

# The Electoral Commission's response to the Scottish Government's consultation paper, *Chief Returning Officer for Scotland*

1. The Electoral Commission welcomes the opportunity to comment on the Scottish Government's consultation paper on a Chief Returning Officer (CRO) for Scotland. This paper sets out the Commission's response to the Scottish Government.

## **General comments**

2. We support the Scottish Government's view, expressed in paragraph 70 of the consultation paper, that:

*An integrated approach to management, accountability and legislation would provide the Scottish people with the best reassurance that the problems identified by Gould would not recur. It would provide the most practical way of running future parliamentary and local elections.*

3. The Scottish Government has responsibility for electoral policy and law in relation to local government elections. However, we would not wish to see arrangements designed to improve the overall system of electoral administration applying to only one of the four sets of Scotland-wide elections. We encourage the Scottish Government to continue their dialogue with the Scotland Office and the Ministry of Justice to ensure that any final proposals will apply equally to UK, Scottish and European Parliamentary elections, as well as to Scottish local government elections. The Scottish Government may also wish to consider whether any new arrangement should extend to other elections for which the Scottish Government has responsibility. These include elections to community councils, national park authorities, and the proposed elections to health boards and crofting boards.
4. We also support the Scottish Government's focus on principles rather than structures at this stage. It is important that any final structure should be based on guiding principles for upholding public confidence in electoral administration and meet the UK's international obligations in terms of elections and democracy.
5. As such, we have drafted our response based on the principles identified in paragraph 78 of the consultation and sought to answer the specific questions asked in relation to those principles. These follow an outline of the examination of electoral administration that the Commission undertook in 2008 and the recommendations we made in August 2008.

## Examination of electoral administration

6. Since the publication of the *Independent review of the 2007 Scottish Parliamentary and local government elections* by Ron Gould, who was appointed by the Electoral Commission to head the review, we have continued to discuss the recommendations with various stakeholders. We undertook a detailed examination of electoral administration in 2008 to identify the fundamental principles and requirements for electoral administration and to explore how they might best be delivered. Our findings were published in August 2008 in *Electoral administration in Scotland*. A companion report was published at the same time with reference to the UK as a whole. Our report made the following recommendations:
  - Establish an Electoral Management Board (EMB) for Scotland comprising all Electoral Registration Officers and Returning Officers.
  - A member of the EMB should be elected as Convener to lead and coordinate electoral administration.
  - The EMB and the Convener should be recognised in statute.
  - We expect that the EMB will be supported by a small but dedicated and funded Secretariat. We also envisage that the EMB will appoint a small executive group to assist the Convener.
  - The EMB should have a remit that extends to all elections in Scotland.
  - The Convener should be given a statutory power to direct local electoral officers following consultation with the EMB
7. Since then we have worked with stakeholders, including the Scottish Government, the Scotland Officer, Returning Officers, Electoral Registration Officers and their professional associations to encourage the development of an Electoral Management Board led by a Convener.
8. We welcome the establishment of the Interim Electoral Management Board for Scotland under the leadership of the Regional Returning Officer (RRO) for Scotland for European Parliamentary elections as a step forward. We aim to report on the operation of the Interim Electoral Management Board as part of our statutory report on the 2009 European Parliamentary elections.
9. The Gould report did not prescribe the detail of how a Chief Returning Officer for Scotland would work in practice. From the consultation paper, we see similarities between the Scottish Government's Chief Returning Officer and the Commission's Convener of an Electoral Management Board. Therefore, our responses to the questions raised by the consultation could apply to either job title and we hope we can build common ground with all stakeholders in Scotland for improving electoral administration.

## The case for change – do we need a Chief Returning Officer?

10. We do not believe that change in the system of electoral administration can be avoided or postponed. Structures that were adequate for electoral management in the nineteenth century are under severe strain from the increasing number of elections that are held to various institutions, the complexity and frequency of change to electoral law, and the increasing use of technology and external suppliers.
11. Scotland, along with England and Wales, has administered and delivered elections at a local level. We believe that this should remain the case but, in future, should be supplemented by centralised coordination to improve consistency of practice and provide strategic leadership for electoral matters. This would build on the development in more recent times of Elections Steering Groups which have sought to strengthen the collaborative working arrangements
12. In *Electoral administration in Scotland*, we proposed that an EMB be established in Scotland. The membership of the EMB would comprise all the Electoral Registration Officers (EROs) and Returning Officers (ROs). We envisaged that the EMB would select one of its experienced members to become the Convener following an open and transparent appointment process. We expect that the EMB will establish a small management group to assist the Elections Convener. The Convener should have a statutory power of direction over the other members of the EMB. This would mean that the Convener would be able to direct other members to perform a certain task, or to conduct it in a certain way. This could be issued as a direction covering all members of the group or to one specific officer. While the goal of an EMB is to achieve consensus in improving electoral administration, it may be necessary to issue a direction to achieve consistency in a particular circumstance.
13. Representatives from the Scottish and UK governments, the Electoral Commission or other relevant organisations would not be members of the EMB, but may be invited to provide information and advice.
14. The aims of this model are to reassert the independence and responsibility of those who deliver electoral administration, allow central co-ordination of activity, where it is appropriate, to improve consistency and provide greater leadership. It would also create a focal point of accountability for voters. Equally, local delivery of electoral services would be retained with the flexibility to respond to local needs and circumstances.
15. The Commission recognises that its recommendation for an EMB in Scotland may not be the ultimate conclusion of this debate. Therefore, we would welcome alternative structures that achieved our aim of a better electoral administration service for electors and which resulted in

the clarification of roles and responsibilities, improved co-ordination of ROs and EROs, and strengthened leadership and accountability for electoral administration professionals.

16. We welcome the fact that the RRO for European Parliamentary elections in Scotland has established an Interim Electoral Management Board (IEMB). The RRO already has a power of direction in respect of European Parliamentary elections and has established a group of colleagues to consult and advise on arrangements for those elections, and other electoral matters arising. The Scottish Government and Scotland Office have already agreed to resource the support required on a trial basis. The IEMB has not restricted itself to discussing and taking decisions on matters related to the European Parliamentary elections alone. It has sought to coordinate the responses of electoral officers to various consultation papers and consider the preparations required for other elections. We look forward to seeing how the IEMB operates and will report on and evaluate its activities in our statutory report on the 2009 European Parliamentary elections.

## **Conclusion**

17. We believe that there is a need for change as we have already outlined in *Electoral Administration in Scotland* and in this response. Whether the job title is Chief Returning Officer, or Elections Convener, we need a post that clarifies the roles and responsibilities, improves coordination of electoral administration and strengthens leadership and accountability for electoral officers.

## **A clear and open appointment process**

18. A person fulfilling the role of CRO, or Convener of the EMB, should be appointed in a neutral and non-partisan way as all other electoral officers are. Given that this is a leadership role, the Convener should be nominated by the ROs and EROs whose activities the Convener will seek to lead and coordinate. This should mean that the Convener is an experienced member of the EMB who has the support of their colleagues. The nomination and appointment process for the Convener should be transparent and inspire public confidence. We wish to see the appointment process and role of the Convener established in statute.
19. The independence of the Convener of the EMB, or the CRO, is paramount in ensuring that elections and electoral registration are administered in a neutral and non-partisan fashion and that there is public confidence that no political party has an unfair advantage at an election. There needs to be a clear delineation of roles and responsibilities so that once governments and legislatures have established the legal framework for an electoral event, electoral officers, including the Convener, must be able to implement the framework without further political intervention.

## **Functions of the CRO and support required**

20. The EMB would have a remit that extended to electoral registration and all nation-wide elections in Scotland. This is important to ensure that as much consistency as possible is achieved across the whole electoral framework.
21. We have already set out the aspects of electoral administration that we believe the EMB should coordinate. They are:
  - Establish a project plan for the delivery of all elections held in Scotland other than local by-elections. This would provide the strategic plan from which local operational plans would be developed.
  - Develop and deliver a centralised aspect of an election e.g. procurement of e-counting solutions.
  - Advise government on new legislation and policy development regarding elections and electoral registration.
  - Establish training levels provided to electoral staff locally by ROs and EROs.
  - Establish requirements for documentation/forms based on Electoral Commission guidance, implemented by local RO, EROs and their staff.
  - Develop plans for the continued professional development of ROs, EROs and their staff.
  - Support the development of performance standards for electoral administration in Scotland.
  - Act as a statutory consultee and adviser to relevant Ministers with responsibility for electoral administration in Scotland. Advice from the Board should be made public.
22. This list is not necessarily comprehensive and the EMB should be able to alter its remit in response to changing circumstances.
23. The EMB and the post of Convener should be adequately funded with a small Secretariat able to support it (and act as an interface with other stakeholder organisations) on a permanent basis. The Secretariat should be independent of the UK and Scottish governments although it would be appropriate for them to provide funding if the Convener and EMB were to have a remit that extends to all elections in Scotland. We are pleased to see that the Scottish Government and the Scotland Office are making arrangements to provide funds for the Interim Electoral Management Board for Scotland.

## **Conclusion**

If a CRO, or Elections Convener, is established, then a similar funding arrangement should be in place to adequately support the functions they undertake.

## **Authority to give directions**

24. A key role of the EMB and its Convener will be to encourage greater cooperation and consistency of practice in electoral administration. Since 1999, ROs and EROs in Scotland have sought to work together through Elections Steering Groups. However, this has not created a uniform approach to electoral practices and each RO and ERO remains able to make their own decisions where the law allows this.
25. The leadership role of the Convener of the EMB is an essential element in driving improvements that are required in Scotland. In addition to the position being established in statute, we believe the Convener should be granted a power that would enable them to issue directions to ROs and EROs relating to the discharge of their functions and ensure that good and consistent practice is followed.
26. This is not a new development in electoral administration. The RROs for European Parliamentary elections also have a power to issue a direction to a Local Returning Officer. Regional and Constituency Returning Officers for Scottish Parliamentary elections have a statutory duty to co-operate with each other.

## **Conclusion**

27. The post should seek to promote coordination and cooperation in the first instance but it will be necessary to provide a statutory power of direction to ensure that all electoral officers act consistently where the Convener considers that beneficial.

## **Accountability, roles and responsibilities**

28. As a Chief Returning Officer and a Convener of an Electoral Management Board are likely to fulfil many of the same functions, we believe that the accountability arrangements for either post would be similar.
29. Adding a new role with responsibilities for electoral administration requires that there is a corresponding accountability mechanism. Existing individual ROs and EROs are legally accountable for their actions through the courts. We believe that the Convener of the EMB should be accountable under the same procedure.
30. If a petition to challenge the result or conduct of an election was brought to the relevant court, the Convener should be jointly accountable with the local RO as a respondent to the petition for any actions undertaken in accordance with a direction from the Convener.

31. Ron Gould emphasised the need to clarify the different roles, responsibilities and accountability of the various individuals and institutions involved in delivering the election.
32. Development of the policy framework and funding arrangements for electoral administration is the responsibility of the Scottish and UK governments, as is the development of the legal framework, subject to the approval of the corresponding parliaments.
33. We do not believe that it would be appropriate for the CRO, or Convener of the EMB, to be formally accountable to Scottish or UK Ministers given the need for independent and non-partisan delivery of electoral administration. It would, however, be appropriate for the work of the Convener and the EMB to be scrutinised by the relevant committees of the Scottish and UK Parliaments either by giving formal written or oral evidence, or submitting regular reports to those committees and to Ministers on behalf of the EMB. We would envisage that the Convener and the relevant Ministers will wish to have regular meetings to keep each other informed of developments.
34. We also believe that the Commission would also have a role in reporting on the actions of the Convener and the Board in its statutory reports on the administration of particular elections. We intend to review the current working arrangements of the Interim Electoral Management Board for Scotland in our statutory report on the 2009 European Parliamentary elections.

### **Next steps**

35. We would be happy to discuss the issues we have raised in our response and the outcomes of this consultation with Scottish Ministers once they become available.

**The Electoral Commission**  
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