INTRODUCTION

Representatives of the Electoral Management Board (EMB) have been asked to appear as witnesses before the Referendum (Scotland) Bill Committee on 16 May 2013 to provide evidence for the Committee's consideration. This paper has been prepared to assist the Committee in its preparation for the meeting. It introduces the EMB, outlines the role of the Convener in the Referendum process as Chief Counting Officer and then offers a series of comments on the Referendum Bill. Comments on the Bill are general in nature, although more detailed comments on individual clauses, based on a review of the Bill by the SOLAR (Society of Local Authority Lawyers and Administrators in Scotland) Elections Working Group are available and will be submitted to the Government.

THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

The Electoral Management Board for Scotland (EMB) was created by the Local Electoral Administration (Scotland) Act 2011, which gave the Board "the general function of co-ordinating the administration of Local Government elections in Scotland." Consisting of Returning Officers, their Deputies and Electoral Registration Officers, the EMB is under the leadership of a Convener who is appointed by Ministers. Specialist advice is supplied by professional organisations of electoral experts, the Scottish and UK Governments and the Electoral Commission.

With respect to local government elections the Convener has a power of direction over Returning Officers and Electoral Registration Officers to promote best practice in the administration of elections and support the electoral community. The focus of activity is ensuring that the interests of the voter are at the centre of all decision making. In 2012 a range of activities were undertaken to support Returning Officers and Electoral Registration Officers in the delivery of the Local Government elections. This included training, the production of guidance material, negotiation with suppliers and the provision of consistent forms. These were widely appreciated by both the electoral professionals and suppliers including Royal Mail and the eCounting contractor.

The Board is composed of eight members; five are Returning Officers (or their Deputies) and three are Electoral Registration Officers. These are appointed by a Convener, who is in turn appointed by Scottish Ministers following a process of open competition. Advisors from the professional associations that work in electoral
administration, SOLAR and the AEA, attend the Board. The Electoral Commission, the Scottish Government, Scotland Office and COSLA also have representatives at each meeting, acting as official advisors to provide support and advice.

THE INTERIM ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

The EMB was set up on an interim basis in November 2008 as an initiative of the four professional associations responsible for electoral activity in Scotland – SOLAR, the SAA, SOLACE and the AEA. The establishment of the Board was supported and promoted by the Electoral Commission.

This Interim Board was a reaction by the Electoral Community to the issues that arose in the delivery of the combined elections of May 2007 when the Scottish Parliamentary Elections were combined with the Local Government elections. In particular, it was a reaction to the Electoral Commission’s report *Electoral Administration in Scotland 2008*, which in itself was the end of a deliberative process following the 2007 elections.

Operating on clear principles of promoting a consistent national approach to electoral administration and simplifying decision making – both aiming to ensure that the interests of voters were kept at the heart of all electoral activity – the IEMB supported the Regional Returning Officer for Scotland in the delivery of the European Parliamentary Elections in 2009. It also offered support in terms of common forms and other guidance in the UK Parliamentary Elections in 2010. 2011 saw the IEMB support the Regional Counting Officer, in the delivery of the UK Referendum on voting systems for the Westminster Parliament which, in Scotland, was combined with the Scottish Parliamentary elections.

THE EMB AND THE REFERENDUM

The Referendum Bill identifies the Convener of the EMB as the Chief Counting Officer for the Referendum, with specific duties:

“The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act” (section 6(1) – emphasis added)

The Bill has the CCO appointed by Ministers and she then appoints a counting officer for each local government area. The CCO authorises any public announcements with respect to results and must, for the whole of Scotland, certify—

(a) the total number of ballot papers counted, and

(b) the total number of votes cast for and against each proposal.
The CCO can issue directions to Counting Officers and may require a council to provide, or ensure the provision of, such property, staff and services as may be required.

THE EMB’S APPROACH TO THE REFERENDUM

The referendum should be well-run and produce results that are accepted as accurate. The aim is to declare “a result that everyone will trust” – there must be no question about the integrity or accuracy of the process. To achieve this, guiding principles are that:

- the referendum should be administered efficiently and produce results that are accepted as accurate; and
- there should be no barriers to voters taking part.

In practice the Convener of the EMB, as the CCO designate, is taking lessons from last year's local elections, where the EMB had a statutory role, and from the UK Referendum in 2011 where the Convener was Regional Counting Officer. Consistency is important – voters need to have the same experience throughout the whole of Scotland and the EMB always aims to achieve consistency via consensus if possible with direction when necessary. Local variation should be an exception and would have to be well justified and never agreed if there is any risk to clarity or integrity.

CHIEF COUNTING OFFICER WORKSTREAMS

In support of these duties the Convener, anticipating a role as CCO, has initiated a number of workstreams including:

- **Guidance** – drafting guidance, direction, forms and information for Counting Officers;

- **Governance** – putting in place effective and robust project management and risk management arrangements, with regular performance management and monitoring of Counting Officers;

- **Count collation** – providing a technical solution for the gathering of the 32 tallies from the Counting Officers to compile a national result; and

- **Count declaration** – planning an event at which the result will be declared.

These tasks will be the sole responsibility of the CCO. However the Convenor of the EMB is using the expertise and resources of the Board to support her in these tasks as a Programme Management Board.
EARLY CONSULTATION

The EMB has valued early consultation and engagement with Scottish Government as the Bill has been developed. The SOLAR Elections Working Group made a detailed set of comments on the content and approach of the draft bill. These were supported by the EMB. Some of these comments have been incorporated into the Bill that is currently being considered.

GENERAL COMMENTS ON THE REFERENDUM BILL

Once the Bill was published, the Convener requested that the SOLAR Elections Working Group hold a workshop at which the provisions of the Bill could be examined by the country’s experts in electoral administration and legislation. As a result of this work SOLAR have offered some comments through the EMB. SOLAR considered the Bill in the light of its earlier comments on the draft Bill. Its comments are both general and specific and are offered to the Committee to prompt discussion at this evidence session.

The context in which these discussions have been held and these comments generated is that of the objectives above: a clear, consistent process is required in which every voter is able to take part and trust. To give a flavour of the issues discussed by SOLAR, some general comments are as follows:

The declaration of results – liaison arrangements between the CCO and COs for the count need to be the subject of consultation, with clarity on the appropriate sequencing of local and national declarations. It needs to be clear that there is only a national result. A local tally in isolation must always be held discrete from the national result. (section 6(3))

Fees and Charges – early consultation on the draft Fees and Charges Order is essential to enable proper planning for the conduct of the poll. There must be adequate and appropriate resources made available to Counting Officers and to the Chief Counting Officer which reflect the resources needed to deliver this event and take account of local circumstances of geography and scale. (section 8)

A Referendum Timetable – a timetable with key milestones as is used in elections legislation is a major omission and should be inserted into the Bill. This greatly aids planning and preparation and is a valuable resource for both administrators and campaigners.

The Ballot Paper – the ballot paper as specified in schedule 1 stipulates that official mark should be printed on back of the ballot paper. The official mark should be printed on the front of the paper as is usual at elections to facilitate identification of doubtful ballot papers at the count without the need to turn each ballot paper over to check for the official mark.
Days of public thanksgiving or public mourning – days of public thanksgiving or public mourning should be disregarded when calculating the cut-off date for registration, as in para. 2(1)(d) of Schedule 1 to the Scottish Local Government Elections Order 2011. (schedule 2, section 18(2))

An Index – An index or contents page for the conduct rules would be a useful addition, as contained at the start of Schedule 2 to the Parliamentary Voting System and Constituencies Act 2011. (schedule 3)

Provision of rooms – not all public authorities mentioned may be aware of their stated obligation to provide a room free of charge if asked. All such bodies should be advised of this provision in due course, particularly those to whom this obligation will be new. The CO has a right under this rule to use, free of charge, for the purpose of polling and counting, any meeting room which it is the practice to let for public meetings, and which is maintained wholly or mainly by a public authority with mixed or no reserved functions. (schedule 3, Rule 7(3))

Polling – the PO should be given power to limit the total number of persons in the polling station at any one time, given the potentially large number of persons who will have the right to attend at a polling station under Rule 15. (schedule 3, Rule 17(1))

Attendance at Count – Schedule 3, Rule 29(2) should be amended to “The counting officer must give notice to observers attending the count of the time and place at which the counting officer will begin to count the votes”. The public are not permitted into the count so it makes sense that notice should be given by the CO to those entitled to do so.

Marked Registers – It was noted that the new Bill provides for a designated organisation (i.e. a lead organisation) to request copies of the marked polling lists. The implications of this need to be considered.

In addition to these general comments, SOLAR has shared with the EMB a set of comments on many of the clauses of the Bill. These will be submitted to the Scottish Government for consideration as the Bill progresses through Parliament. However, for the purposes of this session they are not appropriate for discussion as they are often very detailed and specific.

SUMMARY

Under the Bill the Convener of the EMB will have the role of Chief Counting Officer (CCO) ultimately responsible for the consistent, effective delivery of the referendum. The referendum must be well-run and produce results that are accepted as accurate. The aim is to declare “a result that everyone will trust”, with no question about the integrity or accuracy of the process. To achieve this, the guiding principles are that:

- the referendum should be administered efficiently and produce results that are accepted as accurate; and
there should be no barriers to voters taking part.

The current Bill has been examined in the light of these principles by the professionals within SOLAR and overall it achieves these aims. However, there are many specific comments that will be submitted to the Scottish Government for consideration as the Bill proceeds through Parliament. The EMB has welcomed the opportunity to engage with Government on the terms of the Bill and has valued the consultation that has already been undertaken as the draft Bill was prepared and developed.

13 May 2013