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.

\(^1\) http://www.electoralcommission.org.uk/document-summary?assetid=13223
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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.
These documents relate to the Local Electoral Administration (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 7 October 2010

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
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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:**

<table>
<thead>
<tr>
<th>Administrative support post</th>
<th>£20k</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy development post</td>
<td>£40k</td>
</tr>
<tr>
<td>Accommodation (based on serviced office let £400 per person per month)</td>
<td>£10k</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£70k</strong></td>
</tr>
</tbody>
</table>

**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
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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>£000s</td>
<td>£000s</td>
<td>£000s</td>
<td></td>
</tr>
<tr>
<td>Guidance</td>
<td>60</td>
<td>60</td>
<td>–</td>
</tr>
<tr>
<td>Public awareness/information</td>
<td>600 – 1,200</td>
<td>600 – 1,200</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.”