

THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND (EMB)

Written evidence presented to

The Reform Bill Committee of the Senedd Cymru in their
consideration of the

Senedd Cymru (Members and Elections) Bill



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Malcolm Burr
Convener of the Electoral Management Board for Scotland
c/o City of Edinburgh Council Elections Office,
249 High Street, Edinburgh EH1 1YJ
0131 469 3126

www.emb.scot

Background - The Reform Bill Committee of Senedd Cymru

1. Established on 12 July 2023, the Reform Bill Committee comprises four members from different political groups represented in the Senedd. The Committee's role is to consider Bills referred to it by the Senedd's Business Committee. The first Bill it is considering is the Senedd Cymru (Members and Elections) Bill, which was formally introduced to the Welsh Parliament on 18 September 2023 as part of Senedd Reform.
2. 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 9 November 2023. The purpose of the evidence session is to inform the Committee's scrutiny of the Bill. The session may cover any aspect of the Bill, but it is anticipated that the focus will be on: the proposed changes to the electoral system; the proposed changes to the Local Democracy and Boundary Commission for Wales; and the proposed changes to the Senedd's boundaries and boundary review arrangements.

Background - Senedd Cymru (Members and Elections) Bill

3. The Senedd Cymru (Members and Elections) Bill is a Welsh Government Bill which, if passed, will
 - Increase the size of the Senedd to 96 Members.
 - Decrease the length of time between Senedd ordinary general elections from five to four years.
 - Increase the maximum number of Deputy Presiding Officers from one to two.
 - Increase the legislative limit on the size of the Welsh Government to 17 (plus the First Minister and Counsel General), with power to further increase the limit to 18 or 19.
 - Require candidates to, and Members of, the Senedd to be resident in Wales (by disqualifying candidates and Members who are not registered to vote in a Senedd constituency).
 - Provide a mechanism for the Seventh Senedd's consideration of job-sharing of offices relating to the Senedd (by requiring the Llywydd in the Seventh Senedd to propose the establishment of a Senedd committee to review specified matters).
 - Change the Senedd's electoral system so that all Members are elected via closed list proportional representation, with votes translated into seats via the D'Hondt formula.
 - Repurpose and rename the Local Democracy and Boundary Commission for Wales; provide the renamed Democracy and Boundary Commission Cymru (DBCC) with the functions needed to establish new Senedd constituencies and undertake ongoing reviews of Senedd constituency boundaries; and provide instructions for the DBCC to follow when undertaking boundary reviews.
 - Provide for review of the operation and effect of the new legislative provisions following the 2026 election (by requiring the Llywydd after the election to propose the establishment of a Senedd committee to review specified matters).
4. Further detail about the Bill can be found in its accompanying Explanatory Memorandum. [Senedd Cymru \(Members and Elections\) Bill, as introduced](#) and [Explanatory Memorandum](#)

Evidence from the Electoral Management Board for Scotland

5. 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 but would be

pleased to expand on any element of it each in discussion with the Committee at the evidence session or in writing.

6. It is to be noted that 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 inappropriate for it to comment on matters of policy with respect to electoral administration. Policy discussions are 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.

Experience of implementing a new electoral system (we understand that the EMB Scotland was only created in 2011, and STV was introduced in Scottish local authorities in 2007, but any insight that could be offered would be welcomed)

8. While the EMB was created by statute in 2011 it had existed in form as an interim body since 2008, pulled together on a voluntary basis by ROs and EROs and their advisers with input from the Electoral Commission and governments to support the 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.
10. He 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.
11. The EMB would recommend that the Senedd Committee reviews the Gould report and notes its comments on the challenges of operating multiple electoral systems. In general however the issues to be considered are presented below.
12. The first is the risk of voter confusion. Voters need to understand how to cast their vote. Multiple electoral systems can be operated but there needs to be clear and effective public awareness campaigns to support the voter so that the vote is used as they intend and not unintentionally spoiled. Where there are multiple systems operating for elections on the same day such public awareness campaigns can be challenging to plan and deliver.
13. A second risk is the complexity for the electoral administrator / Returning Officer team responsible for the planning, preparation and delivery of the election. Multiple electoral

systems make the training of staff and the administration of poll and count more challenging and introduce additional risks to the sound delivery of the election. These risks can all be managed but require robust governance frameworks and professional project planning to promote effective and well-managed systems.

14. There is also a risk for candidates, agents and parties who need to develop an understanding of the voting system so that they can stand, campaign and ultimately offer the voter an informed and effective choice.

Experience of managing elections in a context where there are different franchises, boundaries and systems for different tiers of elections.

15. Returning Officers in Scotland have currently to deliver three tiers of election each of which operates to different electoral systems and over different boundaries. Local authority elections operate a Single Transferable Vote (STV) system using the Weighted Inclusive Gregory (WIG) method of counting, with multi-member wards. The system used for Scottish Parliament general elections is known as the Additional Member System (AMS), a "mixed member system" or as "mixed member proportional representation". Electors have two votes. Constituency MSPs are elected on a first past the post system with Regional MSPs elected from a list using the d'Hondt system which allocates additional seats to political parties or independent candidates. UK Parliamentary elections use the first past the post system. Up until 2019 European Parliament election were also administered by ROs and EROs on another different electoral system and boundaries.
16. There are also different franchises in operation for these polls with that for devolved polls being different from that for reserved UK elections, the major difference being that the voting age is 16 for devolved elections and foreign nationals are able to vote.
17. ROs and EROs successfully deliver elections under these different systems, with the Electoral Commission repeatedly reporting that elections in Scotland have been managed well with no concerns with respect to the integrity of the polls.
18. However this successful delivery has only been achieved following significant work by the teams of ROs and EROs across Scotland. The divergence between different polls necessarily introduces complexity and potential confusion for voter, electoral administrator and candidates.
19. For the voter this complexity needs to be addressed by effective public awareness exercises that explain clearly how to vote and how the vote will be counted to allow the voter to make informed decisions about how to vote. These public awareness campaigns are run by Returning Officers but for enhanced impact they often align with national campaigns undertaken by the Electoral Commission who can plan and procure media campaigns that have a greater impact than those delivered locally by ROs.
20. ROs and EROs need to build the additional complexity and divergence into their own planning, procedures and systems to ensure that staff understand the differences and operate each system effectively. Again the Electoral Commission provide helpful guidance but the divergence does add to the complexity of the administration.
21. Similarly candidates and political parties need to understand the systems to ensure that they can campaign effectively to offer the voters appropriate choice.
22. There are undoubtedly sound policy reasons for the adoption of different electoral systems but on a practical level the divergence does pose challenges that need to be accommodated with enhanced public awareness and training operations.

23. One basic example has been the need to provide focussed training for election staff on the operation of the STV system so that they remind voters to vote for as many candidates as they wish, using a 1 for their first choice, a 2 for their second etc, while many papers are still marked with a single cross.
24. Again the EMB would encourage the Senedd committee to review recent Electoral Commission reports on STV elections in Scotland which have identified the need to consider ways to minimise spoilt votes where the voter has not understood the voting system leading to high rates of spoiled papers. For example the Electoral Commission [report on the 2022 council elections in Scotland](#) noted that “while the level of spoilt ballots across Scotland has declined since the 2017 council elections, they increased in some wards; further action is needed to address this.”

The Bill does not propose STV, but STV has been a recommendation made in the context of Senedd elections and Members are likely to be interested in the experience of operating elections under STV.

25. Some of the issues with respect to the operation of STV are noted above with respect to the need for public awareness to ensure an understanding of the system such that votes are not unintentionally spoiled.
26. It should also be noted that “general” STV elections in Scotland where all members are elected to all sets in all 32 councils every five years, are counted electronically. By-elections are usually also counted electronically although some ROs do choose to count manually.
27. An electronic count is a major investment and a significant procurement exercise every five years. However it has been judged as the optimal method of counting given the number of candidates across the multiple wards and the complexity of the counting system, involving the transfer of fractions of votes. The procurement of a system to deliver electronic counting across the 32 councils is a large procurement project ultimately awarding a contract costing several million pounds. Besides the speed and accuracy of the electronic count the other benefit is the generation of volumes of data with the system allowing access to data on voting patterns even down to individual ballot boxes which is useful data for political groups and academics as they analyse voting patterns.
28. The electronic count solution is only really practical when delivered across multiple counts where economies of scale render it an efficient option. Costs would be prohibitive were it to be deployed at only one or two locations,

The Elections and Elected Bodies (Wales) Bill (which is not the direct subject of the Committee’s scrutiny) proposes giving the functions of an EMB to the current Local Democracy and Boundary Commission for Wales (to be reconfigured and renamed by the Senedd Cymru (Members and Elections) Bill as the Democracy and Boundary Commission for Wales). On that basis, to inform its scrutiny of the relevant provisions in the Senedd Cymru (Members and Elections) Bill (Part 3 of the Bill) the Committee would be interested in hearing about the role and experience of the EMB Scotland. Part 3 of the Bill makes provision, for example in respect of the number of members of the DBCC, disqualifications from being a member, CEX or assistant commissioner of the DBCC, and quorum.

29. The fundamental issue with respect to the EMB is its independence from government. The EMB has a defined role to promote best practice and to support ROs and EROs.

To achieve this the Convener following consultation can make directions to ROs and EROs and will routinely make such directions for each election to ensure a consistency of approach on key voter facing elements – such as the date of dispatch of poll cards and postal votes – and to ensure adequate contingency – for example proposing suitable numbers to be allocated to polling stations to prevent queues. However to ensure and protect the autonomy and independence of the RO and ERO who properly are accountable only to the courts and not to any politician, the EMB must itself be independent and not subject to any political influence. The protects the independence of RO and ERO and also promotes the interest of the voter ultimately to deliver elections with results that can be trusted as accurate.

30. In terms of the operation of the EMB, the Convener is appointed by Ministers. The Convener then appoints five ROs and three EROs with an effort to ensure a spread of experience and a representation of different types of constituency: urban, rural island etc.
31. 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.

Background – The Electoral Management Board for Scotland

32. 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.
33. 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.
34. 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.
35. 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.
36. 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

37. 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).
38. 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

39. 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

40. 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

41. 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.