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THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND (EMB)

Written evidence presented to

**The Local Government and Housing Committee of Senedd Cymru
in their consideration of the**

Elections and Elected Bodies (Wales) Bill

**EMB | Electoral Management
Board for Scotland**

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Background - The Reform Bill Committee of Senedd Cymru

1. The [Elections and Elected Bodies \(Wales\) Bill](#) has been referred to the Local Government and Housing Committee for Stage 1 scrutiny of the general principles of the Bill.
2. Terms of reference for the committee's consideration of the Bill have been set and these include:
 - The general principles of the Elections and Elected Bodies (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives (see below for further information about the Bill).
 - Any potential barriers to the implementation of the Bill's provisions, and whether the Bill and accompanying Explanatory Memorandum and Regulatory Impact Assessment take adequate account of them.
 - Whether there are any unintended consequences arising from the Bill.
 - The Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum.
 - The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1: Chapter 5 of the Explanatory Memorandum).
 - Matters relating to the competence of the Senedd including compatibility with the European Convention on Human Rights.
 - The balance between the information contained on the face of the Bill and what is left to subordinate legislation.
 - Any matter related to the quality of the legislation.
 - Any other matter related to the constitutional or other implications of the Bill.

Evidence from the Electoral Management Board for Scotland

3. As the Bill contains the provisions to establish an Electoral Management Board for Wales, the Electoral Management Board for Scotland (EMB) has been asked to contribute to the Committee's work by taking part in an oral evidence session on Thursday 30 November 2023.
4. The Committee has asked the EMB to provide comment on several subject areas relevant to the Bill. Comments from the EMB are presented below. The EMB is happy to provide this written evidence for consideration by the Committee and will be pleased to expand on any element of it each in discussion with the Committee or subsequently in writing.
5. The EMB for Scotland has been requested specifically to address:
 - The accountability of the EMB, including how it is accountable to the Scottish Parliament (whether there are any specific processes etc);
 - What was the set-up in Scotland before the creation of the EMB, and how did that merge into the current arrangements;
 - Have there been any issues with the EMB and the independence of Returning Officers managing elections in line with local need; and
 - The annual report says that the EMB has assisted in the coordination of the UK elections as well, so it would be useful to know to what extent that happens and how that works/how it developed.

6. The EMB is an independent body which supports Returning Officers (ROs) and Electoral Registration Officers (EROs) in Scotland. It is independent of both the UK and Scottish Governments and accountable to the Scottish Parliament. As such it is generally inappropriate for the Board to comment on matters of policy with respect to electoral administration, these being the remit of elected governments.
7. However the EMB will offer comments on the practical implications of policies that are being considered or are being implemented. Such comments will include consideration of the impact on the delivery of elections by ROs and EROs. The EMB is always particularly concerned with ensuring that the interests of the voter are kept at the centre of all election planning and delivery; comments may particularly reflect that concern.

The accountability of the EMB, including how it is accountable to the Scottish Parliament (whether there are any specific processes etc)

8. While the EMB was created by statute in 2011 it had existed in the form of an interim board since 2008, a voluntary group of ROs and EROs and their advisers with input from the Electoral Commission and Governments who were working to support electoral administration following problems with the delivery of the combined Scottish Parliament and Scottish Local Government Elections in 2007.
9. An [independent review](#) of the Scottish Parliamentary and local government elections on 3 May 2007 was undertaken by the Canadian election expert Ron Gould which made a number of recommendations including the decoupling of elections to ensure that each received a parity of esteem and publicity, and the need to ensure that legal changes governing elections were in place at least 6 months ahead of any poll to allow adequate time for planning and implementation. These recommendations were implemented.
10. The Gould Report also proposed the creation of a Chief Returning Officer for Scotland. While this recommendation was not implemented, the creation of the EMB in many ways responded to the problems that he identified which prompted that recommendation in that he saw a need for a single point of contact for the oversight of elections and for a vehicle for the promotion and development of best practice. The 2007 Gould report is important background to understand the formal establishment of the EMB.
11. The EMB was formally created by the [Local Electoral Administration \(Scotland\) Act 2011](#). The Act defines the general function of the Board which is to provide a forum for co-ordinating the administration of local government elections in Scotland. This was amended by the Scottish Elections (Reform) Act 2020 which expanded the remit of the Board to cover Scottish Parliamentary elections.
12. The 2011 Act also defines the membership of the Board and provides for the Convener of the Board to be appointed by Scottish Ministers. Members of the Board are Returning Officers, Depute Returning Officers and Electoral Registration Officers, appointed by the Convener.
13. In terms of its accountability, Section 8 of the 2011 Act sets out the reporting requirements of the Board. The Board provides an Annual Report on the performance of its functions to the Scottish Parliament as soon as practicable after the end of the financial year. The Scottish Parliament also exercises oversight of the EMB in that it will routinely request that the Board provides evidence to its

Committees following elections allowing them to scrutinise the delivery of elections and the work of the Board.

14. The independence of the Board is a fundamental principle reflecting the independence of ROs and EROs who are accountable only to the courts for the delivery of elections and not to any political oversight or input. ROs and EROs must necessarily be independent of political control in order to preserve the integrity of elections ensuring that it is the interests of the voter that are paramount and not the interests of any candidate, party or elected politician. The EMB as a body made up of and supporting ROs and EROs maintains and preserves that same independence. Its accountability to Parliament is to report on its work and to justify how its funds have been spent to the pursuit of its aims.

What was the set-up in Scotland before the creation of the EMB, and how did that merge into the current arrangements

15. Before the establishment of the EMB there was generally no formal coordination of electoral activity in Scotland. ROs and Regional ROs developed their own approaches that could differ from each other in multiple ways. There was no coordinated approach to voter-facing elements of the election and no consistency of approach in areas where there was liberty as to how elements of the election should be delivered. There was no clear point of contact for suppliers or Governments in terms of the delivery of elections.
16. As noted above the EMB was established in Scotland by the [Local Electoral Administration \(Scotland\) Act 2011](#), an Act which formalised a Board that had been operating informally as an interim Board since 2008. This interim Board was brought together by the Returning Officer for the City of Edinburgh in reaction to the issues identified by the Gould Report into the 2007 combined elections in Scotland. The purpose of the interim Board, which flowed into the formal remit of the EMB itself, was to support ROs and EROs, to promote best practice among them and to be a single point of contact for key suppliers such as printers. These purposes very much addressed issues identified by Gould and the problems experienced in the 2007 elections.
17. The Interim EMB included representatives from the key professional bodies working on the delivery of elections: SOLACE (the Society of Local Authority Chief Executives) Scotland, the Association of Electoral Administrators (AEA), the Electoral Registration Committee of the Scottish Assessors Association (SAA) and the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR). Advice was provided by the Electoral Commission and Governments were invited to attend Board meetings. Previously these bodies had all engaged with Governments and suppliers over years to promote the interests of their members and of the voter, but the Interim EMB was designed to coordinate that work, to strengthen their voice and to promote consistency. It was also intended to bring a stronger focus onto the interests of the voter.

Have there been any issues with the EMB and the independence of Returning Officers managing elections in line with local need?

18. The Board's objective, principles and approach are discussed in the background paragraphs below. With respect to the overall approach there is an effort to operate through a progression of consensus where possible, guidance where helpful and direction if necessary. The Board has the privilege of supporting a close and

mutually supportive community of electoral professionals in Scotland which makes consensus a valid and practical approach. The concern to protect the independence of the RO also means that the Convener will only intervene where necessary in promotion of best practice and to support the RO and ERO and will avoid interference to take away the local autonomy and role of the RO.

19. There have therefore been no issues where EMB Directions have been at odds with the approach of a local RO. EMB Directions are only made following consultation and generally are a result of consensus so have been well received and often are a defence that an RO can use if challenged locally on their decisions, with the RO able to reference an EMB Direction.
20. Most of the Directions cover voter-facing elements of the election where consistency of approach offers benefits to the voter and to candidates and campaigners. For example, a consistent date of dispatch for postal votes allows a coordinated public awareness campaign to support the election with which campaigners and candidates can also align their efforts. On occasion where there was a risk of overcrowded polling places, for example during the 'COVID elections' of 2021 and 2022, the EMB fixed proposed limits on the numbers of voters to be allocated to each station. This was to prevent queues and to protect the capacity of buildings. These limits were generally accepted by ROs and where an RO thought it inappropriate for a building they could apply for an exemption, providing evidence, that was always granted.

The annual report says that the EMB has assisted in the coordination of the UK elections as well, so it would be useful to know to what extent that happens and how that works/how it developed.

21. The Convener of the EMB has a power of direction over ROs and EROs with respect to Scottish Parliament and Local Government Elections. Directions are filed on the EMB website, including those covering the [Scottish Local Government Elections in May 2022](#) and those covering the [Scottish Parliament Elections in 2021](#) (with a [further set](#) issued later). Directions are generally issued at least 6 months ahead of the poll to allow sufficient time for ROs and EROs to plan around them and implement whatever changes may be needed in process.
22. The Interim Board that preceded the EMB had no formal powers to instruct ROs or EROs to take particular actions. However in 2009 the interim EMB did support the Regional Returning Officer (RRO) for the European Parliament elections in Scotland. The RRO used his power of direction to make a number of directions for ROs and EROs to promote consistency and support contingency. These included for example a consistent date for the dispatch of poll cards and postal votes and a consistent approach to ballot paper design and numbering.
23. This approach was well received by ROs and EROs and the Convener of the Interim Board similarly made a series of recommendations to ROs and EROs for the following year's 2010 UK Parliamentary General Election, again to promote consistency and support a degree of contingency planning.
24. The Convener of the EMB was appointed as Chief Counting Officer for the 2014 Scottish Independence Referendum and in that role also had power to direct Counting Officers and EROs. Again in 2014 and 2019 the Convener had the role of Regional Returning Officer for the European Parliament election for the Electoral Region of Scotland again having a power of direction. Across all of these electoral events the template of there being directions or recommendations issued to ensure a

national consistency of approach became an accepted and expected feature of the delivery of elections.

25. The Convener has therefore issued recommendations to ROs and EROs regarding the delivery of UK Parliamentary Elections in 2015, 2017 and 2019. These address the same issues as the Directions that are routinely issued for the elections for which the Convener does have a power of direction. Recommendations are posted on the EMB website including for example the [2015 recommendations](#).
26. As noted, these are expected, appreciated and accepted with ROs and EROs happy to work to a national standard and structure which gives them comfort and clarity around their role.

Background – The Electoral Management Board for Scotland

27. The Electoral Management Board for Scotland (EMB) was established by the Local Electoral Administration (Scotland) Act 2011. This Act gave the Board “the general function of co-ordinating the administration of local government elections in Scotland.” The Scottish Elections (Reform) Act 2020 extended the remit of the Board to cover elections to the Scottish Parliament.
28. The EMB is independent of both Scottish and UK Governments and political parties and is accountable to the Scottish Parliament. The Convener is appointed by Ministers and leads a Board consisting of Returning Officers, their Deputies and Electoral Registration Officers.
29. Advisors include the professional associations: the Association of Electoral Administrators (AEA), the Electoral Registration Committee of the Scottish Assessors Association (SAA), the Elections Working Group of the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR), and Scottish and UK Governments, and the Electoral Commission.
30. The EMB’s prime focus is ensuring that the interests of the voter are kept at the centre of all election planning and administration. The work of the EMB assumes the close community of electoral professionals in Scotland and accordingly the Board seeks to operate by consensus rather than formal direction, wherever possible. However, the Convener does have a power to issue directions to Returning Officers and Electoral Registration Officers in relation to their duties around Scottish Parliament and Local Government elections as required, and this power has been exercised in recent elections with the consent and wish of the electoral community.
31. The EMB has assisted in the coordination of the work of ROs and EROs in the delivery of European Parliamentary Elections, UK Parliamentary General Elections, Scottish Parliament Elections, Scottish Local Government Elections and UK and Scottish Referendums. Where the Convener does not have a legal power of direction the Board has made recommendations to achieve consistency and support adequate contingency planning across the country. Since its creation, the EMB has had an increasingly important role in promoting a consistent delivery approach, acting as a single point of contact for stakeholders and providing a source of professional expertise and support to the electoral community.

The EMB’s Role

32. The EMB’s “general function of co-ordinating the administration of local government and Scottish Parliament elections” involves two specific roles:
 - (a) assisting local authorities and other persons in carrying out their functions in relation to local government elections; and
 - (b) promoting best practice in local government elections by providing information, advice or training (or otherwise).
33. The over-riding goal is to ensure that the interests of the voter are kept at the centre of all election planning, delivery and administration.

Our Objective

34. With respect to specific electoral events this function translates into a single clear objective: "...to deliver a result that will be trusted as accurate." The currency of elections is trust. Confidence in the result is fundamental to the democratic process and is predicated on confidence in all stages of the process of planning and delivering an electoral event.

Our Principles

35. The EMB shapes its work around four key principles:

- Accessibility - there should be no barriers to any voter taking part;
- Consistency - voters should have the same experience wherever they are in Scotland;
- Efficiency - electoral events will be administered efficiently; and
- Integrity - electoral events will produce results that are accepted as accurate.

Our Approach

36. The Board has the privilege of supporting a close and mutually supportive community of electoral professionals in Scotland. The preferred approach is always to operate through a progression of consensus where possible, guidance where helpful and direction if necessary.