



Electoral Management Board for Scotland

Malcolm Burr
Convener of the Board

Mr Jamie Hepburn MSP
Minister for Parliamentary Business
By email: scottish.ministers@gov.scot
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Dear Minister

ELECTORAL REFORM BILL: SECONDARY LEGISLATION

I write with reference to the letter concerning the above, sent on 30 April by your predecessor as Minister for Parliamentary Business, George Adam MSP, to Martin Whitfield MSP, the Convener of the Standards, Procedures and Public Appointments Committee of the Scottish Parliament, of which I received a copy. The letter noted that in addition to the provisions of the Scottish Elections (Representation and Reform) Bill being considered by that Committee, there were other potential electoral changes discussed in the Scottish Government's consultation paper on this topic that had not been included in the Bill. The letter indicated that, in some instances, Government was actively considering amendments to the law to address these but intended to provide for these in secondary legislation rather than in the Bill itself.

The Annex to the letter detailed a number of policy proposals on which the views of the Committee on potential changes to legislation were requested. I would like to offer comments on three of these policy proposals given the responsibilities I have as Convener of the Electoral Management Board for Scotland for coordinating the delivery of devolved elections.

The first is headed in the Annex "**Dissolution before Scottish Parliament Elections**" and narrates a scenario in which a snap UK General Election is called for a date on or close to a Scottish Parliament General Election, after the Scottish Parliament has been dissolved and is unable to react. The proposed solution is to reduce the 28 working day period for the election timetable to just 20 working days, achieved by an amendment to article 84 of the Scottish Parliament (Elections etc.) Order 2015. I have to be very clear that in the view of the EMB, this would be an unacceptable change which would place the delivery of elections at severe risk. The election timetable is already very tight in many elements, but a 20 day timetable would leave little time for key tasks to be completed, not least the preparation and dispatch of postal votes. 20-25% of the electorate now vote by post and their postal vote packs cannot be dispatched until the period for nominations has closed and ballot papers can be printed.

To limit the timetable to 20 days would leave insufficient time for postal ballot papers to be produced, dispatched and returned. Other crucial elements of the process for example the recruitment and training of polling and count staff and the identification and preparation of venues for polling and count would also be severely challenged by such a curtailed timetable. The scenario proposed has a negligible risk of happening and the solution proposed would put the delivery of either or both Elections at severe risk of failure.

The Annex to the paper also highlights concerns around the timing of the counting of votes at Scottish Parliament Elections. Rule 54 of schedule 2 to the Scottish Parliament (Elections etc.) Order 2015 requires that “the Constituency Returning Officer shall make arrangements for counting the votes in the presence of the counting agents *as soon as practicable* after the close of the poll”. However it is my view and that of Returning Officer colleagues that a count commencing on the day following the poll is appropriate and meets the requirement of this rule. This was the practice at the Scottish Parliament Election in 2021 with which all stakeholders were perfectly satisfied. That event was impacted by restrictions to address Covid, but in any event the safe and efficient provision of a count for an event as complex as a Scottish Parliament election is best served by the use of staff who are well rested with access to all support and resources. That is not the case with an overnight count. It is my intention always to encourage the counting of votes on the day following the poll. That is already the practice for Scottish Local Government Elections again where we have complex counts supported by electronic systems. For both of these events Scotland has made implemented a mature and modern approach which has advantages compared to the position regarding UK Elections. I would like to see that distinction continue.

Finally the Annex proposes that the design of forms should be delegated to the Electoral Management Board’s Forms Working Group. Given the developing role and remit of the EMB this new responsibility would be wholly appropriate but the EMB would require sufficient funding to allow this work to be professionally resourced.

I would be pleased to discuss any of these issues with you and your officials in more detail.

Yours sincerely

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