LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) BILL

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
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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 Report1 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.

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. 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. 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.

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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 outwith 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 (“LEARS”) 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.
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POLICY MEMORANDUM


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