



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 8 December 2010

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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CONTENTS

	Col.
DECISIONS ON TAKING BUSINESS IN PRIVATE	3911
LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) BILL: STAGE 1	3912

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
30th Meeting 2010, Session 3

CONVENER

Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

Patricia Ferguson (Glasgow Maryhill) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Alasdair Morgan (South of Scotland) (SNP)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Malcolm Chisholm (Edinburgh North and Leith) (Lab)

Alex Johnstone (North East Scotland) (Con)

Alison McInnes (North East Scotland) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bruce Crawford (Minister for Parliamentary Business)

Stephen Sadler (Scottish Government Constitution Directorate)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Communities Committee

Wednesday 8 December 2010

[The Deputy Convener *opened the meeting at 10:00*]

Decisions on Taking Business in Private

The Deputy Convener (Bob Doris): Welcome to the 30th meeting in 2010 of the Local Government and Communities Committee. Members and the public should turn off all mobile phones and BlackBerrys.

We have received apologies from Duncan McNeil, Patricia Ferguson and John Wilson, who cannot be with us today due to the inclement weather. I thank members of the committee who have made strenuous efforts to turn up; that is appreciated.

Under agenda item 1, do members agree to consider in private a draft report on the Scottish Public Services Ombudsman's draft statement of complaints-handling principles at next week's meeting?

Members *indicated agreement.*

The Deputy Convener: Do members agree to consider the committee's work programme in private at a future meeting?

Members *indicated agreement.*

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 McKechnie 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 McKechnie 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 McKechnie 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 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.

10:33

Meeting continued in private until 12:02.

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