local government elections. It would be for the Cabinet Office to legislate to provide a statutory role for the board in relation to other elections. We are considering the mechanisms that are available to enable the board’s remit to be expanded to include the Scottish Parliament elections once the responsibility for them is transferred to the Scottish Government. I understand that the Cabinet Office has no plans to legislate at this time. The bill provides for the convener of the electoral management board to be appointed by the Scottish ministers and for the convener to have a power of direction over local returning officers and electoral registration officers.

The bill’s second objective is to extend the statutory remit of the Electoral Commission to cover local government elections in Scotland. That will enable the commission to report on the administration of local government elections, run public awareness and information campaigns on them and the local government system, and provide advice and information to returning officers, candidates and political parties. It will also allow the commission to apply performance standards to returning officers for local government elections that will cover areas such as planning, organisation, integrity and participation. The bill requires both the electoral management board and the commission to report annually to the Scottish Parliament on the exercise of their functions.
We have developed the content of the bill in consultation with the interim electoral management board for Scotland, the Electoral Commission and other professional bodies in Scotland, as members might imagine. I am aware from the previous evidence sessions on the bill that it seems to have the general support of the electoral community. I give members our assurance that we will work to ensure that there is continued support during the passage of the bill and its implementation, which is, obviously, subject to parliamentary approval.

I do not think that I need to say any more at this stage. I am sure that members have questions that they want to ask about the bill.

The Deputy Convener: Thank you very much, minister. We will move to questions.

Alasdair Morgan (South of Scotland) (SNP): One of the arguments that the Electoral Commission put forward in giving evidence to us in the session that we had with it was that the electoral management board should not comprise any depute returning officers on the basis that they have no final legal responsibility for elections. I do not think that the argument was the strongest that I have ever heard, but will the minister give his reaction to it?

Bruce Crawford: I am aware of the Electoral Commission’s concerns and have obviously thought carefully about them, but I do not think that they are valid. We believe that, within the body of DROs in Scotland, there is a considerable level of expertise and knowledge of practical information that could be shared and taken into account when planning elections. When DROs do their work, they are doing it on behalf of returning officers who are, ultimately, accountable to the courts. However, we do not see that as a barrier to their having full membership.

DROs are a lot closer than anyone else to the reality on the ground. I mean no disrespect to returning officers, but a lot of the real work is done by the DROs, so they know more than anyone else about what the impact will be on the front line. We must also remember that the members of the board will be acting in an advisory capacity to the convener of the board. That means that it would be the convener who would be held responsible through court action if anything were to go wrong.

I do not think that there is anything wrong with having a pool of people who we can pull into that advisory board who have not only the depth of strategic experience that the returning officers have but also the front-line experience that the DROs have. I would hope to be able to persuade the Electoral Commission that we are going in the right direction as far as that is concerned.

Jim Tolson (Dunfermline West) (LD): As I am sure you are well aware, two options have been suggested for the financing of the electoral management board. The first involves a dedicated secretariat and policy function and the second involves a portfolio model. Will you give us your views on which of those options is more suited to the bill and why? What discussions have you had with the Scotland Office on the matter? What is the expected division of funding for the electoral management board between the Scotland Office and the Scottish Government?

Bruce Crawford: The preference is for the secretariat model. I think that that is the correct choice, as it allows a much more dedicated resource to be applied to what the board needs to do, especially in the periods around elections when there will be much more activity. Building up experience in the secretariat and whoever supports it is the right way to proceed, especially as the bill includes provisions for the board to regulate its own procedures. The Government is happy to work with the electoral management board to develop that proposal.

There have been a number of discussions with Scotland Office officials about the board, including about how it will be supported. They are content with the options that have been put forward. I think that they support the secretariat model as well. We have also had positive discussions with the Scotland Office around its contribution to the funding of the board, in recognition of the joint nature of its functions. I am sure that we will reach an amicable agreement, as we have done on many other areas that relate to this issue.

Jim Tolson: I am glad to hear that, for a change, the Government is engaged in amicable discussions with the Scotland Office. That is heart warming, especially on a cold day such as this.

Along with others, you have made a clear choice. What were the potential disadvantages of the portfolio model that made the Government choose the option that it has chosen?

Bruce Crawford: I do not think that the portfolio model had any particular disadvantage. What decided the issue was the strength of the secretariat model, because the nature of support will be much closer to the electoral management board than a portfolio-holding model might have been.

Mary Mulligan (Linlithgow) (Lab): Part 2 of the bill provides for an extension of the role of the Electoral Commission. However, in written evidence to the committee, the Electoral Commission has suggested that it does not fully provide for its role, as it sees it. Could you comment on that?
Bruce Crawford: I was a bit mystified when I read that comment because we were quite clear that the Electoral Commission's concern related to candidates. We were quite clear about our direction in that regard—it is okay guys; I have the note that will allow me to explain some of the technicalities of why that is important.

Section 14 of the bill will repeal the provisions in the Political Parties, Elections and Referendums Act 2000 that exclude local government elections in Scotland. Once we bring those elections within the scope of the 2000 act, section 10(3)(b) of that act will be brought into play, which enables the commission to "provide advice and assistance to other persons which is incidental to, or otherwise connected with, the discharge by the Commission of their functions."

We believe that that provides what the commission requires as regards its interaction with candidates and the advice that it can give them, but I would be happy to discuss that further with the commission. I hope that we will be able to satisfy it. If we cannot, I am sure that we would be prepared to consider what else we could do in the bill to address its concerns. I think that that proposed change in the legislation should take care of the matter.

Mary Mulligan: That is a helpful explanation of how the issue will be dealt with. The minister does not seem to be saying that he would have a problem should there be a need for clarification, at some stage in the future, to remove any doubts that the Electoral Commission might have.

Bruce Crawford: I will certainly ask officials to have a longer discussion with the commission to expand on the point that I have just made. If necessary, we will have another look at the issue.

Mary Mulligan: That is helpful—thank you.

The other issue is, as always, finance. The bill makes provision for the financial settlement to be improved to allow for the new responsibilities. Do you want to say a bit about how that arrangement was arrived at? Is there room for further discussions on that?

Bruce Crawford: I think that we have come to a pretty reasonable position with the Electoral Commission in that regard. If I remember correctly, the financial memorandum lays out a range of costs from about £1.62 million to around £2.89 million. What is the reason for that variation? The cost that is incurred will depend on the Government of the day and, in particular, on whatever public awareness programme it might want to involve itself in. We estimate that the cost of that could be anything up to £2.4 million. That explains the potential variation in cost, which is being discussed with the commission.

We should not forget that although the commission was not involved in the 2007 local government elections on a statutory basis, it still carried out work for the then Scottish Executive on those elections and the Scottish Parliament election. I think that the then Scottish Executive spent £750,000—if I have got that right—with the commission on a joint campaign on the Scottish Parliament and local government elections. The Scottish Executive had a strong relationship with the Electoral Commission, which the Scottish Government has maintained. I am not aware that the commission has any concerns about funding issues.

Mary Mulligan: Again, that is helpful, given that the committee had discussions with the Electoral Commission about some of the problems that were experienced in the 2007 elections, during which there was recognition of the resources that were needed, from the early stages of registration to election day itself.

The Deputy Convener: I want to ask about accountability within the system and how the bill deals with that. The convener of the electoral management board will have the power to direct returning officers. In its submission, the Electoral Commission pointed out that only the returning officer is petitionable in court, should the result or process of an election be disputed. The commission suggests that the Representation of the People Act 1983 should be amended to allow the convener of the EMB to be a co-respondent to a petition if the action that is complained of is consequential to a direction that they have issued. What is your view on that?

10:15

Bruce Crawford: First, let us remember that the role of convener of the electoral management board, which we are laying out in the bill, is very similar to the role that is laid out for regional returning officers for the European elections. We have modelled the role in relation to the power of direction and what the convener can and cannot do on something that is proven to work. That background is useful.

Although the bill cannot require that a direction be followed, we do not believe that the lack of a sanction weakens the power in any way. If a direction is issued but not followed and there is a subsequent court action, that could be taken into account should the petitioner consider that ignoring the direction provided by the EMB convener affected the result in some way. The power is based on what is available to regional returning officers for the European elections.

Directions will relate primarily to administrative issues. Remember that the board will not be
carrying out the administration of elections itself; it will be ensuring that the co-ordination of the administration of elections is as good as it can be and will be involved in good practice. Therefore, directions will relate primarily to administrative issues concerning the returning officers in the various authorities. The power of direction will be exercised only where every other option has been explored or exhausted.

If a direction is issued but not followed, there might well be subsequent court action. The fact that the direction was not followed would be taken into consideration by any petitioner.

The bill requires the convener of the EMB to consult board members and the Electoral Commission in advance of issuing any direction. That is our intention in that regard. I have always felt that, in this particular exercise, we are trying to apply a light touch to ensure that it all works without our getting too heavy with it all. The existing legislative framework provides necessary safeguards in relation to any issues that we are concerned about.

The Deputy Convener: Okay. Thanks for that.

Alasdair Morgan: The minister talked about what would happen if the returning officer did not follow a direction—clearly, he would be petitionable, as he is at the moment. What would happen if the grievance in the petition—what the petitioner was complaining about—arose as a result of a direction that the returning officer had followed? In that case, the convener of the board would not be petitionable, although the European regional returning officer is deemed to be petitionable in such cases. Is there not perhaps a chink here, or a gap that we should fill?

Bruce Crawford: It is worth following that up. We will have a look at that, unless Stephen Sadler is going to tell me that the convener is covered in some way that I have not recognised.

Stephen Sadler (Scottish Government Constitution Directorate): I agree that it is something that we could look at. The effect of most directions is likely to be to achieve consistency throughout Scotland, where the convener and the board consider that to be appropriate. It is unlikely that the convener would be directing one returning officer to do something that his or her colleagues were not doing too.

The two examples that the electoral community have given us, which come from the previous European elections, highlight the sort of thing that we are talking about. One relates to what I think electoral professionals call a postal sweep, whereby on the day of polling, all returning officers are required to pay a certain amount of money to the Post Office to look to see that there are no missing postal ballot papers in any sorting office.

In the past, some returning officers have taken the view that that is quite a lot of money to pay just to gather a couple of votes. However, the regional returning officer—or the equivalent of the convener of the EMB—decided that if most of the returning officers in Scotland were doing that, it should be a requirement throughout the country, so that voters were treated with a degree of fairness and consistency. The power of direction relates to that sort of thing, rather than to directing a particular returning officer to do something against his or her better judgment.

Bruce Crawford: We will look at the point that Mr Morgan raises, but there is a distinction between the regional returning officer, who is a returning officer, and the convener of the board, who will ensure that the administrative processes are co-ordinated and that good practice is followed and will be able to issue directions about that. There is a difference between the convener’s role and the returning officer’s role at local authority level. We need to look at that balance. We will take the issue away and consider it.

Alasdair Morgan: Yes. Obviously, the cases that the minister and his officials have raised are reasonable ones. It is perhaps difficult to think of a case in which the convener of the electoral management board would direct a returning officer to do something that they did not want to do—otherwise, the direction would not be necessary—and then someone complains about the returning officer having followed the direction. However, I assume that the purpose of electoral law is to ensure that nothing unexpected—nothing that we have not thought about in advance—happens, which is why we do not try to reform it very often. Therefore, I cannot see any potential disadvantage in making the convener of the board a co-respondent to any petition.

Bruce Crawford: We will look at that.

The Deputy Convener: Thank you for that, minister.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, minister. I have a couple of questions on the role of the electoral management board in future Scottish Parliament elections. We are advised that the Scotland Bill, which has now been introduced at Westminster, will transfer responsibility to Scottish ministers for the management and administration of Scottish Parliament elections. Is the Government satisfied that that transfer of executive responsibility will enable Scottish ministers to assign that role to the electoral management board? If so, and once all the pieces are in place, will we have a board in Scotland with responsibility for both local and Scottish Parliament elections?
Bruce Crawford: We still need some clarity on the specifics of what the Scotland Bill will provide by way of powers to the Scottish Government and Scottish Parliament. There is a reasonable degree of satisfaction that what is already in the bill will give us the power in future, if we so desire—I think we should—to put the electoral management board in Scotland on the same footing for Scottish Parliament elections. I understand why the Cabinet Office does not want to do that at this stage, so close to the Scottish Parliament elections next year. Doing so would break the Gould convention of not doing these things in the six months beforehand, so I understand that bit. The bit that will still not exist—and which is worth having on-going discussions with the UK Government about—is the position in relation to the UK Parliament elections. The electoral management board will still not have statutory responsibility in Scotland for that purpose.

By way of background, I met Ann McKechin when she was the Parliamentary Under-Secretary of State at the Scotland Office in the previous Government. We issued a joint statement supporting an election management board in Scotland, its functions, structure and role. I think that was in October 2009. In that joint statement, there was agreement that both Governments would consider how to take legislation forward. Obviously, the Scottish Government decided to act in the way that we have acted. In January 2010, I wrote to Ann McKechin asking whether the UK Government would take forward legislation to put Scottish Parliament elections on the same footing as we are putting local elections on. The Government at the time decided not to do that, so it is interesting now to see Ann McKechin asking questions of the current Government in the House of Commons on whether it will do so. Members can see the journey that the Government has been on.

I return to the fundamentals. Gould said that the system is fragmented and antiquated. We are unable to deal with some of the antiquity because the legislation is reserved but, where we can act, we have acted. We have tried to find ways of dealing with the fragmented system, and the electoral management board is one example of that. The ethos to do that still exists in the Government, and I have no doubt that it exists in the Parliament.

To cut to the quick of your question, when the powers are available to us, we will introduce proposals to have the same processes for the Scottish Parliament elections as will apply to local government elections.

David McLetchie: That is a helpful answer.

I seek clarification on the cost of elections and on who bears that cost. As I understand the position, the cost of council elections is borne wholly by councils; it is not supported directly by the Scottish Government in any way.

Bruce Crawford: Correct.

David McLetchie: At the moment, the costs of the Scottish Parliament elections are paid for by the Scotland Office.

Bruce Crawford: That is correct.

David McLetchie: If responsibility for the conduct and administration of Scottish Parliament elections is transferred to the Scottish ministers, does that mean that the costs of running those elections will come out of the Scottish Government budget, or will they still be borne by the UK Scotland Office budget?

Bruce Crawford: Given how the bill as introduced is constructed, I understand that discussions are on-going about what the arrangements might look like for a transfer of adequate resources from the Scotland Office, through the normal processes, to the Scottish Government, to deal with elections in future—which we would have executive responsibility for. The conversation about how much the amount should be could be an interesting one. We would expect any Scottish Government to ensure that, whatever resource transfer takes place, it is adequate to cover the costs of Scottish Parliament elections in the future.

David McLetchie: That is interesting, and it leads me on neatly to a letter that we got from Mr Tom Aitchison about the underrecovery by councils of the costs of fulfilling their role in running Scottish Parliament, UK and European elections. Mr Aitchison’s comments relate to the City of Edinburgh, and I suppose that the experience will be the same in other councils. He says that underrecovery has been substantial: councils pick up a substantial tab for running elections. Mr Aitchison’s comments relate to the City of Edinburgh, and I suppose that the experience will be the same in other councils. He says that underrecovery has been substantial: councils pick up a substantial tab for running elections but are unable to recover those costs from central Government—which in this context is the UK Government—because of the limitations that are placed on charging and cost recovery orders. Are you aware of that situation?

Bruce Crawford: I am aware of the argument that has been put forward by Mr Aitchison. I have not seen the actual letter, but I am aware of the on-going issue. I share a lot of the concerns that have been raised—as I said, there could be an interesting discussion about the transfer of funds from the UK Government to the Scottish Government, if we are to ensure that there is not a shortfall. If there were a shortfall, inevitably it would need to be met from funding for other services. We are in a difficult financial place, so that is not a situation that we want to be in. Some hard bargaining might have to take place.
The Deputy Convener: We hear this morning that the electoral management board is gearing up to take on more responsibility, potentially, in particular for the Scottish Parliament elections. Going back to accountability, the more responsibility the board takes on, the more we will be keen to explore how it is accountable to Parliament. As things currently stand, the board will have to prepare an annual report and place it before Parliament. How do you envisage scrutiny of the electoral management board in future?

Bruce Crawford: If there is one thing that we must ensure, it is the independence of the electoral management board for Scotland—that is important for the process. We certainly do not wish the electoral management board to come under undue political pressure—pressure to do what politicians want it to do.

We need to ensure the board’s independence, and the best way to do that is to ensure that its reports come to the Parliament, not to the Government. That would give this committee a particular role in ensuring that any concerns or issues raised by the reports are dealt with under a process that holds the board to account and scrutinises its work. That would be the proper approach.

The Deputy Convener: I am delighted that you mentioned this committee, because that leads on to my next question. Gould spoke about the fragmentation of powers, responsibilities and planning. I want to ensure that there would be no fragmentation of scrutiny and accountability. Obviously, this committee currently scrutinises local government elections, but should Scottish parliamentary elections become part of the electoral management board’s responsibility, I take it that you would see this committee or a successor committee being responsible for that scrutiny as well—it would be responsible for not only local government elections but Scottish Parliament elections.

10:30

Bruce Crawford: Returning officers are primarily employees of Scottish local government and that will continue to be the case. The only thing that would change would be who would administer the executive functions in relation to the elections, and those would transfer from the UK Parliament to the Scottish Parliament, and so ministers would be held accountable to this committee for Scottish Parliament elections. On reporting mechanisms, if any Government proposed to employ the same process as is in the current bill, and it mirrored what is laid out in the bill, it would still be the convener of the electoral management board who was accountable to the committee. However, that is something for a future Government to decide on.

The Deputy Convener: Thank you, minister—that is helpful.

Mary Mulligan: I have a very short supplementary, minister, to follow up on David McLetchie’s question. I understand that the transfer of functions would need to be fully funded and that you would not want to be short changed and have to find moneys from elsewhere. However, I am not quite sure whether you accepted the point that Tom Aitchison and his colleagues were making about there already being a gap between the available funding and what it costs local authorities to service elections. Will you clarify that?

Bruce Crawford: I would need to leave that to them. They are the bodies who are responsible for making a judgment on that. They are professional people and have made a judgment. From my examination of the situation at the moment, I cannot say whether I am in a position to agree 100 per cent with everything that they have said, although I respect entirely where they are coming from. We will need to bear in mind their evidence when we are discussing the transfer of functions and resource with the Scotland Office. We will obviously need to bore into that evidence to ensure that we understand it fully and can use it as part of our prosecution of the case to get adequate resources. However, nothing would suggest to me that what the returning officers concerned have said in that regard would be anything but accurate.

Mary Mulligan: That is helpful. I am sure that we will come back to it.

The Deputy Convener: There are no further questions from members, so we will end this evidence session. I thank the minister and his colleagues for taking the time to come along—it is appreciated. As previously agreed, we will take agenda item 3 in private.
SUBMISSION FROM FAIRSHARE

1. Fairshare welcomes the introduction of this Bill and supports its objectives.

2. We have no comments on the text of the Bill as introduced.

3. We would hope that the Electoral Management Board for Scotland would be open and transparent in all its workings and that, in particular, the agendas and minutes of all its meetings would be posted promptly on a dedicated website. We would also hope that the EMBS would publish on its website all its working papers, documents and reports except those parts that contain commercially sensitive data relating to tendering for commercial contracts. The Committee may wish to consider whether such requirements should be written into the Bill.

For and on behalf of Fairshare Voting Reform
Dr James Gilmour
Fairshare Campaign Committee

11 November 2010

FAIRSHARE - Scotland's Campaign for a Better Democracy
Fairshare Voting Reform is a cross-party and non-party organisation set up in February 2001 to campaign for the introduction of the Single Transferable Vote system of Proportional Representation (STV-PR) for local government elections in Scotland. In January 2005 Fairshare extended its objectives to promote reform of the voting systems used for all public elections in Scotland and specifically, to reform the voting system for elections to the Scottish Parliament through the adoption of STV-PR. Fairshare is constituted as a not-for-profit company limited by guarantee and maintains a network of Registered Supporters.
1. I refer to the Local Electoral Administration (Scotland) Bill, currently laid before the Scottish Parliament, and particularly your invitation for submissions on this draft legislation.

2. I would wish, in brief terms, to add my support to the principal provisions contained within the Bill. In respect of the formalisation of the position of the Electoral Management Board for Scotland, this will be a long-awaited and significant step forward in terms of enhancing the consistency of approach to the delivery of elections in Scotland. In relation to this proposal, my only other observation would be to add my support to the preference expressed by the interim EMB that it should have a permanent and stand-alone secretariat.

3. The second main element of the Bill relates to the extension of the remit of the Electoral Commission to incorporate local government elections in Scotland. This is clearly a sensible provision and will further encourage good practice in election delivery. Regarding the specific elements of empowering the Commission to extend the application of performance standards for returning officers to local government elections in Scotland, I have no difficulty with this, subject to the request that the application of performance standards in this regard should be on a similar basis to the self-assessment regime which has applied for other elections in recent years. Similarly, the Commission’s operation of a scheme for election observers should also be applied on the same basis as that which pertains at other elections in Scotland.

Colin Mackenzie
Returning Officer
Aberdeenshire Council

9 November 2010
Thank you for your letter of 27 October inviting the Scotland Office to comment on the Local Electoral Administration (Scotland) Bill that was introduced to the Scottish Parliament on 7 October 2010.

The consideration of this Bill is a matter for the Scottish Parliament and the following comments should not be seen as trying to influence any decisions that the Parliament may come to.

You asked for the Scotland Office's comments on a number of questions, to which I respond as follows:

- The Electoral Management Board for Scotland (EMB) plays a valuable role in co-ordinating electoral administrations in Scotland. Its statutory establishment in relation to local government elections is a matter for the Scottish Government, so it would not be appropriate for the Scotland Office to comment.

- Officials of the Scotland Office and Scottish Government have discussed the future role and remit of the EMB across all elections.

- There have been discussions with the Cabinet Office on the EMB, because responsibility for the European and General Elections rests with them.

- As you are aware we are currently preparing a Bill which will, amongst other things, implement the recommendation of the Commission on Scottish Devolution to devolve the administration of elections to the Scottish Parliament. The UK Government has no immediate plans to extend the remit of the proposed EMB to cover the remaining UK wide statutory elections,

- We recognise that there are costs associated with supporting the EMB and, to date, we have shared the cost of supporting the Interim Electoral Management Board with the Scottish Government. Our intention is to continue to share those costs, but how that is split between the Scotland Office and the Scottish Government is for further discussion.

Rt Hon Michael Moore MP
Secretary of State for Scotland
Local Electoral Administration (Scotland) Bill: The Minister for Enterprise, Energy and Tourism (Jim Mather) moved S3M-7818—That the Parliament agrees to the general principles of the Local Electoral Administration (Scotland) Bill.

After debate, the motion was agreed to (DT).
Local Electoral Administration (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-7818, in the name of Jim Mather, on the Local Electoral Administration (Scotland) Bill.

15:35

The Minister for Enterprise, Energy and Tourism (Jim Mather): I thank the Local Government and Communities Committee for its work in considering the bill and preparing the stage 1 report. I also thank those who gave evidence to the committee and who contributed to the development of the proposals in the bill.

The Gould report into the 2007 local government and Scottish Parliament elections found that the fragmentation of roles and responsibilities was a critical constraint on the smooth administration of elections. We passed the Scottish Local Government (Elections) Act 2009 to decouple local elections in Scotland from elections to the Scottish Parliament.

Having separated the two sets of elections to remove confusion and to give each its place, we have introduced the Local Electoral Administration (Scotland) Bill with two main objectives. The first is to establish the electoral management board for Scotland and the second is to extend the Electoral Commission’s remit.

The bill will establish the electoral management board on a statutory basis to supervise Scottish local government elections. The board’s general function will be to co-ordinate the administration of local government elections in Scotland by assisting local authorities and others to carry out their functions and by promoting best practice.

I recognise the arguments in favour of the board having responsibility for Scottish Parliament elections. The United Kingdom Government’s Scotland Bill will devolve some powers for the administration of Scottish Parliament elections, but we cannot anticipate that transfer by including Scottish Parliament elections in the board’s proposed remit. Therefore, we will extend the board’s functions as soon as it is practicable to do so and we are considering how best to do that.

The committee suggested that the board’s remit should be extended to cover elections to other bodies, such as health boards and the crofting commission. As members know, such elections tend to cover specific geographical areas or functions. I see no need for such national co-ordination, but the board could continue to offer ad hoc advice. The Scottish Government will keep the
matter under review and will consider extending the board’s remit if the need to do so is clear.

The bill establishes the post of convener and provides for the convener, who must be a returning officer, to be appointed by Scottish ministers. The convener will have the power to give returning officers and electoral registration officers directions that will relate primarily to administrative issues. The bill requires the convener to consult board members and the Electoral Commission before giving a direction. That process will help to ensure consensus about the need for any direction.

In the committee’s evidence sessions, whether the board’s convener should be able to be named in court cases that arise as a result of a direction being given was discussed. We consider that the convener could be the subject of an election petition under existing provision. Section 128(2) of the Representation of the People Act 1983 provides that

“any returning officer of whose conduct the petition complains, may be ... a respondent to the petition.”

Given that the convener must be a returning officer, that section would apply. However, for a challenge to be founded, the direction would need to fall within one of the statutory grounds for challenge.

The financial memorandum sets out the costs that are associated with supporting the board. The committee and the interim board support the option of a dedicated secretariat and policy function. In any event, the Scottish Government will provide funding towards the costs of operating the board and will work with it to implement its preferred option.

Discussions have been held with the Scotland Office about support to the board, given that it will have a non-statutory role in European and Westminster Parliament elections. We will continue that dialogue in the coming weeks.

Members will know that the bill requires the board to provide an annual report to Parliament on the conduct of its functions. I stress that the report is to provide information on the board’s activities and is not a report in the context of performance management. Subsequently, it will be for the Parliament to decide whether to have a detailed discussion of the report.

I would now like to say something about the Electoral Commission. The commission was established in 2000, post-devolution, but the legislation and resulting functions did not apply to local government elections in Scotland. With that, I come to the second objective of the bill: to extend the Electoral Commission’s existing functions to include local government elections. This extension reflects the spirit of the Gould report, in particular the need to remove fragmentation in responsibilities. It also provides consistent oversight of elections. Some of that activity—for example, public awareness campaigns—has already been done by the commission on an ad hoc basis. The bill formalises that work. During its evidence sessions, the committee heard some concerns about the commission’s power to provide advice to candidates in local elections. We believe that the bill as drafted will allow this. However, my officials are in discussions with the commission to look again at the issue. If necessary, we will lodge an amendment at stage 2.

The financial memorandum sets out the likely costs of extending the commission’s functions. Based on discussions with the commission, we believe that the total costs will range from between £1.69 million and £2.89 million until 2013-14. The actual annual cost will depend on the level of activity that is required from the commission—obviously, it will be more in election years. The bulk of spending covers information and awareness campaigns, which would be required regardless of legislation to confer powers on the commission. The Scottish Government will reimburse the commission for expenditure on local government elections and will agree a maximum amount in advance.

The bill requires the commission to report to this Parliament, rather than ministers, on the performance of its functions. That is important in reinforcing the commission’s independence from Government. Again, it will be for the Parliament to decide whether it wishes to have a detailed discussion on the content of the commission’s report.

The bill is a definite and further step towards improving the administration of elections in Scotland. The bill is part of our programme. Working with the electoral community, it will give voters the electoral system that they deserve.

I move,

That the Parliament agrees to the general principles of the Local Electoral Administration (Scotland) Bill.

15:42

Duncan McNeil (Greenock and Inverclyde) (Lab): I apologise to you, Presiding Officer, the minister and my colleagues for being slightly late. I had to be present at a meeting with a local colleague who faces a difficult situation, but I accept that there is no excuse for being late.

As convener of the Local Government and Communities Committee, I am pleased to take part in this debate on a bill that is designed to improve and benefit the administration of local government elections in Scotland. I thank all those
who provided written and oral evidence to the committee. I also thank our committee clerks, the Scottish Parliament information centre researchers and, of course, my fellow committee members for all their efforts during our stage 1 scrutiny of the bill.

As we have heard, the bill does two main things: establishes, on a statutory basis, an electoral management board for Scotland to oversee local government elections; and extends the Electoral Commission’s remit to cover local government elections in Scotland. We already have an interim electoral management board that operates on a non-statutory basis and there was widespread support for the next step: putting the board on a statutory footing. Of course, the Scottish Parliament already has powers in relation to local government elections, but not in relation to elections to the Scottish Parliament or House of Commons or European elections. Therefore, the provisions in the bill are restricted to local authority elections. As we know, the Scotland Bill makes provision for the Scottish Parliament to have control over its own elections. Therefore, it seems logical that the electoral management board’s remit should be extended to include other elections in Scotland, as and when that is appropriate.

When the minister gave evidence to the committee, he confirmed that the Scottish Government is considering the available mechanisms to extend the board’s remit once responsibility for Scottish Parliament elections is transferred. We welcome the minister’s comments in relation to those elections. We also acknowledge the UK Government’s role in bringing forward legislation to give the board a statutory role in relation to other elections. Therefore, we have called on the UK Government to consider further extensions to the board’s remit that would allow it to cover elections to the House of Commons, European Parliament elections and referenda. In addition, the wealth of electoral expertise that the board will have could be valuable in the administration of elections to institutions such as health boards and the crofting commission, and we have asked the Scottish Government to consider that.

There was a great degree of consensus on the bill’s provisions, but slight disagreement arose in one area. The convener of the electoral board will be a returning officer, will be appointed by Scottish ministers and will, in turn, appoint the other eight members of the board, five of whom must be returning officers or depute returning officers. The Electoral Commission expressed some concern about having depute returning officers on the board as, in its view, they would not be legally accountable for their actions in the same way as returning officers are. However, members of the interim electoral management board and the minister rejected those concerns, on the basis that depute returning officers provide much-needed practical experience and do their work on behalf of returning officers, who are ultimately accountable to the courts. Having listened to the arguments, we agree with the approach that is taken in the bill—that depute returning officers should be eligible to be full members of the board, especially given the expertise that they will undoubtedly bring to bear.

Under the bill, the convener of the board will be given a power of direction in relation to local government elections. The Electoral Commission expressed some concern that the bill did not provide for any sanctions if a returning officer failed to comply with a direction issued by the convener. Both the former and the current chair of the interim electoral management board envisaged that there would be a great deal of consultation and consensus and that there should not be any surprises. The former chair, Tom Aitchison, took the view that if a situation arose in which one direction was being issued after another, the board would have failed. However, we noted that the power was needed as a backstop against unforeseen eventualities.

Effective planning should reduce the need to issue directions. We also think that compliance with a direction will be dependent on returning officers and electoral administration officers adopting a consensual approach. In our report, we recommend that the Scottish Government monitor the effectiveness of the power of direction going forward.

The board will be required to produce an annual report. We agree with that provision.

Finally, the bill extends the function of the Electoral Commission to cover local government elections in Scotland. Again, that is a logical step, given that those are the only elections in respect of which the commission has no formal remit. As with so much in the bill, there was agreement on that provision, which will benefit electoral administration in Scotland by promoting consistency and good practice. We also welcome the requirement for the commission to lay an annual report before Parliament.

Although some of the bill’s provisions needed clarification, there was a high degree of consensus on what the legislation sets out to do. The committee is of the view that the main provisions will improve electoral administration in Scotland. We support the bill’s general principles.

15:48

Michael McMahon (Hamilton North and Bellshill) (Lab): I am pleased to be able to take
part in this afternoon’s debate. I thank the Local Government and Communities Committee and all concerned for bringing us to this point.

Fortunately, this is a debate on a piece of legislation that has broad consensus. There are no major political or ideological differences between the parties on it, so there is nothing for anyone to get heated about. Unfortunately, as there is broad consensus in the debate and there is nothing for anyone to get particularly exercised about, the bill is likely to be placed on the growing list of worthy but dull legislation with which the Parliament has had to deal.

However, the bill is worthy of our consideration and support—for a very important reason. No one can forget the problems that we encountered with the ballot in the 2007 local government and Scottish Parliament elections. Lessons must be learned. We must move on from those events and the scarred memories that most of us carry from the 2007 election counts, and must introduce measures to improve electoral administration in Scotland.

I am particularly pleased that the bill will extend the remit of the Electoral Commission to include local government elections in Scotland and that the commission will now be required to produce an annual report.

I believe that the electoral management board for Scotland—the EMB—will be of great benefit to many people in promoting best practice and providing information, advice and training for local government elections.

Given the faith that those who took part in the consultation and in the consideration of the bill have placed in the future of the board, we have to wonder why it was not set up a long time ago to deal with the complex issues of local government elections. The bill creates the body to fill the gap that was identified in the Gould report, and I welcome the proposal to establish it now.

Like other members, I would like the remit of the board to be extended, as the Electoral Commission has called for, although I recognise that that has to be decided elsewhere. It surely makes sense to have one board covering all elections in the future, which would provide a great deal of stability for us all.

It is important to note, as the Local Government and Communities Committee did, that concerns have been expressed that the bill does not give the EMB powers to sanction those who do not follow a direction. I encourage the committee to look a bit further into that issue, to ensure that opportunities are not missed and that potential pitfalls are addressed.

I am also concerned that if a direction that is issued by the EMB is followed but subsequently leads to court action, a returning officer could be petitioned but the EMB would be exempt. Surely that loophole should be considered further.

I do not wish to add too much of a note of discord to what is otherwise a non-contentious debate, but this point should be made. The Gould report highlighted

“the additional complexity faced in Scotland in 2007 due to the use on the same day of the single transferable vote system for local government elections and the first past the post system and the Additional Member System for Scottish Parliament elections.”

We find ourselves facing the same problem with the election this May, with the potential alternative vote referendum likely to fall on the same day as the Scottish Parliament elections. I hope that Liberal Democrat and Conservative members will speak to their colleagues in the coalition Government in Westminster and remind them how difficult it was in 2007 when we had that problem. I will leave it at that for the moment, but I look forward to hearing the rest of the debate.

15:52

**Alex Johnstone (North East Scotland) (Con):** I, too, pay tribute to the work that was done by the Local Government and Communities Committee and its clerks in preparing the stage 1 report on the bill. I was not a member of the committee until the very last minute so, although I voted to approve the committee’s report, my colleague David McLetchie had the major input, and I look forward to hearing what he has to say later in the debate.

The issues surrounding the bill are largely non-contentious, and all members who have spoken in the debate so far have made that point. However, anyone who was around an electoral count on the night of that first Thursday in May in 2007—or perhaps the Friday morning—saw what happened as we appeared to sleepwalk into a situation in which hundreds of thousands of Scots had their votes discounted. That was a mistake that should have been foreseen, but the institutions did not exist to point out the problem. The bill marks a major step towards ensuring that such institutions do exist in future.

The terms of the Gould report made it clear that changes were necessary. The Scottish Local Government (Elections) Act 2009, which was designed to separate Scottish parliamentary and local government elections once and for all, was a major step. The Local Electoral Administration (Scotland) Bill, which will have the effect of establishing an electoral management board for Scotland, and which will extend the statutory powers of the Electoral Commission to cover local
government elections in Scotland, is the second major step forward in achieving the objective of avoiding the problem that we had before.

I was listening carefully to the minister what he was saying, particularly in relation to the future remit of the electoral management board for Scotland. I accept what he said about not going forward or extending it to the whole range of subjects to which it could be applied, yet welcome the minister’s intention to ensure that the board’s remit is extended to Scottish Parliament elections. I look forward to hearing what is said during the further passage of the bill on a range of other possibilities.

Much of what has to be said about the bill has been said already, so I do not intend to go into too much detail. However, I am interested in something that Michael McMahon raised, which I was tempted to raise myself but dismissed: the AV issue. I would dispute Michael McMahon’s assertion that a referendum on AV on the same day as the Scottish election might be disruptive. I think that asking people to give a simple yes or no will not cause confusion or difficulty, but I am genuinely worried about what might happen in the longer term, when we could end up with an AV election and a Scottish Parliament election on the same day, which would result in our walking into a multiplicity of electoral systems. I am glad that, once it has been passed, the bill will have the effect of giving us bodies that can administer that properly. I am sure that everyone is well aware of the fact that I am opposed to AV, but you never know what might happen, so we should be prepared.

The Conservatives will support the general principles of the bill at stage 1. I believe that it is a major step forward that will complete the process that was necessary to overcome the problems that we experienced back in May 2007. I look forward to working in conjunction with the minister and the other parties to ensure that the bill is complete when it becomes an act later in the year.

15:56

Jim Tolson (Dunfermline West) (LD): I join colleagues in congratulating fellow committee members, the clerks and Scottish Parliament information centre colleagues on all the work that they have done to get us to this stage, and I welcome the opportunity to open for the Scottish Liberal Democrats.

As a member of the Local Government and Communities Committee over the past few years, I have taken a great deal of interest in issues relating to local government elections; as someone who has some 15 years’ experience as a councillor, I experienced quite a few of them. As we have heard, the bill has a dual purpose: first, it will establish the electoral management board for Scotland; and secondly, it will extend the remit of the Electoral Commission to include Scottish local government elections.

I am glad that we have cross-party support for some of the key proposals. As Michael McMahon quite rightly said, the bill is not one that will exercise us a great deal as far as our political differences are concerned, but in due course we will want to look, with the minister and others, at some of the detail.

As we are aware, the Electoral Commission invited Mr Ron Gould from Canada, an international expert on electoral administration, to conduct an independent review of the 2007 elections fiasco. His subsequent report made a series of recommendations, which included options for ensuring clear lines of responsibility and accountability in the future. Hopefully, the bill will, as Alex Johnstone said, be a major step towards that.

Prior to the local government elections in 2007, I had the opportunity to attend a trial of the new counting scanning machines. I decided to test the system by removing one of the dummy ballot papers from one of the piles to see whether the system would highlight the anomaly in any way. That caused some unease among the officials of the company that was giving the demonstration but, as they were determined to show how robust their system was, I was equally determined to test it. Despite the fact that the system passed my test, we all know that, on the night, the operation of the equipment and software was nothing short of shambolic.

Next Monday, I and other members of the Local Government and Communities Committee will go to see a demonstration of the new counting machines. I wonder what spanner I can throw in the works this time to provide a more robust test.

One of the Gould report’s recommendations was that a chief returning officer for Scotland should be established, but the responses to the consultation in 2008 indicated that there was little support for that role. As a result, the Scottish Government is taking forward the setting-up of an electoral management board for Scotland. I would be interested to know whether the minister feels that local elections in Scotland would be better served by a chief returning officer or an electoral management board, and why he feels that to be the case.

In committee, I had the opportunity to question the minister on the financing of the board, and I was pleased to hear that the Government had had positive discussions with the Scotland Office about its contribution to the board’s funding. Working together is, indeed, the way forward, and I wonder...
whether the minister can give us an update on discussions with his Westminster colleagues in that regard.

The Liberal Democrats consider that it would be beneficial for the electoral management board to have wider responsibilities for co-ordinating the administration of other elections in Scotland, particularly given the expertise that it will have in the administration of elections.

In summary, the bill is a welcome step in making the arrangements for elections to Scottish local authorities more robust. It does not present a perfect system for any of us, but it is a welcome step nonetheless and, for that reason, the Liberal Democrats will be happy to give it our support at stage 1 at decision time.

16:00

John Wilson (Central Scotland) (SNP):
Members who have stood in elections will have their own experiences, but the positive and negative aspects of the May 2007 elections to the Scottish Parliament and local government will live for a long time in the memories of those who participated.

I welcome today’s debate on the Local Electoral Administration (Scotland) Bill. The bill deals with two specific items: the establishment of a statutory electoral management board for Scotland; and the extension of the Electoral Commission’s remit to include local government elections in Scotland.

In its report on the bill, the Local Government and Communities Committee states quite clearly that it “welcomes the proposal to establish the Electoral Management Board on a statutory basis”.

The bill is part of a wider response to the events of the 2007 Scottish Parliament and local government elections. The number of rejected ballots in the 2007 local government elections was significantly higher than the number of rejected ballots in the 2003 and 1999 elections. However, it should be noted that the 2007 local government elections were held under the new single transferable vote ballot.

The Gould report reviewed the general administration of the 2007 elections and made several recommendations. The report is quite clear in advocating the separation of parliamentary and local government elections. The decoupling of those elections was enacted in the Scottish Local Government (Elections) Act 2009.

The holding of a referendum on the alternative vote and the elections to the Scottish Parliament on the same day runs the substantial risk of doing a disservice to the public in Scotland. It is not as if we have not been in this situation before.

Although the Electoral Commission’s response to recent developments was not wholly negative, it maintains that “The Government must support the Commission in putting in place a robust process to ensure ... planning for 5 May 2011”.

Furthermore, the commission states that “Adequate provision must be made for appropriate public awareness” to support voters’ understanding of the voting process.

The same point could have been made four years ago in the run-up to the Scottish Parliament elections. Lessons must be learned from the previous elections, and the Gould report on the 2007 elections states quite clearly that there was cause for serious concern about how the elections were conducted throughout Scotland. The Local Electoral Administration (Scotland) Bill attempts to address the need for change and challenges some of the antiquated election practices that we use. Clearly, the Parliament believes that the decoupling of elections is the way forward.

It is bad enough to hold the alternative vote referendum on the same day as the 2011 election, courtesy of the UK’s Parliamentary Voting System and Constituencies Bill—we face the prospect of the coalition Government driving through the referendum as policy. However, as part of the coalition of the willing partnership agreement, the UK Government is also committed to holding the UK elections on the same day as the Scottish Parliament elections are scheduled to take place in 2015.

As I said in the chamber on 9 October 2008, “Scottish Council Elections 2007: Results and Analysis” by Bochel and Denver, which was published by the University of Lincoln in 2007, offers some useful background to provide context for the debate.

I welcome the general principles of the bill. I also put on record my thanks to those who provided oral and written evidence, the committee clerks, SPICe and, in particular, my committee colleagues for examining the issue. I look forward to the day when the Parliament controls all the elections that are held in Scotland.

16:04

Patricia Ferguson (Glasgow Maryhill) (Lab):
Like my colleagues, I have been to many election counts in my time. I have attended just three as a candidate but many more as a Labour Party activist and full-time official. In my time, I have experienced some close calls, recounts and counts that were delayed because of the problem
of getting all the ballot boxes in from rural communities.

I have also witnessed elections in which the votes were cast on the Thursday, verified on the Friday and not counted until the Sunday. Such delays are unsatisfactory and I sincerely hope that the returning officers will think again about introducing them for the votes cast and decisions made by the electorate in May this year.

I had never experienced a situation like the one that followed the Scottish Parliament and local government elections in 2007. The local government count was always going to begin on the Friday morning, but I do not think that it was ever envisaged that we would still be counting constituency votes at 4 am on Friday in Glasgow and abandoning counts in other areas at 6 am.

As we know, the Gould report was commissioned as a result of the debacle. The debate that we are having today is a direct result of Ron Gould’s inquiry, and it picks up on some of his recommendations. The minister alluded to previous legislation on the issue that was passed by the Parliament.

The bill that we are considering at stage 1 today provides for the establishment of an electoral management board for Scotland to oversee and co-ordinate local government elections in Scotland, and it extends the remit of the Electoral Commission to include local government elections in Scotland.

As we have heard, the discussions in the Local Government and Communities Committee were largely consensual, and we agreed that the establishment of the electoral management board is a positive step. However, we were also of the view that the United Kingdom Government should consider the possibility that the board should also have oversight of the elections to the House of Commons and the European Parliament and of referenda. We welcomed the comments of the Secretary of State for Scotland and the Minister for Parliamentary Business, who were both positive about the board’s involvement in elections to the Scottish Parliament. As others have said, the committee was also of the view that the board might play a part in elections to, for example, the crofting commission.

Imbuing any body with a power of direction is often controversial, but I think that in this case it is both warranted and useful as it will allow the board to ensure consistency across Scotland and help it to deal with unforeseen events. However, I genuinely hope that, more often than not, a consensual approach will be adopted in the relationship between the board and individual returning officers.

The Local Government and Communities Committee welcomed the minister's commitment to consider whether there should be a way of petitioning the board or its convener when a grievance arises as a result of a direction issued by the convener. I heard the minister address the issue today, and I am sure that the committee will happily listen to and think seriously about the points that he made.

Given the level of responsibility that the board will have and its role in our democracy, I believe that it is important that it produces an annual report that is laid before Parliament, and I am pleased that such a provision is included in the bill. Expanding the remit of the Electoral Commission will help to promote good practice and—just as important—consistency across Scotland.

The debate has been consensual, and I look forward to the stage 2 discussions on the bill. I am sure that the dialogue with the minister will continue to be consensual and that all the efforts to improve the administration of elections will be positive. That can only be a good thing for everyone.

16:08

Bob Doris (Glasgow) (SNP): Like other members, I start by thanking the clerks, SPICe, fellow committee members and all those who gave evidence, written and oral, to the committee for their assistance in helping us to reach the stage 1 proceedings today.

For many people listening—if there are many people listening, that is—this is a rather dry and dusty debate, but that does not make it unimportant. It is vital. Michael McMahon and Patricia Ferguson rightly pointed to the 2007 elections debacle as the reason why action is needed. I do not think that anyone should forget Professor Ron Gould’s comments that in the whole process the voter was "an afterthought". I will come back to that point.

We should remind ourselves of the problem areas: combined elections, spoiled papers, electronic vote counting and the single ballot paper design. The problems went on and on, but at their heart was fragmentation—in the planning, the powers involved, the responsibilities and the accountability. Who was to blame? Where did power lie? Where did the buck stop?

Since then, action taken by the Scottish Government—in a consensual way with parties across the Parliament—has dealt with some of those problems. The Parliament supported the decoupling of Scottish Parliament and local authority elections, which is to be welcomed.

Expanding the remit of the Electoral Commission will help to promote good practice and—just as important—consistency across Scotland.
When we look back on today's debate, we will see it as the point at which we started to deal with the fragmentation in the system. Whether or not that is seen as the motivation today, the bill is about dealing with fragmentation. Putting the interim electoral management board on a statutory footing is vital in the process. Also vital is the independence of the board from Government. It will not be accountable to ministers, although its annual reports will be scrutinised. The minister said that the annual report will relate to the board’s activities and not its competence. I would like more information about that. How will we drill down to scrutinise the effectiveness of the board, and what will the parliamentary procedure for that be?

Nevertheless, I welcome the bill and think that it brings a coherent structure to the expertise in running Scotland’s elections that clearly exists throughout the country in the returning officers, the deputy returning officers and the various council officials who have generations of experience of running good elections. None of us should forget about that. The bill will allow information sharing and the sharing of best practice right across our nation and will provide a powerful framework for all elections—not, I hope, just council elections.

I will finish on the broad, cross-party consensus that we have achieved today. The Secretary of State for Scotland has intimated that the Government is poised to give the administration of Scottish elections to the Scottish Parliament, and the minister has said that he would speedily change the provisions in the bill to ensure that that was within the competence of the electoral management board. However, I would go further than that. We need full legislative competence over Scottish elections, and administrative competence in relation to UK elections. Of course, I would rather have the great efficiency saving of eradicating UK elections altogether—if not having any.

I mentioned the idea of fragmentation because, as far as the bill goes, the buck still does not stop in the one place. We must ensure that we have one Government, one minister and one management board with direct responsibility for all Scotland’s elections. That is the only way in which we will get direct accountability and drive up standards in the process.

In terms of a respect agenda, it is an absolute farce that the Scottish Government—never mind Scottish voters—was not consulted on whether an AV referendum should be held on the same date as Scotland’s elections. We should never forget the main reason for the problems with the AV referendum: in UK law, the chief counting officer for the UK determines certain things at 1 pm on the Friday, and certain other things must be done with the AV referendum at 4 pm. That shows complete disrespect to the Scottish Parliament, to Scotland and to democracy.

However, we cannot deal with the AV referendum just now. The bill deals with what we can process and I welcome its principles at stage 1.

Jim Tolson: As many of us expected, this has been an interesting, if short and consensual, debate. Some of the key points, especially concerning the electoral management board, have been highlighted by a number of colleagues, including the minister, Duncan McNeil and others. A key function of the bill is to ensure that the system will be much more robust than it is at the moment. Having returning officers’ experience as part of that is welcome, but we are not convinced by the decision that returning officers be appointed by ministers. I challenge the minister, in his summing up, to justify that decision.

The extension of the Electoral Commission’s remit has also been mentioned as a key area. John Wilson, Bob Doris and others referred to some of the issues in that regard. Even Alex Johnstone suggested that we sleepwalked into the situation that arose in 2007, when the results came out. Like him and many other members, I felt the dragging on of those long hours—my colleague Patricia Ferguson alluded to that. Although this did not happen during my count, many colleagues had to come back the following day, in the middle of the afternoon, to get the results. For many of us, the 2007 election was a fiasco. For example, I did not get the result for Dunfermline West until 4 o’clock in the morning. It was a long night for everybody concerned. Many colleagues around the country faced similar situations. That is why, in looking at the details of what we want to take forward, we ask the minister to look in detail at what is imposed in the bill, what is necessary and, to some extent, what is not necessary further down the line.

There has to be more robust testing. That testing must not be just someone potentially throwing a small spanner in the works during a visit on Monday; it must ensure that the minister and the Government are absolutely satisfied that the electoral positions that this bill will put us in have been robustly tested in detailed, practical ways, including through discussions with the electoral management board and whoever leads it, once it is set up.

I hope that the chamber will join me in ensuring that we put as much pressure as possible on the Government to take forward the key recommendations in the committee’s report.
The bill is designed to improve local government elections. I have some sympathy with colleagues, such as John Wilson, who wish the provisions to be extended to cover European or, perhaps, United Kingdom elections.

We have lessons to learn from the 2007 elections. We might not have got it right last time, but I urge the minister and the Government to ensure that we get it right next time.

Despite the fact that there will be a manual count for this year’s Scottish Parliament elections, there will be an automatic count for next year’s local government elections—rightly so, given the complexities of the voting system for those elections. We have to ensure that, this year, the current Government and the new Government that comes in, whatever shape it might have, do all that they can do robustly to check what is needed for those elections to ensure that they proceed correctly.

We commend the bill at stage 1.

16:16

David McLetchie (Edinburgh Pentlands) (Con): As a former member of the Local Government and Communities Committee, I had the pleasure of participating in the evidence-taking sessions on the bill, but not in the compilation of the stage 1 report. That task fell to my colleague, Alex Johnstone. However, I should say that I agree with the conclusions and recommendations that were reached by my former colleagues on the committee.

As a number of members—Michael McMahon, John Wilson and Patricia Ferguson—have narrated, the unhappy genesis of the bill was in the problems that arose with the conduct of the 2007 elections to this Parliament and to Scottish councils, which led to the Gould report and its detailed recommendations about how we might improve the administration of elections in Scotland.

As the minister said, the bill takes the Gould report forward in relation to local government elections in Scotland. Of course, not all Mr Gould’s recommendations in that respect have been implemented. For example, his recommendation to establish the post of a chief returning officer for Scotland has not been adopted and instead the bill proposes to establish an electoral management board. At this stage, its remit will cover only the administration of local elections but I welcome the fact that the Scotland Bill, which I am now considering in a parliamentary committee, will transfer administrative responsibility for the conduct of elections to this Parliament to the Scottish Government, and that the new electoral management board can thereafter exercise that responsibility, if so directed by Scottish ministers.

However, that transfer of administrative responsibility for the conduct of elections should bring with it a budget line for the financing of elections. I was struck by the evidence from the City of Edinburgh Council to the effect that councils are short-changed in relation to reimbursement of the costs of holding the Scottish Parliament elections. We expect a lot of our councils, in terms of the conduct of elections, and they and returning officers take a lot of flak and criticism from politicians and the public at what we all know is a stressful time. The least that we can do in return is to ensure that our councils are fully reimbursed for their costs in that respect.

I believe that the problem in 2007 arose not from the coincidence of elections but from the design of the Scottish Parliament ballot paper and the adoption of a new STV system for electing councillors, which, as we know, produced treble the number of spoilt votes in the council elections—a failure rate that would have been considerably higher if single Xs had not been counted as 1s, which demonstrated that many more voters did not clearly understand the new system.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Does the member accept that there were in fact far more spoiled papers among the single X ballot papers?

David McLetchie: No, there is no evidence to that effect at all.

Mike Rumbles: Oh!

David McLetchie: The evidence is that the number of spoiled votes was treble what it had been before. If Mike Rumbles wants to consult the committee’s report, he will find that evidence. Facts are chëirs: even Mr Rumbles cannot deny facts, despite his best efforts to do so.

It has been suggested, as some members have mentioned, that similar confusion may arise from the holding of the alternative vote referendum on the same day as our elections on 5 May this year. However, I do not think that that will be case. Putting a single X on a single ballot paper in council elections at the same time as Scottish Parliament elections in 1999 and 2003 did not cause any significant problems, so it is not obvious why putting a single X on a referendum ballot paper should cause problems.

Disappointment has recently been expressed about the possibility of delays in conducting the count for the coming election. There is no doubt that once administration for our elections is transferred to the new board, there will be even greater political pressures on returning officers to
stick with overnight counts for elections to the Parliament and to councils. That should be a matter for discussion by the political parties with returning officers and the electoral management board, rather than one for ministerial direction.

At the end of the day, those who are given the important role of conducting elections, whose independence and impartiality guarantee the integrity of our democratic system, must be free to make independent judgments as to the appropriate timetable, although I hope that we will be able to continue with our tradition.

16:21

Michael McMahon: It is standard practice in debates such as this to thank all those who took part in the discussion of the bill at the start of the debate, when one begins to consider the analysis of the bill and the consultation that took place. I decided to leave that bit until my closing speech on behalf of the Labour Party, in case there was nothing else left for me to say.

I therefore thank the clerks and the members of the Finance Committee and the Local Government and Communities Committee, who have contributed a great deal to the consideration of the bill. As I said at the beginning of the debate, it is a worthwhile piece of legislation that, in hindsight, should have been in place a long time ago.

Having listened to the debate, I remain of the view that there is a valuable debate to be had around the extension of the electoral management board’s remit to cover all elections in future. However, I am pleased that, through the bill, local government elections will for the first time be managed in an appropriate way.

As we have heard, all political parties recognise the need for the bill and agree with most aspects of it. However, I hope that the proposed greater powers for the EMB, which would enable it to order sanctions against those who do not follow directions, will be re-examined; I would be interested to see how that debate continues to move forward.

It is important that we listen to the views of the EMB and support its requests if and when we can, as Patricia Ferguson mentioned. I understand that the committee is of the view that effective planning will result in fewer directions being given, and I hope that that is the case.

I believe that greater and more effective management of local elections will provide for the smoother running of elections. That will ultimately benefit all political parties and, it is hoped, lead to greater turnout at those elections, which would be welcomed across the political spectrum.

I heard David McLetchie and Alex Johnstone valiantly trying to defend their party’s decision to go ahead with an AV referendum, even though they probably do not believe in what it is about in the first place. Mr Johnstone gave us the opportunity to ponder that.

John Wilson, Patricia Ferguson and Bob Doris made very strong arguments. I was reminded of the time when I was on the Local Government and Communities Committee during its consideration of the changes to the electoral system for local government elections. I was quite struck by the fact that when we looked at America, we saw that they were able to hold elections to elect the local dog warden, the local sheriff and the President on the same day without much difficulty. Having seen the evidence from Northern Ireland, where European elections, Westminster elections and local elections were all held on the same day with different voting systems, I felt confident that the people of Scotland would be able to manage two elections on the same day with different systems.

However, as Bob Doris pointed out, something went badly wrong. The problem was due not necessarily to the voting systems, but to the fact that the electorate was not put at the centre of the considerations for the arrangements on the day. That is the fundamental problem that we have to address.

The bill is not contentious. Other non-contentious bills have failed in the Parliament because their financial memorandums have not been robust enough, but on this occasion we cannot even look to that issue for a dispute that will divide us, because the committee has made it clear that it considers the information on the resource implications of the bill to be robust. It is useful to know that, and we can take confidence from it.

In outlining all the issues on behalf of the committee, Duncan McNeil made it clear that there are some caveats in the committee’s report and that it will look at those issues further. That is reassuring. Any matters that are outstanding after stage 2 can be looked at again at a later stage. I look forward to the stage 3 debate, even though what we say then might reflect very much what we have already heard this afternoon.

16:25

Jim Mather: At this late stage in the session of Parliament, and at a time when there is disagreement about a number of electoral issues across the UK, I am pleased to note that today’s debate on the Local Electoral Administration (Scotland) Bill has been based on consensus. That is significant when we consider the significant
expertise that is present in the chamber and which has been engaged through the committee.

We all know that, since the events of May 2007 and the subsequent analysis and recommendations of Ron Gould, there has been widespread agreement among those who are involved in managing and administering elections in Scotland about the need for improvement. There has been agreement about the action to be taken to secure that improvement, and there has also been agreement that the bill forms part of that action. The Local Government and Communities Committee’s stage 1 report states that the Government has consulted on the bill and that we have been responsive to the views of the key stakeholders, and I believe that that will continue.

Mike Rumbles: Does the minister agree that, when we are debating this issue, it is important to get the facts correct and that David McLetchie was quite wrong in what he said? The fact of the matter is that there were more problems with the Scottish Parliament ballot paper than with the local government one.

Jim Mather: I feel as though I am being asked to adjudicate in “Just a Minute” fashion, so I am going to move on.

It is clear that there is consensus on the work that is in progress. For the record, the committee has welcomed the proposal to establish the electoral management board on a statutory basis and considers that to be a positive step in improving the administration of local government elections in Scotland. The committee has also welcomed the extension of the Electoral Commission’s remit and considers that that will benefit electoral administration in Scotland by promoting consistency and good practice.

However, there are issues that we have to address. I note the points that Patricia Ferguson made about the need for us to be consensual and also to continue to consult and focus on the residual issues so that they are dealt with at stages 2 and 3. An important issue that registered with me today is extending the board’s remit, which was called for by several members, including Alex Johnstone, Patricia Ferguson and notably Duncan McNeil. I take on board the concerns that have been expressed about what has come from the Electoral Commission and how that has been handled to date. Officials and the Official Report will capture the points that have been made and those points will feed in rather well to what happens at stage 2 and beyond.

Some specific issues have been mentioned that require a response here and now. In particular, Jim Tolson mentioned the testing of the equipment. I will be there on Monday and we will see how that goes but, in essence, once the trials are over, we will still have a year in which to work with the contractor and the local authorities before the next local government elections. Having a deliberately lengthy period of testing and going down among the people who are developing the equipment is the right approach, as that will give us a basis to avoid the problems that were encountered in 2007.

Mr Tolson also made a point about the idea of having a chief returning officer rather than a board. Although it is time to move on, and although there is wisdom in teams, in wider experience and in joint and several responsibility, we also consulted on the chief returning officer proposal. There was just no support for that. There was a preference instead for the strengthened board proposition. As for Mr Tolson’s point about the ministerial appointment, the convener of the board will continue to be a returning officer. By definition, that means that the applicants will be 32 of, and the Electoral Commission will be represented in the appointment via an advisory panel. That will be done in the most open way.

David McLetchie made an interesting point regarding administrative transfer and the need for a subsequent budgetary transfer. A respectful dialogue is under way on that matter, as he would no doubt accept.

Equally, Bob Doris made the important point that the voter should be an afterthought no more in this respect. We need to move on to a much stronger basis to give us what we require.

We can look forward to a very workmanlike process through stages 2 and 3, where we will be looking at issues such as sanctions and closer Scottish Government monitoring of the power of direction. We can bring those things out more fully.

The point about the need for sanctions as a backstop to cover unforeseen eventualities and Michael McMahon’s practical point about ensuring that directions are followed both tie in well. We now have a basis on which to move forward and ensure that we have a bill of which we can be proud.
1. I welcome the Committee’s report on its Stage 1 consideration of the Local Electoral Administration (Scotland) Bill and its support for the general principles of the Bill. As you know, the Parliament debated the Bill on 2 February and at that time agreed to its general principles. I am grateful for your, and other Committee member’s, support during this debate.

2. The Committee’s report identified some key issues for the Scottish Government to consider.

3. The first of these related to the power of direction being provided to the Convener of the Electoral Management Board. The Committee recommended that the Scottish Government should monitor the effectiveness of the power of direction. I am happy to confirm that this will take place.

4. The Committee also sought consideration as to whether the Convener should be petitionable to the Courts as a result of a direction he or she has given. As I explained during the debate, we believe provision already exists which would enable the Convener to be named as a respondent in an election petition. Section 128(2) of the Representation of the People Act 1983 provides that “…any returning officer of whose conduct the petition complains may be a respondent to that petition.” Given that the Convener must be a returning officer and that the statute does not restrict the challenge to the conduct of the local returning officer, we are of the view that this could enable the Convener to be named in a petition. I am, of course, happy to discuss this point further during the Stage 2 consideration of the Bill.

5. During the evidence session, the Committee heard from the Electoral Commission their concern that the Bill as drafted does not confer adequate powers on them to offer guidance to candidates. We have held some further discussions with the Commission on this issue and they are now content with the provision within the Bill. We are therefore not intending bring forward an amendment on this point.

6. I look forward to discussing the Bill further with the Committee and to continuing with the consensual approach that has been taken to date.

Jim Mather
Minister for Enterprise, Energy and Tourism

23 February 2011
Local Electoral Administration (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 21 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 15

Jim Mather

1 In section 15, page 5, line 22, leave out subsections (2) and (3) and insert—
   <( ) Subsections (3) and (7) are repealed.>

Jim Mather

2 In section 15, page 5, line 26, leave out <, or local government,>

After section 17

Jim Mather

3 After section 17, insert—
   <Consequential amendments
   The Scottish Public Services Ombudsman Act 2002 is amended as follows—
   (a) in section 7 (restrictions on investigations), after subsection (6C) insert—
   “(6D) The Ombudsman must not investigate action taken by or on behalf of the Electoral Commission unless the action taken concerned local government elections in Scotland.”,
   (b) in Part 2 of schedule 2 (listed authorities), after paragraph 91B insert—
   “91C The Electoral Commission.”>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Electoral Commission function of promoting awareness of system of local government
1, 2

Scottish Public Services Ombudsman: power to investigate Electoral Commission
3
LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

EXTRACT FROM THE MINUTES

7th Meeting, 2011 (Session 3)

Wednesday 2 March 2011

Present:

Bob Doris (Deputy Convener)   Patricia Ferguson
Alex Johnstone                Duncan McNeil (Convener)
Alasdair Morgan               Mary Mulligan
Jim Tolson                    John Wilson

Also present: Sarah Boyack MSP

Local Electoral Administration (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3.

Sections 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20 and 21 and the long title were agreed to without amendment.

Section 15 was agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Local Electoral Administration (Scotland) Bill: Stage 2

10:00

The Convener: Agenda item 2 is consideration of stage 2 amendments to the Local Electoral Administration (Scotland) Bill. I welcome to the meeting Jim Mather, the Minister for Enterprise, Energy and Tourism, who is accompanied by Scottish Government officials Stephen Sadler, head of the elections team; Fiona Campbell, policy executive; and Deborah Blair, solicitor.

Sections 1 to 14 agreed to.

Section 15—Education about electoral and democratic systems

The Convener: Amendment 1, in the name of the minister, is grouped with amendment 2.

The Minister for Enterprise, Energy and Tourism (Jim Mather): The bill sets out to extend the Electoral Commission’s remit to include local government elections in Scotland. However, we do not intend to confer a greater range of responsibilities for elections in Scotland than that which exists for England and Wales. Since the bill’s introduction, the commission’s function of promoting awareness of systems of local government has been removed under the Political Parties and Elections Act 2009 and amendments 1 and 2 are necessary to reflect the fact that it no longer has an education function in relation to local government systems that could be extended to include local government systems in Scotland.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Jim Mather]—and agreed to.

Section 15, as amended, agreed to.

Sections 16 and 17 agreed to.

After section 17

The Convener: Amendment 3, in the name of the minister, is in a group on its own.

Jim Mather: Amendment 3 is a technical amendment that seeks to enable any issues arising as a result of the Electoral Commission’s work in relation to Scottish local government elections to be considered by the Scottish Public Services Ombudsman rather than by the United Kingdom ombudsman. It does not amend the bill’s purpose or any of its substantive provisions.

I move amendment 3.

Amendment 3 agreed to.
Sections 18 to 21 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister.
Local Electoral Administration (Scotland) Bill
[AS AMENDED AT STAGE 2]

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Local Electoral Administration (Scotland) Bill

[AS AMENDED AT STAGE 2]


PART 1

ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Establishment of Board etc.

1 Electoral Management Board for Scotland

(1) There is established a committee to be known as the Electoral Management Board for Scotland.

(2) The Board has the general function of co-ordinating the administration of local government elections in Scotland.

(3) That function includes—

   (a) assisting local authorities and other persons in carrying out their functions in relation to local government elections,

   (b) promoting best practice in local government elections by providing information, advice or training (or otherwise).

2 Membership

(1) The Board is to have—

   (a) a convener, who must be a returning officer,

   (b) 8 other members of whom—

      (i) 5 are to be returning or depute returning officers,

      (ii) 3 are to be electoral registration officers.

(2) The Scottish Ministers are to appoint the convener.

(3) The convener is to appoint the other members.
(4) When appointing members, the convener is to have regard to the desirability of the membership taken as a whole having a broad range of experience in relation to different local authority areas (including different kinds of areas) throughout Scotland.

3 **Duration of appointment**

(1) A person is to be appointed to the Board for a period of 4 years.

(2) A person may be reappointed to the Board (once or more).

4 **Procedure etc.**

(1) It is for the Board to regulate its own procedure (and quorum).

(2) The convener may (with the agreement of the other members of the Board) invite a person to attend a meeting of the Board for the purpose of providing advice or otherwise assisting the Board in carrying out its functions.

**Directions**

5 **Directions to returning officers**

(1) The convener may give directions in writing to returning officers about the exercise of their functions in relation to—

(a) local government elections generally, or

(b) a particular local government election.

(2) A direction may require a returning officer to provide the convener with information.

(3) A returning officer to whom a direction is given must comply with the direction.

6 **Directions to electoral registration officers**

(1) The convener may give directions in writing to electoral registration officers about the exercise of their functions in relation to a particular local government election.

(2) But a direction is of no effect if it is inconsistent with any direction given under section 52 of the 1983 Act.

(3) An electoral registration officer to whom a direction is given must comply with the direction.

7 **Consultation before giving direction**

Before giving a direction under section 5 or 6, the convener must consult—

(a) the other members of the Board,

(b) the Electoral Commission.

**Annual report**

8 **Annual report**

(1) The convener must, as soon as practicable after the end of each financial year, prepare a report on the carrying out of the Board’s functions during the year.
(2) After securing the Board’s approval of the report, the convener must—
   (a) lay the report before the Scottish Parliament, and
   (b) send a copy of the report to the Scottish Ministers.

Interpretation

9 Interpretation of Part 1

In this Part—

“the 1983 Act” means the Representation of the People Act 1983,

“convener” means the convener of the Board,

“depute returning officer” means a person appointed under section 41(2) of the 1983 Act,

“electoral registration officer” means an officer appointed under section 8(3) of the 1983 Act,

“local government election” has the meaning given in section 204(1) of the 1983 Act,

“returning officer” means an officer appointed under section 41(1) of the 1983 Act.

PART 2

ELECTORAL COMMISSION: LOCAL GOVERNMENT ELECTIONS ETC.

Functions of Commission

10 Reports on elections

In section 5(2) of the 2000 Act (elections which must be reported on), after paragraph (e) insert—

“(f) an ordinary election of councillors for local government areas in Scotland.”.

11 Electoral Commission representatives and observers

(1) In section 6A(5) of the 2000 Act (elections which may be attended by Commission representative), after paragraph (e) insert—

“(ea) a local government election in Scotland;”.

(2) Section 6B(3) of that Act (observation of local government elections in Scotland not permitted) is repealed.

(3) In section 6C(3) of that Act (accredited observers: individuals), after “6F” insert “or, in relation to a local government election in Scotland, section 6G”.

(4) In section 6D(4) of that Act (accredited observers: organisations), after “6F” insert “or, in relation to a local government election in Scotland, section 6G”.

(5) In section 6F of that Act (code of practice)—
(a) in subsection (1), after “6A” insert “(other than a local government election in Scotland)”,

(b) in subsection (10), after “section” insert “and section 6G”.

(6) After section 6F of that Act insert—

“6G Code of practice on attendance of observers at local government elections in Scotland

(1) The Commission must prepare a code of practice on the attendance of—

(a) representatives of the Commission;

(b) accredited observers; and

(c) nominated members of accredited organisations,

at local government elections in Scotland.

(2) The code must in particular—

(a) specify the manner in which applications under section 6C(1) and 6D(1) are to be made to the Commission;

(b) specify the criteria to be taken into account by the Commission in determining such applications;

(c) give guidance to relevant officers (within the meaning of section 6E) as to the exercise of the power conferred by subsection (1) of that section;

(d) give guidance to such officers as to the exercise of the power mentioned in subsection (2) of that section as it relates to a person having the permission mentioned in subsection (1) of that section;

(e) give guidance to such officers as to the exercise of any power under any enactment to control the number of persons present at any proceedings relating to an election as it relates to a person having such permission;

(f) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations on the exercise of the rights conferred by sections 6A, 6B, 6C and 6D.

(3) The code may make different provision for different purposes.

(4) Before preparing the code, the Commission must consult the Scottish Ministers.

(5) The Commission must lay the code before the Scottish Parliament.

(6) The Commission must publish the code (in such matter as they may determine).

(7) The following persons must have regard to the code in exercising any function conferred by section 6A, 6B, 6C, 6D or 6E—

(a) the Commission;

(b) representatives of the Commission;

(c) relevant officers (within the meaning of section 6E).

(8) The Commission may at any time revise the code.

(9) Subsections (4) to (7) apply in relation to a revision of the code as they apply in relation to the code.”.
5

(7) Sections 8 to 11 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

12 Consultation on changes to electoral law

In section 7(2) of the 2000 Act (instruments to be consulted upon), after paragraph (i) insert—

“(j) an order under section 3(1) of the Local Governance (Scotland) Act 2004.”.

13 Performance standards

(1) In section 9A(6) of the 2000 Act (setting of performance standards), after paragraph (e) insert—

“(f) a local government election in Scotland.”.

(2) Sections 1 to 3 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

14 Advice and guidance

(1) Section 10 of the 2000 Act (giving of advice and assistance) is amended as follows.

(2) In subsection (7), the words “other than a local government election in Scotland” are repealed.

(3) Subsections (8) to (10) are repealed.

15 Education about electoral and democratic systems

(1) Section 13 of the 2000 Act (promotion of public awareness of electoral and government systems) is amended as follows.

(2A) Subsections (3) and (7) are repealed.

(4) In subsection (8), for “by virtue of an order made by the Scottish Ministers under subsection (7)” substitute “in relation to local government elections in Scotland”.

Financing and reports

16 Financing of Commission

(1) The 2000 Act is amended as follows.

(2) In section 13—

(a) in subsection (8), the words from “but” to “Ministers” are repealed,

(b) subsections (9) to (11) are repealed.

(3) After section 13 insert—

“13A Reimbursement of costs by Scottish Ministers etc.

(1) The Scottish Ministers must reimburse the Commission for any expenditure incurred by them which is attributable to the exercise of the functions mentioned in subsection (2).”
(2) The functions are the Commission’s functions under this Part in relation to local government elections in Scotland.

(3) The total expenditure incurred in any financial year by the Commission in performing the functions mentioned in subsection (2) must not exceed such sum as is for the time being specified by an order made by the Scottish Ministers.

(4) The power to make an order under subsection (3) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4) In paragraph 14(1)(a) of Schedule 1, for “13(9)” substitute “13A”.

17 Reports on Commission’s functions

(1) Schedule 1 to the 2000 Act is amended as follows.

(2) In paragraph 20 (reports), after sub-paragraph (2) insert—

“(3) The functions referred to in sub-paragraph (1) do not include the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

(3) After paragraph 20 insert—

“20A(1) The Commission must, as soon after the end of each financial year as may be practicable, prepare and lay before the Scottish Parliament a report about the performance of the functions mentioned in sub-paragraph (3) during that financial year.

(2) On laying the report, the Commission must publish the report in such manner as they may determine.

(3) The functions are the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

17A Consequential amendments

The Scottish Public Services Ombudsman Act 2002 is amended as follows—

(a) in section 7 (restrictions on investigations), after subsection (6C) insert—

“(6D) The Ombudsman must not investigate action taken by or on behalf of the Electoral Commission unless the action taken concerned local government elections in Scotland.”.

(b) in Part 2 of schedule 2 (listed authorities), after paragraph 91B insert—

“91C The Electoral Commission.”.

Interpretation

18 Interpretation of Part 2

In this Part, “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000.
PART 3
GENERAL

19 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, consequential, transitional, transitory, or saving provision (including by modifying an enactment) as they consider necessary or expedient for the purposes of or in connection with this Act.

(2) Subject to subsection (3), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) A statutory instrument containing an order under this section which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

20 Commencement

(1) This Act (except this section and sections 19 and 21) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act.

21 Short title

The short title of this Act is the Local Electoral Administration (Scotland) Act 2010.
Local Electoral Administration (Scotland) Bill
[AS AMENDED AT STAGE 2]


Introduced by: John Swinney
On: 7 October 2010
Bill type: Executive Bill
CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Order, these revised Explanatory Notes are published to accompany the Local Electoral Administration (Scotland) Bill (introduced in the Scottish Parliament on 7 October 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. Following the 2007 joint Scottish Parliament and local government elections, Ron Gould, former Assistant Chief Electoral Officer of Canada and an electoral administration expert, was appointed by the Electoral Commission to carry out an independent review of the problems which had arisen during the elections. Gould made a number of recommendations to improve electoral administration and this Bill continues the process of implementing these.1

5. The Bill establishes the Electoral Management Board for Scotland on a statutory basis for its work in relation to local government elections in Scotland and extends the statutory remit of the Electoral Commission to cover local government elections in Scotland.

COMMENTARY ON SECTIONS

Part 1 – Electoral Management Board for Scotland

6. Part 1 of the Bill contains provisions relating to the Electoral Management Board for Scotland. Section 1 establishes the Board and defines its general function which is to provide a forum for co-ordinating the administration of local government elections in Scotland. Section 2 defines the membership of the Board and provides for the convener of the Board to be appointed by Scottish Ministers. Members of the Board will be returning officers, depute returning officers and electoral registration officers and will be appointed by the convener.

7. Section 3 sets out the duration of the convener’s and other members’ appointments. Appointments will be for a period of four years and the Bill also allows for the possibility of reappointment. 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.

8. Section 4 will enable the Board to determine its own operating procedures. Subsection (2) will enable the convener, with the Board’s agreement, to invite advisers to its meetings.

9. Sections 5 and 6 provide for the convener to have the power of direction over local government returning officers and electoral registration officers. The power of direction over returning officers is similar to that given to the Regional Returning Officer for European Parliamentary elections. Such directions must relate to the exercise of the returning officers’ functions. Previous directions for European elections have included, for example, requirements in relation to the opening of postal votes and the timing of the count. The Bill contains a more limited power of direction over electoral registration officers in relation to local government elections in Scotland. This power of direction would be limited to functions relating directly to the preparation for a particular election. Possible uses of this power of direction could include the supply of data to returning officers at a particular time, the requirement to use an agreed style of form or to confirm specific dates for making available updated electoral registers.

10. Section 7 provides that the convener must consult the Electoral Commission and the Board before giving a direction.

11. Section 8 sets out the reporting requirements of the Board. The Board will provide an annual report on the performance of its functions in relation to local government elections to the Scottish Parliament as soon as practicable after the end of the financial year.

Part 2 – Electoral Commission: local government elections etc.

12. Local government elections in Scotland are the only statutory governmental elections in the UK which currently fall outwith the remit of the Electoral Commission. Part 2 of the Bill extends the statutory powers and responsibilities of the Electoral Commission so that these can be exercised in relation to elections to Scottish local authorities.

13. Sections 10 to 15 contain provisions to enable the Electoral Commission to:
This document relates to the Local Electoral Administration (Scotland) Bill as amended at Stage 2 (SP Bill 57A)

- report on administration of local government elections (section 10);
- include local government elections in Scotland within the 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 (section 15).

14. Section 16 sets out the mechanisms for financing the Commission. It requires the Commission to be reimbursed by the Scottish Government for expenditure incurred by the Commission on carrying out their functions in relation to local government elections in Scotland subject to a maximum specified by the Scottish Government.

15. Section 17 sets out the reporting requirements of the Commission. Subsection (3) will require the Commission to prepare and lay before the Scottish Parliament a report on the performance of their functions in relation to local government elections in Scotland as soon as practicable after the end of each financial year. The report should also be published.

16. Section 17A enables the Scottish Public Services Ombudsman to consider any complaint or request to investigate a matter arising as a result of the Electoral Commission’s work in relation to local government elections in Scotland.

Part 3 – General

17. This Part sets out powers for the Scottish Ministers to make ancillary provision and provides for the commencement of the Act. It also gives the short title of the Act.

18. Section 19(1) confers on Ministers a power to make by order further provisions to support the implementation of the Bill or to ensure a smooth transition from the current law to that in the enacted Bill.

19. Section 20 of the Bill provides for Ministers to make an order specifying that the Bill will come into force on a day or days determined by them.
Local Electoral Administration (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 21 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 10

Jim Mather

1 Leave out section 10 and insert—

<Reports on elections

In section 5 of the 2000 Act (reports on elections and referendums), after subsection (2A) insert—

“(2B) After an ordinary election of councillors for local government areas in Scotland, the Commission must prepare and publish (in such manner as the Commission may determine) a report on the administration of the election.”>
Local Electoral Administration (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

Amendment 1 was agreed to (without division).

Local Electoral Administration (Scotland) Bill: The Minister for Energy, Enterprise and Tourism (Jim Mather) moved S3M-8127—That the Parliament agrees that the Local Electoral Administration (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
The Presiding Officer (Alex Fergusson): We come to stage 3 proceedings on the Local Electoral Administration (Scotland) Bill. Members should have before them the bill as amended at stage 2 and the marshalled list. If the division bell sounds, proceedings will be suspended for five minutes, and the period of voting thereafter will be 30 seconds.

Section 10—Reports on elections

The Presiding Officer: Amendment 1 is in the name of the Minister for Enterprise, Energy and Tourism.

The Minister for Enterprise, Energy and Tourism (Jim Mather): Amendment 1 is a technical amendment, which will alter the way in which the bill will amend section 5 of the Political Parties, Elections and Referendums Act 2000, to extend the Electoral Commission’s function in relation to reporting on the administration of ordinary local government elections. That is necessary because of the interaction of section 5 with other sections in the 2000 act. Amendment 1 will substitute section 10 of the bill with a new provision, which will still extend the commission’s functions to ordinary local government elections, but in a way that will avoid the unintended application of other sections of the 2000 act to those elections. The amendment also avoids the duplication and confusion that might have resulted from the interaction of section 5 of the 2000 act with the amendments that the bill makes to other sections of that act.

I move amendment 1.

Alex Johnstone (North East Scotland) (Con): I welcome the amendment and the way in which it will simplify the requirement that is placed on the Electoral Commission. It is welcome that the bill contains a requirement for the commission to consider each election for local government and to report on it. I am glad that the amendment uses the phrase “in such manner as the Commission may determine”, because that will reduce the burden on the commission. It will be able to ensure that it analyses and reports, but without overanalysing or overreporting in circumstances in which that would be unnecessary.

As I have said, I welcome amendment 1.

Amendment 1 agreed to.
The Presiding Officer: There being only one amendment to the bill, that ends consideration of amendments.

Local Electoral Administration (Scotland) Bill

The Presiding Officer (Alex Fergusson): The next item of business is the stage 3 debate on the Local Electoral Administration (Scotland) Bill.

09:24

The Minister for Enterprise, Energy and Tourism (Jim Mather): I am pleased to be here for the debate. The parliamentary process has been fairly smooth and has reflected the consensus across all parties on the need to continue to improve the administration of elections. I am grateful for members’ support and, in particular, for the work of the Local Government and Communities Committee. I also thank the people who gave evidence and helped to develop the bill.

This is the second bill in this session of the Parliament that has been designed to improve the administration of elections. It follows the Scottish Local Government (Elections) Act 2009, which decoupled local government and Scottish Parliament elections. As members are aware, the bill has two key purposes: first, to establish the electoral management board for Scotland on a statutory basis for its work in relation to Scottish local government elections; and secondly, to extend the Electoral Commission’s statutory remit to include local government elections in Scotland.

As I said during the stage 1 debate, the electoral management board will have the general function of co-ordinating the administration of local government elections in Scotland. For now, the board’s statutory remit relates only to local government elections. I hope that by the time of the next elections to the Scottish Parliament, which are likely to take place in 2016, the board’s remit will have been extended to cover Scottish Parliament elections.

It has been suggested that the board’s remit could be extended to include elections to other bodies, such as health boards or the Crofters Commission. Such bodies cover specific geographical areas or functions, and expertise and advice is available from local returning officers. As a consequence, I do not see the need for national co-ordination, although the matter can be kept under review as the board beds in.

The bill will establish the post of convener, who will have the power to give directions to returning officers, and a more limited power to give directions to electoral registration officers. There was debate during the earlier stages on whether the convener should be able to be named in court cases that arise as a result of such a direction.
Section 128(2) of the Representation of the People Act 1983 provides that

“A person whose election is questioned by the petition, and any returning officer of whose conduct the petition complains, may be made a respondent to the petition.”

Given that the board’s convener must be a returning officer, we are of the opinion that section 128(2) would apply. We do not intend that the procedure would have to be used, given that directions are intended to provide administrative consistency and will be given only where other options for agreement have been considered and exhausted. Overall, the board will play a valuable role in the elections process and in ensuring the smooth administration of elections.

On the implications for the Electoral Commission, the extension of the commission’s remit to cover local government elections in Scotland will help to address Gould’s concern about fragmentation of responsibilities. The provisions will ensure that there is consistent oversight and reporting on the administration of all general elections in Scotland.

The commission has already exercised some of those functions on an ad hoc basis; the bill will formalise that activity. For example, the commission conducted public awareness campaigns to support previous local government elections. The function of awareness raising will become more important in the lead-up to the 2012 elections. As members of the Local Government and Communities Committee are aware, the Scottish Government recently conducted testing on the design of the ballot paper that will be used next year. The results of the testing will be published shortly and are likely to reinforce the need for an information and awareness campaign on the single transferable vote system.

During consideration of the bill, the Electoral Commission expressed concern that the bill would not allow it to provide advice to candidates in local government elections. I undertook that my officials would discuss the issue further with the commission. I am pleased that as a result of those discussions the commission confirmed that it is content with the bill, and that no amendment was required at stage 2.

The bill represents a further step towards improving electoral administration and ensuring that the electoral system that is in place has, at its core, the clear objective of meeting the needs of the electorate.

I move,

That the Parliament agrees that the Local Electoral Administration (Scotland) Bill be passed.
he has a similar view. That approach should not only benefit all political parties but reassure the electorate that the system is run for their benefit, first and foremost.

By passing the bill, we will show that the Parliament can learn from past mistakes. It is with some regret that I express that the current Westminster Tory coalition had not ignored the lessons that we have learned and decided to press ahead with its ill-advised referendum on the same day as the forthcoming Scottish Parliament election. Let us hope that the arrogance of our UK Government does not cause us to have to address the aftermath of another electoral shambles in May. The lack of interest in the referendum may be the main reason why that will not happen.

However, today is about the bill, which is to be welcomed.

09:32

Alex Johnstone (North East Scotland) (Con): The bill is worthy legislation but will not take up much time in the chamber, I suspect. I hope that, at this moment, the clerks are vigorously phoning offices in other parts of the Parliament to ensure that those who are responsible for the next item of business are aware that it may arrive early.

Yesterday, I had the good fortune to find myself speaking at a conference along with Mr Willie Rennie. I travelled back to Edinburgh on the train last night in his company, during which time we took the opportunity to discuss and compare parliamentary procedure. He told me that, if such a piece of business as this debate were scheduled at Westminster and if a specific time were allocated, each member would ensure that they filled every second of the available time—I see Stewart Stevenson’s chest sticking out and rising to that opportunity.

It is one of the virtues of this Parliament that, when we have the opportunity to do things that are consensual and hold common interest across the parties, we can do so efficiently. The way that business has been truncated today and extra stage 3 debates have been timetabled because of the limited number of amendments is an indication of one of the things that we do better.

The bill covers part of the problems that we experienced in 2007. The electoral shambles that happened then crept up on many of us. Although there were concerns about there being three ballot papers and three different electoral systems in use on the same day, many people applied a great deal of thought in advance of that and believed that the system would work. The fact that it did not work demonstrated that we cannot cover every eventuality. That is why the bill may not achieve the objectives that we have set out for it. However, we have gone into the matter with open minds and with our eyes open and we have been determined to achieve the objectives that we set out at the start.

The bill has the function of implementing a significant part of the recommendations of the Gould report. For that reason, I welcome it and will be happy to vote for it later in the day.

There is a concern, which the previous speaker expressed, that we are about to do something similar again; that the alternative vote referendum, in conjunction with a Scottish Parliament election, might cause as yet unforeseen complications. I do not believe that that will be a problem. I believe that having three ballot papers on which electors are asked to mark a single X is not the same as the problem that we had whereby the differing electoral systems required an X on one paper and numbering of candidates on the other. I have faith in the Scottish electorate and I believe that they will not experience difficulties in the election that is about to happen.

However, having put that on the parliamentary record, it is now a hostage to fortune. I look forward to being hoist by my own petard at some time in the future. I support the bill.

09:35

Jim Tolson (Dunfermline West) (LD): I welcome the opportunity to open the debate for the Scottish Liberal Democrats. As a member of the Local Government and Communities Committee over the past few years, I have taken a great deal of interest in issues relating to local government elections. As a former councillor of 15 years’ experience, I have experienced quite a few elections myself.

This bill forms part of a response to the events of 2007, to which other members have alluded this morning. I share the sentiments of Alex Johnstone: the Scottish Parliament and Scottish local Government elections were, at the end of the day, quite shambolic. With such significant problems to overcome between the previous election and the next, I pay tribute to the significant work that has been done by committee clerks, fellow members of the committee—including David McLetchie, who is no longer on the committee, but sat through many of the deliberations—as well as the minister and his team. With only one minor amendment in today’s stage 3 proceedings, we must be doing something right. Who would have believed that political consensus would break out just a week before Parliament is dissolved?

Prior to the previous local government elections in 2007, I took the opportunity to attend a trial of the new counting and scanning machines. I
decided to test the system by removing one of the dummy ballot papers from one of the piles to see whether the system would highlight the anomaly. That caused some unease to the officials of the company giving the demonstration but, as they were determined to show how robust the system was, I was determined to test it. Despite their passing my test, we all know that the operation of their equipment and software was nothing short of shambolic on the night.

Recently, with other members of the Local Government and Communities Committee, I had the opportunity to see a demonstration of the new counting equipment and software. Although I am glad that a new system and software will be used for next year’s election, it could hardly be worse than the last. The demonstration that we recently attended did not give me any real confidence that the system is robust enough. We are being asked now to back a company that has not yet done any significant volume testing of its software and hardware. We are being asked to accept that all will be okay when volume testing is conducted in the autumn and we are being asked to accept that it will be alright on the night. I for one remain very sceptical.

One of the recommendations of the Gould report was to establish a chief returning officer for Scotland. However, the responses to the consultation in 2008 indicated that there was little support for that role. As a result, the Scottish Government is setting up an electoral management board for Scotland. I am grateful to the minister for the answer that he gave me on this matter when we last discussed the bill on 2 February. The Liberal Democrats consider that it would be beneficial for the electoral management board to have wider responsibilities for coordinating the administration of other elections in Scotland, particularly given the expertise that it will have in administration of elections.

In summary, the bill is a welcome step in making the electoral arrangements for Scottish local authorities more robust. It presents a much improved system for us. For that reason, the Liberal Democrats will be happy to give it our support at decision time.

09:39

Stewart Stevenson (Banff and Buchan) (SNP): The debate is perhaps an opportunity to look at the changing nature of how we run elections. If we go back to the UK election that took place in 1832, which is the earliest one for which I have been able to find records, 658 members of the House of Commons were elected and 827,776 people cast votes, so the number of votes per member of Parliament was just a wee bit over 1,000. That was a very different environment from the one in which we live now. Indeed, fewer votes were cast for each MP than we would now expect to be cast for each member of a local authority.

If we fast-forward to the Westminster election of 1945, we had multimember seats and seats for which the alternative vote or the STV system was used. We are looking at changing the electoral system for Westminster elections, but the Conservatives, in particular, will not be in favour of the multimember first-past-the-post system that Brian Donohoe proposed yesterday in a House of Commons debate as a replacement for the list system for Scottish Parliament elections because, of course, in 1922, when Churchill stood for re-election in Dundee, he came third in a two-member seat. He was defeated by a Scottish prohibitionist, Edwin Scrymgeour and by the Labour candidate. The results are not always what we expect.

In 1945, when three members were elected to the Combined Scottish Universities seat by STV, a form of alternative voting, the third person who was elected on the second ballot obtained only 4.15 per cent of the first preference votes and was elected despite losing their deposit. Therefore, the systems that we have had over the years can lead to various differences.

Moving forward to the general election of October 1974, the turnout in Scotland was 74.81 per cent. That was a highly memorable election. After it, Westminster had more nationalist members than it had Liberal members.

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Shame!

Stewart Stevenson: There were 13 Liberal members and 14 nationalist members, including three Plaid Cymru members and others. It is clear that, over the piece, there were changes in the way things were done. In 1945, it was a fortnight after the election before the results were known because, in days before the advent of the internet, the service vote took some logistical organisation.

I add to the commendation that there will be for Duncan McNeil’s contribution on the subject in October 2008, when he reported to Parliament on his committee’s deliberations. The committee’s work was vital in underpinning what we are discussing. Its report highlighted a general point that I and my colleagues and, I think, some others would make, which is that having different bodies and different parliamentarians responsible for the rules for different elections is a potential source of difficulty. It is certainly the case that in 2007 the Scotland Office did not cover itself in glory.

Even though a vote on the use of AV for Westminster elections is coming up shortly, it has not led to a single question from an elector to me
so far. The Scottish National Party has just completed two days in Glasgow at our party conference. In my hearing, the subject never arose, although it may have arisen in other people's hearing.

We have heard about some of the difficulties in 2007. It is certainly important that the Electoral Commission should report on how elections have gone. An illustration of when a report by the Electoral Commission might have been useful is the referendum that was held on 1 March 1979. I was at the count in Lothian. Members who are old enough to remember the campaign may remember that the "no" campaign bought lots of poster space. The posters had a picture of the ballot paper with the words "yes" and "no" on it. Opposite the word "no", instead of an X, the word "no" was written. More than 2,000 electors in Lothian chose to write the word "no" opposite the "no" option.

We might think that that was fair enough. Most of us here might think that the electors' intentions were relatively clear, and that is the normal test. However, on that occasion, the returning officer decided that, because the electors had written "no" opposite the word "no", those votes should count as a "yes". Being a campaigner for the "yes" campaign, I was not greatly upset by that decision, although I was astonished by it. On appeal, the returning officer of that count agreed that those votes would be counted as spoilt papers. That is an example to show that it was not just in 2007 that we have had difficulties; there have been previous occasions on which it would have been right and proper to examine what went on.

When we have complex elections, it is important that the electors know what is going on. One of the rules in the forthcoming election, as in all previous elections, prohibits election communications from referring to other elections, which might help people to understand the nature of other, simultaneous elections. That prohibition might be thought to be unhelpful and the Electoral Commission might have to look at that.

As someone who spent 30 years in computers, I will make a wee reference to the nature of some of the difficulties that might arise with computer systems. We computery people always used to apply a rule of thumb when we were given numbers relating to the throughput of a computer system. The rule of thumb was that marketing people always get estimates wrong by a factor of 10. It was the computer people's job to work out whether to divide or multiply. In some ways, that is exactly what part of the problem was in 2007. We did not anticipate that more than 20 people would be standing on some of the lists, and there was a limitation in the software. In Lothian, the number standing on the list exceeded that limit so there was a last-minute ad hoc redesign of the ballot form that caused the computer systems great difficulties. I hope that the stress testing that will take place in the autumn will focus on some of the more unlikely boundary conditions that might occur, because that is where computer systems almost invariably fail.

I am pleased to see the legislation coming through Parliament. I sniff not a whiff of dissent and I hope that the motion will be carried unanimously at decision time.

09:47

Duncan McNeil (Greenock and Inverclyde) (Lab): I am pleased to be taking part in the stage 3 debate on the Local Electoral Administration (Scotland) Bill. This is the latest piece of legislation and action by the Parliament and others in response to the difficulties and failures in the 2007 local government and Scottish Parliament elections.

Today's debate is in complete contrast to the type of debate that we had after the 2007 election. In my constituency, 1,100 people were denied the vote and, in some polling stations, the proportion of spoilt papers was in excess of 10 per cent.

It might be useful to remind ourselves about some of that debate and the recommendations and actions that flowed from that time. The Gould report has been mentioned, and the Local Government and Communities Committee's report of 2008 made recommendations and comments about a range of areas around the Scottish Parliament and local government elections. Many of the issues that gave us concern at that time have been addressed and committees of Parliament will have a scrutiny role. Many of those issues have been addressed and committees of Parliament will have a scrutiny role in the future. I hope that that role will be used to the full in the evaluation of the 2011 elections and the referendum that we face in a few weeks.

We addressed the issue of wider engagement in elections. In a good example of the Government of the day working with a committee of the Parliament, we held a major seminar in the chamber to address the challenges of voter turnout and registration.

Of course, we passed legislation to decouple the local government and Scottish Parliament elections. Also, deadlines for nominations for all elections were brought forward and are now set out in election law. Further changes—I hope that they are for the good—are expected in the Scotland Bill.
Like other members, I believe that the bill is another step in the right direction. It seeks to put in statute much of the good work that the electoral management board has under way on a non-statutory basis. In a recent evidence session, the Local Government and Communities Committee was given a flavour of that. We heard about the introduction of an annual publication of standards for returning officers, which is now in place. That will ensure good standards across Scotland. One consequence of the bill that will be passed today is that that will be extended to local government.

In its regular planning meetings, the electoral management board has agreed specific preparations and planning arrangements for the May elections. Counting officers and returning officers have submitted risk registers to the chief counting officer. Members will be pleased to know that none of that work indicates a level of risk that should worry us. Working together, parties such as the Electoral Commission and the Government have overseen the serious addressing and testing of the design guidance for voter material and the production of verification and count protocols for people to follow. All that should give help and advice irrespective of where it is needed in Scotland. We also have adjudication booklets and codes of practice on postal voting. Overall, the detailed level of planning and action in the bill gives hope for the future. It should address any lack of confidence in the general population about the election process in Scotland.

Before we get carried away with all that, I should mention the significant planning challenges that still remain. The UK referendum and the Scottish Parliament elections have different franchises and different rules on what should be counted, and how. That will impact on where the ballot can be counted. There is also the issue of postal voters receiving not one ballot paper on which to mark yes or no or to tick a box, but various coloured ballot papers and a whole range of information. We can only do our best to try to reassure people that they will be guided and supported through the process. I hope that we will be able to achieve that.

As I mentioned, the nature of the count will be affected. In recent evidence, the Local Government and Communities Committee was told that some declarations could be made between five and six o’clock in the morning. That made me wonder what the chamber wants by way of an overnight count. When declarations may not be made until five or six o’clock in the morning, is an overnight count still worth it? We may not be able to do anything about that now, having got to this stage. The various ballot papers have to be sorted out before the count on the Scottish Parliament elections can start. That is a significant challenge.

We may have an increased number of postal votes. That is not necessarily a bad thing. However, as the Local Government and Communities Committee heard in evidence, personal identifiers are an issue that impacts on the elderly in particular. At the last UK elections, more than 8,000 mainly elderly people in Scotland did not even have their ballot papers opened, perhaps because they got the day that they signed the form mixed up with their date of birth and put their date of birth in the wrong box.

There are other significant challenges, such as the impact of the Easter holidays and the royal wedding. However, I look forward to voting for the bill as yet another step in ensuring that we address the mistakes of the past, restore confidence in our elections and give voters, candidates and agents as good an election as possible.

09:55

Jim Tolson: Members will be aware that there are two key themes to this important bill, the first of which is the creation of the electoral management board. In deliberations in committee and in the chamber, we have heard that that is absolutely necessary to provide a much more cohesive and well-rounded view on how the election should be conducted to ensure that it is freer, fairer and more open in the future. The statutory function of the electoral management board is essential in ensuring that a free, fair and open election takes place and that it has, as the minister said, a smooth administration.

The smooth passage of the bill seems to concern Michael McMahon, but I do not share his concerns. Although it might not be the most exciting debate that we will ever have in the Scottish Parliament, it is necessary that we work together with co-operation across the parties. Alex Johnstone had a good discussion yesterday with my good friend Willie Rennie, who said that MPs would seek to fill every second of the debate. I have had a number of discussions with Willie Rennie about the differences between how Westminster operates and how the Scottish Parliament operates, and I have always told him how debates here are much better because they are much more concise and focused than those of our colleagues at Westminster.

As we all know, the election in 2007 did not go smoothly. It is to the great credit of many that the work that has been done in putting together the bill gives not just me but many others greater confidence that the forthcoming elections—especially the Scottish local authority elections next year, which we are focusing on in this debate—will be much more efficient than has hitherto been the case.
The second key theme of the bill is changes to the Electoral Commission. Although those changes are not as significant as the creation of the electoral management board, they are an important part of ensuring that the whole system works more efficiently. Having gone through the issues that were raised in the Gould report—the need to decouple the elections and many others—I feel that we have clearer information to give to the electorate on all the forthcoming elections. Sometimes, cluttering the picture with too many elections can lead to confusion and concern among voters—indeed, among many members—that we will end up with more spoiled ballot papers even than the number of votes that certain members have in their majorities. I welcome the testing of the ballot paper design that is to be undertaken by the Electoral Commission—that is good to see.

It was also good to see Stewart Stevenson giving us a history lesson. He told us that he was going back to 1892—what a memory that man has. However, very quickly—through his digital processes, no doubt—he fast-forwarded to 1945 and talked about multimember seats. The world did not fall apart in 1945 following the introduction of multimember seats, nor did it do so in 2007 following our local authority elections. In giving us the new history lesson that we seem to be getting from the SNP, Stewart Stevenson has a big task in trying to fill the boots of Christopher Harvie, who often gives us very good history lessons in the chamber. I do not know whether he will manage to do that—time will tell. I cannot conjure up the thought of Stewart Stevenson in plus fours, but let us leave that aside.

Stewart Stevenson: I have plus fours.

Jim Tolson: That worries me, Presiding Officer.

Ross Finnie (West of Scotland) (LD): Too much information.

Jim Tolson: I agree with my colleague that that is too much information.

The autumn stress testing of the new system will be absolutely crucial. I hope that I am proved wrong in thinking that the system will not be as robust as before, as it must be more robust than the system that we had before. I am grateful to Duncan McNeil for highlighting many of the issues that we went through at the committee stages of the bill.

I am certain that the bill will take us forward by many great steps, and I am pleased to support it on behalf of the Liberal Democrats.

09:59

Alex Johnstone: In my opening speech, I mentioned procedure, and I welcome the fact that the procedures that we use in the chamber have allowed me to upstage Michael McMahon by taking the opportunity before he can do so to thank the clerks and all who have been involved in the bill process. Legislation can sometimes be exciting. Sometimes, of course, it can be less exciting, but equally purposeful. This bill is an example of the latter category. I welcome all the hard work that has been done by the committee, the clerks and the bill team during the process.

I did not expect the debate to provide many revelations, but we heard one or two. Jim Tolson confessed that, in practice sessions at least, he has been interfering with the ballot. I accept that his objective was to find out whether it would be detected, but I hope that the practice does not become more widespread—another function that the Electoral Commission will have to keep an eye on, I suspect.

As Jim Tolson mentioned, Stewart Stevenson gave us a history lesson. The part that impressed me the most was the fact that, in 1945, a candidate standing for the Combined Scottish Universities seat—which had the responsibility of electing three members—got less than 5 per cent of the vote and lost his deposit but was elected in any case. I asked myself whether that person could have been a prototypical Liberal Democrat.

Stewart Stevenson: For the record, in those days, candidates required to get 12.5 per cent of the vote to keep their deposit. However, because the constituency elected three members, only a third of that figure was required, which is 4.17 per cent. The candidate who received 4.15 per cent of the vote failed that test but he—a Conservative—was elected anyway.

The Presiding Officer: You asked for it, Mr Johnstone.

Alex Johnstone: I stand corrected. However, I would say that, given the intervening time and what has happened in the past 12 months, it probably does not make a great deal of difference.

I thank Duncan McNeil for his contribution. In his role as convener of the Local Government and Communities Committee, he has had his finger on the pulse of this issue to a greater extent than many others. During this debate, he brought us back down to earth and explained how vital the objectives of the bill are. He rehearsed the situation that led to the bill being brought forward and pointed out how hundreds of thousands of Scottish people’s votes were probably not included in the electoral process, probably without their knowledge. Although the result is acceptable, because no pattern connected to political support was involved in the failure to register votes, the problem of the lack of inclusion remains. That, in itself, undermines the efforts that are going on to
increase engagement in the electoral process. We have to thank Duncan McNeil for bringing us back down to earth and reminding us why it is important that we make progress on the issues that the bill deals with.

I welcome the bill and look forward to voting for it at 5 o’clock.

10:03

Michael McMahon: I am quite pleased that the debate took the course that it did and was not as uninteresting as some might have feared. The opening speakers stuck to what was essentially a dry subject. Following that, Stewart Stevenson gave us a six-minute analysis of obscure election results from British history and then spent a couple of minutes telling us how his computer knowledge would fix the technicalities of any future election process.

I agreed with one thing in Stewart Stevenson’s speech, which was that the establishment of an electoral management board on a statutory basis to supervise Scottish local government elections should assist local authorities to perform their functions by promoting best practice. We should all welcome that. Along with the extension of the Electoral Commission’s remit to cover local government elections in Scotland, that is a welcome step.

I join Alex Johnstone and other members in noting the great degree of consensus on the bill’s provisions, although—as was evident from Duncan McNeil’s speech—many contentious issues were involved. Duncan McNeil is entitled to be given credit, given the range of concerns that existed, for establishing cross-party agreement and helping to sustain it throughout the deliberations on the bill.

The EMB will greatly benefit many people by promoting best practice and providing information, advice and training for local government elections. The Gould report made a series of recommendations to improve electoral administration, and rightly recognised as an omission the fact that local government elections are the only elections in Scotland for which the Electoral Commission has no formal remit to provide support. The extension of the commission’s remit to include local government elections in Scotland is the correct move.

The Electoral Commission indicated that the extension to its statutory remit would provide greater accountability and transparency in its role, and would cover performance standards for returning officers in local elections. The implementation of a system of international and other observers for local government elections would be another potential step.

The bill is a progressive move, which I wholeheartedly endorse. There will always be issues on which one or more of the parties cannot find common ground with the rest, but we have fortunately reached a consensus on this one, and it is good that the Parliament can come together on it. The next few weeks will bring few other opportunities for agreement, so we should make the most of this opportunity while we can and unite around the provisions in the bill at decision time, just as we have throughout its passage.

10:06

Jim Mather: We have less than a week left of the current parliamentary session. We have debated many issues, and there has been some agreement and some disagreement, but all with the intention of improving the lives of people in Scotland.

Although the Local Electoral Administration (Scotland) Bill may not be the most newsworthy piece of legislation that we have considered, it will make changes to give the people of Scotland the electoral system that they deserve: a system that is properly administered to ensure that votes can be properly cast and accurately counted. There is consensus on the bill’s content, and I am grateful to stakeholders and members for their support before and during the bill proceedings. I am sure that members in the next session of Parliament will want to continue those good relationships and continue the process of improving electoral administration in Scotland.

I was struck by Michael McMahon’s opening remarks regarding consensus, and the risk that it may reduce the content of speeches and limit what can be said. Perhaps that shows that we are reaching the new politics, where discussion, conversation and the involvement of stakeholders and real people can reduce the disagreement when we get to stage 3 debates such as this one. That is exactly what we tried to do with the Arbitration (Scotland) Bill, and we took the Census (Scotland) Order 2010 through by getting people involved at an earlier stage.

There is scope for maintaining that approach and for the EMB to keep it going. I anticipate that the board will have an annual meeting that will be open to all returning officers and electoral registration officers and will enable issues to be discussed more widely with stakeholders. That will ensure that we have a crucial feedback loop, which will also allow feedback to flow from the EMB when it reports to Parliament.

As members know, the board will report to Parliament on the performance of its statutory functions, and it will then be for Parliament to decide whether it wishes to have a detailed
discussion on the report's content, which would provide the opportunity to raise particular issues with the convener. However, it is important to stress that the board is independent and must be seen to be separate from political influence.

It seems that we have made considerable strides forward. I was interested to hear about the chance conversation between Alex Johnstone and Willie Rennie; it appears that we have perhaps evolved to handle consensus a bit more effectively here than they have in Westminster. That might be because we are fewer in number, we represent a small country and we can get everyone in the room to debate the issues, or because we increasingly have open minds and a willingness to address unintended consequences by taking a more structured and thoughtful approach to the process.

I was taken by Jim Tolson's one-man stress testing of the new system. He is building a bit of a track record there and maintaining his scepticism. To be fair, that scepticism is a useful catalyst. It is a prompt for further motivation to all concerned to ensure that the system is as resilient as we want it to be and that it passes the test of fewer spoiled ballot papers.

I was taken by Stewart Stevenson, who will ably pick up the baton that is about to be passed to him by Chris Harvie, and who gave us a thoughtful speech. The numbers were a wee bit dodgy, mind you. He said that in the 1832 election, 658 members garnered 827,000 votes, which was about 1,000 a head. However, that calculates as closer to 1,200 a head. Nevertheless, the bill would pass the Thomas Muir of Huntershill test. It will make the system much more representative and much more able, so he would approve of what we are doing.

I was also taken by Stewart Stevenson's comment about marketing people who sell computer systems to the public and private sectors sometimes being wrong by a factor of 10. I thought long and hard about that, because having been a marketing man who was involved with IBM and ComputerLand in selling to Mr Stevenson in his persona at the Bank of Scotland, I would have to be the exception to that. I will talk to him about that later.

I am grateful for Duncan McNeil's contribution, as I have been throughout the process. He gave a thoughtful and useful overview of what the bill is all about. I welcome the enhancement and development of the committee's scrutiny role and the part that it has played with Government in the wider engagement, such as the seminar in the Parliament to discuss highly relevant issues such as voter turnout and voter registration. He recorded the fact that the bill is another step in the right direction and will consolidate and put on a statutory basis much of the good ad hoc work that has been done. He highlighted the issues of risk management, which is being addressed, design guides and adjudication booklets. He set out the essential overall purpose of addressing any residual lack of confidence out there while being prepared to face the planning and logistical challenges. He pointed out the need for feedback to ensure that we improve all the aspects and at least leave a clean pass to our successors to do exactly that when they re-engage with the issue in future.

We are in an interesting place. We still have the AV referendum, which is a reminder of the benefit of increased electoral autonomy and other levels of autonomy. I noted Stewart Stevenson's comment that he has heard not a single question raised by the public on the matter, which has been my experience, too.

We have put together a very tidy piece of work. It might not be the most exciting bill, but it is significant, as Duncan McNeil set out. It is a function of excellent work by the committee. We are grateful for the way in which the committee worked together on the issue and to the witnesses, who gave us the inputs that allowed us to refine the bill and keep it on track. We are grateful to the committee clerks. I am particularly grateful to the bill team, who were absolutely impeccable in guiding me through the process and helping me make my contribution.

With that, I commend the motion: that the Local Electoral Administration (Scotland) Bill be passed by the Parliament.
Local Electoral Administration (Scotland) Bill
[AS PASSED]

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Local Electoral Administration (Scotland) Bill
[AS PASSED]


PART 1
ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Establishment of Board etc.

1 Electoral Management Board for Scotland

(1) There is established a committee to be known as the Electoral Management Board for Scotland.

(2) The Board has the general function of co-ordinating the administration of local government elections in Scotland.

(3) That function includes—
   (a) assisting local authorities and other persons in carrying out their functions in relation to local government elections,
   (b) promoting best practice in local government elections by providing information, advice or training (or otherwise).

2 Membership

(1) The Board is to have—
   (a) a convener, who must be a returning officer,
   (b) 8 other members of whom—
      (i) 5 are to be returning or depute returning officers,
      (ii) 3 are to be electoral registration officers.

(2) The Scottish Ministers are to appoint the convener.

(3) The convener is to appoint the other members.
(4) When appointing members, the convener is to have regard to the desirability of the membership taken as a whole having a broad range of experience in relation to different local authority areas (including different kinds of areas) throughout Scotland.

3 **Duration of appointment**

   (1) A person is to be appointed to the Board for a period of 4 years.
   (2) A person may be reappointed to the Board (once or more).

4 **Procedure etc.**

   (1) It is for the Board to regulate its own procedure (and quorum).
   (2) The convener may (with the agreement of the other members of the Board) invite a person to attend a meeting of the Board for the purpose of providing advice or otherwise assisting the Board in carrying out its functions.

**Directions**

5 **Directions to returning officers**

   (1) The convener may give directions in writing to returning officers about the exercise of their functions in relation to—
      (a) local government elections generally, or
      (b) a particular local government election.
   (2) A direction may require a returning officer to provide the convener with information.
   (3) A returning officer to whom a direction is given must comply with the direction.

6 **Directions to electoral registration officers**

   (1) The convener may give directions in writing to electoral registration officers about the exercise of their functions in relation to a particular local government election.
   (2) But a direction is of no effect if it is inconsistent with any direction given under section 52 of the 1983 Act.
   (3) An electoral registration officer to whom a direction is given must comply with the direction.

7 **Consultation before giving direction**

   Before giving a direction under section 5 or 6, the convener must consult—
      (a) the other members of the Board,
      (b) the Electoral Commission.

**Annual report**

8 **Annual report**

   (1) The convener must, as soon as practicable after the end of each financial year, prepare a report on the carrying out of the Board’s functions during the year.
(2) After securing the Board’s approval of the report, the convener must—
   (a) lay the report before the Scottish Parliament, and
   (b) send a copy of the report to the Scottish Ministers.

Interpretation

5  9 Interpretation of Part 1
In this Part—
   “the 1983 Act” means the Representation of the People Act 1983,
   “convener” means the convener of the Board,
   “depute returning officer” means a person appointed under section 41(2) of the
   1983 Act,
   “electoral registration officer” means an officer appointed under section 8(3) of
   the 1983 Act,
   “local government election” has the meaning given in section 204(1) of the 1983
   Act,
   “returning officer” means an officer appointed under section 41(1) of the 1983
   Act.

PART 2
ELECTORAL COMMISSION: LOCAL GOVERNMENT ELECTIONS

Functions of Commission

10 Reports on elections
In section 5 of the 2000 Act (reports on elections and referendums), after subsection
(2A) insert—
   “(2B) After an ordinary election of councillors for local government areas in
   Scotland, the Commission must prepare and publish (in such manner as the
   Commission may determine) a report on the administration of the election.”.

11 Electoral Commission representatives and observers
   (1) In section 6A(5) of the 2000 Act (elections which may be attended by Commission
       representative), after paragraph (e) insert—
       “(ea) a local government election in Scotland;”.
   (2) Section 6B(3) of that Act (observation of local government elections in Scotland not
       permitted) is repealed.
   (3) In section 6C(3) of that Act (accredited observers: individuals), after “6F” insert “or, in
       relation to a local government election in Scotland, section 6G”.
   (4) In section 6D(4) of that Act (accredited observers: organisations), after “6F” insert “or, in
       relation to a local government election in Scotland, section 6G”.
   (5) In section 6F of that Act (code of practice)—
(a) in subsection (1), after “6A” insert “(other than a local government election in Scotland)
(b) in subsection (10), after “section” insert “and section 6G”.
(6) After section 6F of that Act insert—

“6G Code of practice on attendance of observers at local government elections in Scotland

(1) The Commission must prepare a code of practice on the attendance of—
(a) representatives of the Commission;
(b) accredited observers; and
(c) nominated members of accredited organisations,
at local government elections in Scotland.
(2) The code must in particular—
(a) specify the manner in which applications under section 6C(1) and 6D(1) are to be made to the Commission;
(b) specify the criteria to be taken into account by the Commission in determining such applications;
(c) give guidance to relevant officers (within the meaning of section 6E) as to the exercise of the power conferred by subsection (1) of that section;
(d) give guidance to such officers as to the exercise of the power mentioned in subsection (2) of that section as it relates to a person having the permission mentioned in subsection (1) of that section;
(e) give guidance to such officers as to the exercise of any power under any enactment to control the number of persons present at any proceedings relating to an election as it relates to a person having such permission;
(f) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations on the exercise of the rights conferred by sections 6A, 6B, 6C and 6D.
(3) The code may make different provision for different purposes.
(4) Before preparing the code, the Commission must consult the Scottish Ministers.
(5) The Commission must lay the code before the Scottish Parliament.
(6) The Commission must publish the code (in such matter as they may determine).
(7) The following persons must have regard to the code in exercising any function conferred by section 6A, 6B, 6C, 6D or 6E—
(a) the Commission;
(b) representatives of the Commission;
(c) relevant officers (within the meaning of section 6E).
(8) The Commission may at any time revise the code.
(9) Subsections (4) to (7) apply in relation to a revision of the code as they apply in relation to the code.”.
(7) Sections 8 to 11 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

12 Consultation on changes to electoral law

In section 7(2) of the 2000 Act (instruments to be consulted upon), after paragraph (i) insert—

“(j) an order under section 3(1) of the Local Governance (Scotland) Act 2004.”.

13 Performance standards

(1) In section 9A(6) of the 2000 Act (setting of performance standards), after paragraph (e) insert—

“(f) a local government election in Scotland.”.

(2) Sections 1 to 3 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

14 Advice and guidance

(1) Section 10 of the 2000 Act (giving of advice and assistance) is amended as follows.

(2) In subsection (7), the words “other than a local government election in Scotland” are repealed.

(3) Subsections (8) to (10) are repealed.

15 Education about electoral systems

(1) Section 13 of the 2000 Act (promotion of public awareness of electoral and government systems) is amended as follows.

(2A) Subsections (3) and (7) are repealed.

(4) In subsection (8), for “by virtue of an order made by the Scottish Ministers under subsection (7)” substitute “in relation to local government elections in Scotland”.

Financing and reports etc.

16 Financing of Commission

(1) The 2000 Act is amended as follows.

(2) In section 13—

(a) in subsection (8), the words from “but” to “Ministers” are repealed,

(b) subsections (9) to (11) are repealed.

(3) After section 13 insert—

“13A Reimbursement of costs by Scottish Ministers etc.

(1) The Scottish Ministers must reimburse the Commission for any expenditure incurred by them which is attributable to the exercise of the functions mentioned in subsection (2).
(2) The functions are the Commission’s functions under this Part in relation to local government elections in Scotland.

(3) The total expenditure incurred in any financial year by the Commission in performing the functions mentioned in subsection (2) must not exceed such sum as is for the time being specified by an order made by the Scottish Ministers.

(4) The power to make an order under subsection (3) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

17 Reports on Commission’s functions

(1) Schedule 1 to the 2000 Act is amended as follows.

(2) In paragraph 20 (reports), after sub-paragraph (2) insert—

“(3) The functions referred to in sub-paragraph (1) do not include the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

(3) After paragraph 20 insert—

“20A(1) The Commission must, as soon after the end of each financial year as may be practicable, prepare and lay before the Scottish Parliament a report about the performance of the functions mentioned in sub-paragraph (3) during that financial year.

(2) On laying the report, the Commission must publish the report in such manner as they may determine.

(3) The functions are the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

17A Consequential amendments

The Scottish Public Services Ombudsman Act 2002 is amended as follows—

(a) in section 7 (restrictions on investigations), after subsection (6C) insert—

“(6D) The Ombudsman must not investigate action taken by or on behalf of the Electoral Commission unless the action taken concerned local government elections in Scotland.”.

(b) in Part 2 of schedule 2 (listed authorities), after paragraph 91B insert—

“91C The Electoral Commission.”.

Interpretation

18 Interpretation of Part 2

In this Part, “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000.
PART 3
GENERAL

19 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, consequential, transitional, transitory, or saving provision (including by modifying an enactment) as they consider necessary or expedient for the purposes of or in connection with this Act.

(2) Subject to subsection (3), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) A statutory instrument containing an order under this section which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

20 Commencement

(1) This Act (except this section and sections 19 and 21) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act.

21 Short title

The short title of this Act is the Local Electoral Administration (Scotland) Act 2011.
Local Electoral Administration (Scotland) Bill

[AS PASSED]


Introduced by: John Swinney
On: 7 October 2010
Bill type: Executive Bill