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Scottish Elections (Franchise and Representation) Bill: Follow up to evidence session

Dear Convener,

Thank you again for the opportunity to provide oral evidence to the Committee in support of its consideration of the Scottish Elections (Representation and Reform) Bill. The Electoral Management Board for Scotland (EMB) had already submitted written evidence to the Committee, which is attached for reference. During the evidence session I agreed to provide further information to the Committee on matters that arose during discussion relating to the provisions of the Bill. This information is addressed below.

Requirement for the EMB to become a body corporate

During the evidence session there was discussion of why the EMB should become a body corporate as proposed in the Bill. This was addressed to some degree in the written evidence provided to the Committee in paragraphs 39-49 but I will provide a summary here. Since its creation by the Local Electoral Administration (Scotland) Act 2011 while the general function of the EMB has not changed, its role, position in the organisational infrastructure that delivers elections in Scotland and the need for the intervention of the EMB have grown substantially. As in the 2011 Act, the EMB exists to coordinate the administration of devolved elections in Scotland, through assisting Returning Officers, Electoral Registration Officers and other persons in carrying out their functions and through the promotion of best practice in elections. The need for such coordination and intervention has grown due to the increased complexity of electoral processes, new legislation (with increasing divergence between the rules in UK and Scotland) and, most importantly, finance and resource constraints on local authorities. With respect to the last point the EMB has become increasingly concerned about the capacity and resilience of the sector, as has the Electoral Commission, and much of the EMB's anticipated work programme is focussed on building resilience and developing the capacity of the sector. With multiple demands on their staff and time, councils find it very challenging to release the resources which are needed to ensure that robust elections can be offered.

The future work of the EMB should see it develop its activity across a number of workstreams supporting and developing the capacity of ROs and EROs. To deliver this work will require additional staff and the deployment of specific resources. However, the current structure of the EMB as a statutory committee is such that the EMB as such is unable to employ staff, appoint consultants or enter into contracts. It has worked around this in recent years through co-operation with the City of Edinburgh Council which hosts the Board secretariat, but this is not an ideal solution nor is it appropriate as the EMB grows.

The EMB has also taken a lead role in the procurement of the eCount solution for the local government election in 2017 and 2022. It is similarly leading on the procurement of the system to be deployed in 2027. In terms of governance it may be

appropriate for the EMB to contract for the system on behalf of the 32 local authorities. However, with no individual legal personality this has not been possible, so while the EMB is intimately involved in the procurement it is the Scottish Government that contracts acting as an agent for the 32 councils.

Becoming a body corporate will allow the EMB more successfully to do what is needed to support ROs, EROs and ultimately the voter. That work needs staff and resources to be devoted to the work and to employ such staff and manage such resources the EMB needs a new structure.

Constitution of the EMB

At the evidence session I noted that the EMB was working closely with Scottish Government colleagues to develop an appropriate “constitution” for the EMB as a body corporate to ensure that the structure, remit and objects of the new body corporate were appropriate, would not limit the work of the Board, would provide suitable governance and controls and maintain the independence of the EMB. I anticipate that this work can be concluded within 3 months, as I stated at the evidence session, with the constitution of the EMB being addressed in a Schedule to the current Bill. Work is required on several points, some of which are already dealt with in the 2011 Act, some in the current Bill but others would need to be picked up in such a Schedule. Overall the “constitution” would need to cover at a minimum:

- The status of the EMB and its property;
- The powers of the EMB;
- Term of office etc. of Board Members;
- Term of office etc. of the Convener;
- Remuneration of the Convener and Board;
- The appointment of Depute Conveners;
- The delegation of work to subcommittees and their status;
- Procedures and proceedings of meetings;
- The employment and remuneration of staff; and
- Political restrictions on staff.

Accountability of the EMB

Within all of these discussions about the status of the EMB I am anxious to state and preserve appropriate lines of accountability for the EMB. For all of those involved in the administration of elections the interests of the voter must be held central to all planning and activity. It is fundamental that structures and processes focus on operating elections with give results in which the voter, or at least a reasonable voter, can have full confidence. There can be no perception of political bias, interference or control. This position is reflected in the statutory role of Returning Officers, for example, which is separate from their local authority employment, functions and lines of control. While an individual who is a Returning Officer may also have a position as an officer of a local authority, as Returning Officer they have no accountability to their local authority. The RO is accountable only to the courts. As the EMB Convener has a power to direct ROs and EROs that role similarly must be independent of any actual or perceived political control. The Convener of the EMB must not be accountable to politicians. It is suggested, therefore, that the most appropriate accountability of the EMB would therefore be to the Corporate Body of

the Scottish Parliament. The EMB, like any other public body or organisation, must be accountable for the discharge of its duties, but its accountability should not be directly to a political authority or source so that it can objectively be demonstrated that politicians have no control over those who deliver the electoral events which confirm their election to office.

Postponement of Elections

There was discussion at the evidence session around the mechanics of postponing elections, provision for which is made in the Bill. Robert Nicol, who also attended the Committee representing the Electoral Registration Committee of the Scottish Assessor's Association, and I understand that he will be making a separate response to you providing some additional information on this area of the Bill. The issues to be considered will differ depending on the point during the timetable when the decision to postpone is cancelled, but having discussed the matters with Robert the approach taken where there is the death of a candidates following the close of nominations may provide an appropriate model in which the poll is countermanded and a completely fresh election is run at a future date.

I would again emphasise my position stated at the Committee that a period of postponement of **four weeks** or more should be the minimum, especially where there is an eCount scheduled, in order to allow for contractors to manage the rescheduling of equipment and staff and for venues to be booked.

Conclusion

The EMB has once again warmly welcomed the opportunity to engage with the Committee to support its consideration of the Bill. As Convener I will always be pleased to discuss more fully any of the points in the response, in this additional material and in general to engage in broader discussions around the practical delivery of electoral activity in Scotland.