

Observations on the development of the Interim Electoral Management Board for Scotland

Introduction and purpose

1. The Commission's statutory report on the 2009 European Parliamentary and English local government elections (EPE) includes consideration of the administrative arrangements put in place by Regional Returning Officers throughout Great Britain. As part of that report, we also considered the development to date of the Interim Electoral Management Board (IEMB) for Scotland.
2. As the EPE statutory report considers many issues, the purpose of this paper is to expand upon the points regarding the IEMB in the EPE report to the Elections Convener of the IEMB. Our aim being to share our views on how the IEMB should be developed in the future as we wish to assist in progressing the development of the concept.
3. A copy of this paper has also been provided to both the Scotland Office and the Scottish Government given their interests in the matter.

Development of the EMB to date

4. The Commission is grateful to the Elections Convener for his support and efforts in taking forward the idea of an EMB for Scotland. We believe the concept can improve electoral administration in Scotland and thereby provide a better level of service for voters. It is widely accepted that we have an opportunity at this juncture to ensure that structures are put in place which strengthen independent and non-partisan electoral administration to the benefit of electors and our democratic process in Scotland. We also recognise that the efforts made have occurred in a context of seeking to lead major change in a voluntary manner given the lack of legislative change which could move the development of the concept to an earlier conclusion.
5. The Commission is pleased to note that the establishment of the IEMB led by an Elections Convener has been welcomed by the electoral community as a positive step in rebuilding the confidence of the electorate, parties and candidates in Scotland's electoral administrative processes subsequent to the Scottish elections 2007. We have observed from our interactions with other stakeholders a widespread support for the concept and acceptance that the IEMB has had a positive benefit upon the delivery of elections. The structure of the IEMB is widely regarded as being more in keeping with the Scottish

public service ethos of cooperative working and has developed positively the Chief Returning Officer model proposed by Ron Gould in October 2007. While the Commission believes the development of the IEMB is progressing well, there remain steps to be taken to ensure its permanent establishment.

A statutory basis for the EMB and Elections Convener

6. We are concerned that more than two years have passed since the 2007 Scottish Parliamentary and local government elections and final decisions are still to be taken with regard to the permanent structures to be put in place to ensure electoral administrative performance continues to improve in Scotland. We understand that governments are still considering policy proposals but we believe early decisions are needed and any necessary legislative changes enacted to ensure future elections benefit from the establishment of a statutorily based EMB.

7. While the interim phase of the EMB has relied on the Interim Election Convener's personal position as Regional Returning Officer for the European Parliamentary election and that role's power of direction, no such power exists in relation to other elections and we are in danger of returning to an elections steering group position with all the potential shortcomings that were identified in the Gould report. 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 IEMB 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.

8. In establishing the post of Elections Convener we believe it should be given a power of direction over Returning Officers and Electoral Registration Officers similar to the powers held by the RRO over Local ROs at a European Parliamentary election. The power to direct should cover both electoral registration and election administration. It should cover the UK Parliamentary, Scottish Parliament, European Parliamentary and local government elections. The post and power is important in our view as it provides leadership, co-ordination and consistency in electoral administration. The Elections Convener should also be selected following an open and transparent appointment process from amongst the 47 ROs and EROs. This will add legitimacy to the post as the public face of electoral administration in Scotland and create a direct accountability with the individual ROs and EROs.

Recommendation:

We believe the relevant governments should move quickly to place the IEMB on a statutory basis.

We have recommended to governments that the position of Elections Convener should be established in statute for the four statutory elections in Scotland and that the position be given a power to direct Returning Officers and Electoral Registration Officers similar to the powers held by the RRO over Local ROs at a European Parliamentary election

To emphasise the importance of the role of Elections Convener we recommend that the post holder is henceforth selected following an open and transparent appointment process from the 47 ROs and EROs.

9. We have made the respective governments aware of our view.
10. Legislation by governments to establish the IEMB and the post of Elections Convener in statute, providing a power of direction for the Convener and requiring transparent internal election processes etc. is not, however, the only action required. There is much preparatory work for the successful establishment of the EMB on a permanent basis which can and should be undertaken now, and which need not wait for legislation
11. As we stated in our report published in August 2008 'Electoral Administration in Scotland', structures and methods of working can be developed ahead of legislation and we would urge that this challenge is taken up by the ROs and EROs led by the Elections Convener. We would hope such actions could be undertaken in good time to influence planning for the forthcoming UK and Scottish Parliamentary elections.

Recommendation:

We recommend that the Elections Convener further develops the structures and working methods which underpin the IEMB rather than waiting for legislative change.

Moving forward

12. The terms of reference of the IEMB acknowledged that initially its focus would be on the delivery of the 2009 European Parliamentary elections and its actions and those of the Elections Convener reflected this. The IEMB sought to achieve consistency in delivery of electoral administration across Scotland through meetings with individual ROs and via 'cluster group meetings' in order to be satisfied that procedures were in place to ensure the delivery of the

election. The IEMB has sought in its deliberations, in our opinion, to put voters first and the use of the power of direction on two occasions we understand to be motivated by the desire to provide good service to the Scottish electorate.

13. The actions of the IEMB, however, have not simply been confined to event specific matters and the actions of the Elections Convener and that of the IEMB have begun to look increasingly at more strategic issues beyond the immediate electoral event faced for example e-counting and will, we expect, make strategic contributions to the implementation strategy of individual electoral registration in the future. The Commission believes the IEMB's work in this area will make a real difference in the future to the benefit of electors. We make a number of comments below on the deliberations of the IEMB and offer some suggestions for its development.

Recommendation:

The IEMB and the Elections Convener should place greater emphasis on their consideration of strategic electoral issues.

Membership and accountability of the EMB, the professional associations and advisers

14. The current remit, membership and terms of reference of the IEMB states that its core membership comprises representatives of the Society of Local Authority Chief Executives (SOLACE), the Society of Local Authority & Administrators in Scotland (SOLAR), Association of Electoral Administrators (AEA) and the Scottish Assessors Association (SAA). The Commission believes that the membership of the Electoral Management Board should include statutory officers with operational responsibility for the administration of elections and electoral registration in Scotland i.e. the 32 Returning Officers and 15 Electoral Registration Officers.

15. We are not convinced that representatives of various professional associations who have in membership to varying degrees the 47 Scottish Returning Officers and Electoral Registration Officers can adequately provide the direct accountability which we believe is necessary between the ROs and EROs who serve on the IEMB and the remaining number whom they represent and act on their behalf. While the Commission believes it is for the ROs and EROs to choose how they select their representatives to serve on the IEMB, accountability to the individual ROs and EROs needs to be achieved.

16. A mechanism by which accountability of the IEMB to all ROs and EROs could be developed is the establishment of an annual meeting of the 47 RO and EROs. Such a meeting could also discuss and agree an annual report, the IEMB's strategy and work plan for the forthcoming year, which are

discussed later in this paper and decide the members to serve on the IEMB. A number of events are held each year where most of the 47 officers attend and consideration should be given to using these opportunities to run the annual meeting consecutively.

17. If the professional associations were to be the mechanisms by which the EROs and ROs chose their representatives then it should be explicitly recognised as such in the founding documentation. It is crucial that all EROs and ROs are linked directly to the work and discussions of the IEMB and that those appointed are accountable for the decisions they make on behalf of their peers.

18. We recognise, however, that some of the professional associations presently represented on the IEMB do not have in membership any of the 47 Scottish ROs and EROs. The valuable advice of the associations should not be lost, particularly as some of the associations currently represented provide representation for those who deliver the front line of electoral services.

19. We also support the continued inclusion of the current advisers to the EMB, which includes the Commission, but would suggest the any revised term of reference clearly states that whilst such organisations give advice they do not own the operational process, responsibility for which firmly lies with the EROs and ROs. Precedent exists for this with the Boundary Commissions in Scotland and their relationship with Ordnance Survey and GRO Scotland as assessors to the Boundary Commissions.

Recommendations:

We recommend the roles and responsibilities of the ROs and EROs with regard to the IEMB are clarified to ensure that the responsibility for and ownership of the IEMB lies firmly with themselves as they are personally responsible for delivering electoral registration and election administration in Scotland.

We suggest that consideration be given to the establishment of an annual meeting of the 47 ROs and EROs, chaired by the Elections Convener to embed the collaborative working approach of the IEMB.

To avoid losing valuable expertise we would suggest consideration is given to appointing a representative(s) of each professional association as an adviser to the board.

The Commission continues to support the inclusion of Scotland Office, Scottish Government, COSLA and itself as advisers to the IEMB.

Clarifying the purpose of the board

20. The interim terms of reference of the IEMB referred to a number of roles to be undertaken with regard to the then coming electoral event, namely the European Parliament elections held on 4 June 2009. The Commission had previously indicated that whilst all the tasks outlined in the interim terms of reference were legitimate, we recommended including generic roles rather than event specific and suggested those defined in Appendix A to our report '*Electoral administration in Scotland*' published in August 2008. The tasks outlined at that section are those an IEMB should be undertaking in our view and we recommend they be adopted.

21. Given that the 2009 European Parliamentary election has passed, the Commission believes the time is right for lasting, not interim, arrangements to be put in place. As previously indicated we have recommended to governments that they legislate quickly to place the IEMB on a statutory footing. In the meantime, the preparatory work for the successful establishment of the EMB on a permanent basis should be undertaken by ROs and EROs led by the Elections Convener as this does not need to wait for legislation

Recommendations:

We recommend including in a revised terms of reference the generic roles as defined in Appendix A to our report '*Electoral administration in Scotland*' published in August 2008.

22. No significant volume of opinion has been identified by the Commission which suggests that the IEMB is not the right way forward. Some comment however has been received that suggests the work of the IEMB and its place in the delivery of electoral administration is not fully understood by some in the electoral administration community and by others who regularly interact with electoral administrators. We recognise that efforts were made to disseminate information to RO/EROs and their staff via a regular bulletin between September 2008 and March 2009 and that it is intended to continue this practice. In addition, the profile of the IEMB and the Elections Convener with the Scottish electorate as a whole is perhaps understandably currently very low given its recent establishment.

23. To clarify and highlight the role, purpose and activities of the Elections Convener and the IEMB we recommend that the IEMB develops a short paper which sets out a Statement of Intent and Challenges it expects to meet in the short, medium and long term. An annual report should be produced which could be used to highlight the activities of the IEMB to the electorate, politicians and legislatures as well as those in the electoral administration community.

24. Work should be undertaken to ensure that a greater awareness by stakeholders and the electorate of the EMB led by the Elections Convener is established. Given the levels of public concern over electoral administration following the 2007 elections it is important to ensure the electorate are aware of the measures put in place to deliver improved electoral administration. To aid transparency with stakeholders and the public we would recommend that the minutes of the IEMB are made public. Consideration should also be given to the development of an IEMB website. This could provide a public portal to access information on the IEMB including membership, updates on its work, the annual report, minutes and host work produced by any sub-groups of the IEMB, for instance the work of the Forms sub-group on an open or closed part of the site.

Recommendations:

To clarify the role, purpose and activities of the Elections Convener and the IEMB we recommend that the IEMB develops a short paper which sets out a Statement of Intent and the Challenges it expects to meet in the short, medium and long term.

We recommend that an annual report is produced to highlight the activities of the IEMB to the electorate, politicians and legislatures as well as those in the electoral administration community.

We recommend that a greater awareness by stakeholders and the electorate of the EMB led by the Elections Convener is established.

We recommend that the minutes of the EMB's are made public.

Method of working and resources

25. The Commission in acting as an adviser to the IEMB and in fulfilling its other roles has observed the EMB's working methods. Currently the IEMB meets monthly on average. Much of its workload seems to be driven and undertaken by the Elections Convener, his staff and the consultant financed by Scotland Office, Scottish Government and the Improvement Service. Occasionally, pieces of work have been led by individual members from one of the professional associations in drafting responses to policy consultations produced by government.

26. The IEMB has also undertaken valuable joint working with the Commission in delivering seminars to electoral administrators.

27. While the Commission values the work undertaken to date by the core group around the Elections Convener and supports its continuance, we believe it is important that more members of the IEMB i.e. Returning Officers and Electoral Registration Officers become directly involved in the development of its work programme to ensure it is valued by the ROs and EROs to which it is accountable. Without a widening of those involved in its

activities there is a danger that the sense of ownership of the IEMB will be limited to a very small number.

28. We would suggest that the Elections Convener and the IEMB consider methods by which greater involvement of the ROs and EROs could be achieved. One model perhaps worth investigation is establishing a system of Portfolio Holders from amongst its revised membership to assist it in achieving the aims and objectives contained within its Statement of Intent and Challenges. Portfolio Holders would then be able to establish groups or other mechanisms to assist them in achieving their tasks. This has the benefit of drawing on a wider pool of knowledge and expertise and ensuring that electoral administrators feel that the IEMB also considers their views and is of value to them directly. Portfolio Holders could also draw upon the expertise of non-electoral bodies that have an interest in electoral administration such as access groups and political parties.

29. If a portfolio holder model was instituted a number of policy areas could be considered as potential portfolios, for instance: integrity issues; individual electoral registration; outside suppliers of services; party and candidate liaison; e-counting; access matters; performance standards; training; liaison with government departments and legislatures; absent voting; forms; and public awareness. We would imagine the Elections Convener may choose to retain the lead in some of the issues suggested.

Recommendation:

We recommend that consideration be given to methods by which more Returning Officers and Electoral Registration Officers can be involved in the development and delivery of the IEMBs work programme.

30. On a specific matter, we would suggest that the IEMB brings within its structure the Local Authority Public Awareness Network which the Commission has helped to establish. This has proved to be of assistance in operational matters and should be coordinated at a national level. The Commission wishes to continue to support this body as it is valuable in promoting awareness of electoral events.

31. In our report 'Electoral Administration in Scotland' we recommended that the EMB should be adequately funded and a small secretariat established to support it on a permanent basis, independent of UK and Scottish Governments. We have noted and welcomed the small amounts of funding which Scotland Office, Scottish Government and the Improvement Service have provided to the IEMB to assist it in various undertakings to date. We recommend that further discussions take place between governments and the IEMB with a view to establishing permanent funding for a secretariat/policy post to support the future work of the Elections Convener and the IEMB.

Recommendation:

We recommend that discussions between the IEMB and governments take place with a view to establishing permanent funding of a secretariat/policy post to support the future work of the Elections Convener and the IEMB.

EMB within the UK context

32. The IEMB also operates in a UK context with regard to UK Parliamentary elections, European Parliamentary elections and electoral registration matters for which legislation is reserved to the UK Government. A number of UK fora exist in which policy issues relevant to these processes are discussed. We urge that the IEMB continues to take part fully in such fora. Indeed, we believe the development of the Scottish IEMB to date has assisted in contributing to such fora. The manner in which Scotland has chosen to organise itself may have lessons for other parts of the UK which others may wish to consider, although solutions suitable to Scotland may of course not be appropriate elsewhere. We welcome the interim Elections Convener's commitment to offer advice to others who may wish to consider establishing similar structures in the future.

Recommendation:

We recommend the IEMB plays its part fully in UK activities and does not confine itself to Scottish only matters

Reporting to Ministers, legislatures and other elected representatives

33. Electoral administrative matters are rightly viewed by the UK and Scottish Parliaments, government departments and Ministers as important. While all three have no responsibility for direct operational matters undertaken by independent ROs and EROs, they do establish the legislation and policy within which such operational activities take place. Also, the electorate often looks to our elected representatives to comment on electoral matters on occasion.

34. Given their importance in our representative democracy, it is right that ministers and legislatures are periodically informed of developments and activities undertaken by the IEMB. Establishing a dialogue with Ministers and relevant parliamentary committees, in our view, is an important mechanism by which public confidence can be maintained in electoral administration. We would recommend that the EMB seeks to lay its annual report (see paragraph 16) before the relevant parliaments.

Recommendation:

We recommend that the IEMB seeks to meet relevant Ministers and the relevant committees of both the UK and Scottish Parliaments on a regular basis.

35. In addition, while the roles of RO and ERO are independent it is recognised that the delivery of elections and electoral registration takes place within the context of being widely seen as a council function. The rationale for dialogue with Ministers and legislators equally applies in the Commission's view for councils and councillors.

Recommendation:

The IEMB should consider establishing a dialogue with councils and councillors. It is suggested that this could be achieved via the local authority association COSLA.

The Electoral Commission
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