



House of Commons
Scottish Affairs Committee

**Experience of the
Scottish Elections:
Government Response
to the Committee's
Fifth Report of Session
2007–08**

**Third Special Report of Session
2007–08**

*Ordered by The House of Commons
to be printed 24 June 2008*

HC 830
Published on 2 July 2008
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the Office of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Publications

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Third Special Report

The Scottish Affairs Committee published its Fifth Report of Session 2007–08 on 18 May 2008.¹ On 24 June 2008 we received a memorandum from the Scotland Office, which contained a response to the Report. The memorandum is published as an appendix to this Report.

¹ Fifth Report from the Scottish Affairs Committee, Session 2007–08, *Experience of the Scottish Elections*, HC 78

Appendix

Introduction

1. The Government welcomes the Fifth Report of the Scottish Affairs Select Committee Session 2007–08 on the experience of the Scottish elections which were held in May 2007. The Committee has identified a number of issues which it believes need to be addressed; the Government is equally concerned to ensure that everyone involved in the election process in Scotland works together to eliminate the problems that occurred at those elections.

2. This Government is determined that the events of the May 2007 Scottish elections should never happen again. In seeking to ensure that the problems which led to the spoiling of a significant number of ballot papers in the election to the Scottish Parliament in 2007 and the confusion around the use of electronic counting do not happen again the Government's overriding priority has been to put the interests of the voter first.

3. The key task now is to re-build the confidence of voters in casting their vote. The steps that the Government has set out today in the Government's statement on the Gould report and in this response to the Scottish Affairs Committee report are, the Government believes, the right ones to take to ensure that the problems of the 2007 election never happen again.

4. It is the Government's view that all political parties should work together to build on the proposals in the Gould Report in order to improve the election process in Scotland. Elections belong to the people, not individual political parties, and that is why all parties must work for across the board consensus and to ensure that the Scottish voter is put first.

5. The Gould Report on the May 2007 Scottish Parliament and local government elections was published on 23 October and the Secretary of State for Scotland immediately accepted a number of recommendations which would, in future, help to improve the experience of voters when they vote at elections to the Scottish Parliament. On 23 October the Secretary of State made the following commitment in the House:

In addition, I wish there to be further parliamentary debate in this House and will initiate wider discussion with ministerial colleagues and with the wide range of interests involved in electoral matters. That would include the Electoral Commission and Mr. Gould and his team, if possible. I believe that those are important steps to take before we finalise views to be set out in our final written response to the report.

I commend Mr Gould's report to this House and look forward to more extended debate on its findings in due course.²

6. On 13 November, when giving evidence to the Scottish Affairs Committee, David Cairns, Minister of State at the Scotland Office, confirmed that the Scotland Office would be launching a consultation document as well as a series of meetings with political and other interested parties.

² HC Deb, 23 October 2007, col 167

7. On 13 December 2007, the Government issued a consultation document, *Sorting the Ballot: Improving the Elections to the Scottish Parliament*, on the recommendations contained in the Gould report. The purpose of the consultation paper was to get views on suggestions and options to improve voting at elections to the Scottish Parliament in the future. This consultation related only to how the elections to the Scottish Parliament are carried out. It did not relate to the UK and European Parliament elections held in Scotland, which are the responsibility of the Ministry of Justice, nor did it cover elections to local government in Scotland which are the responsibility of the Scottish Executive.

8. This written consultation was backed up by meetings with the 4 main Westminster parties, electoral administrators and the Electoral Commission. In addition 8 focus groups were held in order to gather the views of voters.

9. The views expressed by those that attended the focus groups and responded to the *Sorting the Ballot* consultation paper have played a significant part in informing the Government's response to the Committee's report.

Experience of the Scottish Elections: Conclusions and recommendations

The Question of responsibility

1. We agree that the Scotland Office and all those involved in planning and organising elections in Scotland should now focus on how to strengthen electoral procedures for future years, rather than on assigning blame for what went wrong on 3 May. This is not to deny that there were failings on the part of individuals and institutions. We do not believe that 'no-one was to blame' for the problems. Rather, lines of accountability were so fragmented and confused that no one person could be held solely responsible. (Paragraph 12)

10. The Government has already acknowledged that mistakes were made by all those involved with the planning and organising of the May 2007 elections. The Government strongly agree that efforts should focus on rebuilding voters' confidence in the electoral process and eliminating the risk of similar problems in the future. The Government is therefore proposing to establish, on a non-statutory basis, an Elections Policy and Planning group. This Group, chaired, for the first time, by a senior Returning Officer, will report to the Secretary of State for Scotland on a regular basis on progress with the commitments given in this response. The Group will also take the lead in the active planning for the elections in 2011, again reporting to the Secretary of State for Scotland.

Role of the Scotland Office

2. It is clear to us that there were significant delays in Ministerial decision making in the run up to the 2007 Scottish Parliament elections. It may be that these delays were the result of a desire to allow the consultation process to run its full course. Nevertheless, Ministers in the Scotland Office must realise that excessive delays will have serious consequences for the smooth running of an election. It is highly likely that many of the problems of 3 May 2007 would not have arisen had the legislation

been put in place sooner, allowing for proper testing and contingency planning of the practical aspects of election organisation. (Paragraph 17)

11. While the Government acknowledges that there were delays in making some decisions in the run up to the May 2007 Scottish Parliament elections, these delays were due to the need to consult fully. However the Government has already given a commitment that changes in the law governing the conduct of elections will be in place 6 months before the date of future Scottish parliament elections. This should allow sufficient time for proper testing and planning of the practical aspects of the election process.

The Elections Steering Group

3. The lack of a clear decision-making structure for the Elections Steering Group was a key failure of the preparations for the 2007 elections to the Scottish Parliament. The benefits of consultation had been demonstrated by the experience of previous elections. Nevertheless, the desire to take account of as many views as possible should not prevent structures being established to draw the consultation process to a timely conclusion. (Paragraph 23)

12. The Government agrees that co-ordination of elections can be improved and therefore, as mentioned above, the Government is proposing to establish an Elections Policy and Planning group. The Group will also take the lead in the active planning for the elections in 2011.

Future responsibility for elections to the Scottish Parliament

4. We do not consider that overall responsibility for elections to the Scottish Parliament should be transferred to the Scottish Executive. This is not necessary in order for elections to proceed smoothly in future. However, there may be a case for organisational changes ‘on the ground’ in Scotland, including reformed structures of accountability. In this context, the proposal to establish a Chief Returning Officer for Scotland as a single point of accountability deserves further consideration. (Paragraph 26)

13. The Government accepts the Committee’s recommendation that there is no need to transfer the overall responsibility for the Scottish Parliament elections to the Scottish Executive.

14. The Government has considered the question of whether a Chief Returning Officer should be appointed with full responsibility for administering Scottish elections. The Gould report sets out a range of functions that a CRO might fulfil. However the views that have been expressed across the political spectrum and by administrators are not conclusive. A considered examination of the structures required for administering elections in Scotland is necessary and the Government notes that the Electoral Commission has taken the initiative in leading on an initial investigation on this subject and their report is expected later this summer. The Scottish Executive has also indicated that they propose to consult on the detailed options for a CRO for local authority elections later this year. Given

the need to ensure a consistent approach across elections in the potential role of a CRO, and the ongoing consideration that is being given to this issue, the Government will work closely with colleagues across Government, the Electoral Commission and the Scottish Executive in examining this in more detail before a final decision is reached.

15. However, this consideration will take time and any change would require primary and secondary legislation. The Government is very conscious of the need to make decisions now for the elections in 2011 so that there is no uncertainty about how these elections will be run. The Government is also conscious of the need for a period of stability in order to rebuild confidence in the Scottish electoral processes. The Government does not think it practical therefore to make decisions on a CRO to enable such a person to be in place for the 2011 election. That is not to rule out the concept, but rather to ensure sufficient time is available to give the matter the consideration it deserves.

16. By the end of this year, as Gould recommended, work will have begun on consolidating that legislation in a single statutory instrument. Scotland Office Ministers have committed to achieving this consolidation at least 6 months before the 2011 elections are held.

Role of the Electoral Commission

5. We were not satisfied with the quality of the VoteScotland information campaign. In future, better information campaigns need to be run, particularly when there are changes to electoral procedures. (Paragraph 32)

17. Under Section 13 of the Political Parties, Elections and Referendums Act 2000, the promotion of public awareness of electoral systems in the United Kingdom, including the Scottish Parliament elections, is the responsibility of the Electoral Commission.

6. We conclude that the communication process between the Scotland Office and the Electoral Commission was not effective. Failures on the part of the Electoral Commission meant that warning signs were not acted on. We are particularly disappointed that the Electoral Commission did not raise concerns about the level of spoiled ballots in the pilot study. There is little value in establishing an independent Electoral Commission if it fails to act robustly to warn Government of potential problems with the electoral system. It is difficult to see the Electoral Commission as having added any value to this entire process. (Paragraph 35)

18. The Government acknowledges the importance of good communications with the Electoral Commission and will continue to give priority to this.

7. The status of the Electoral Commission, combining an external auditing role with active participation in organisational aspects of electoral procedure is in need of review. In particular, the Committee would see advantage to some participation, albeit as a minority, of nominees from political parties. This has now been recognised by a number of observers, including the Committee on Standards in Public Life. As part of this review, the Government should give consideration to the proposal to appoint a Chief Returning Officer for Scotland and the allocation of responsibility for:

- the provision of legal advice;
- the development of electoral policy;
- commissioning research;
- the provision of guidance to returning officers;
- compliance and the regulation of political parties;
- monitoring and auditing functions; and
- operational roles (including voter information and awareness programmes). (Paragraph 36)

8. It is unlikely that all of the factors leading up to the 3 May problems are unique to Scotland. (Paragraph 37)

19. The Government notes the Committee's views on the participation of nominees from political parties in the Electoral Commission. The White Paper on Party Finance and Expenditure in the United Kingdom, published on the 16 June, sets out the Government's proposals in relation to representation on the Electoral Commission by those with political experience. The Government intends to take steps, through legislation, to reduce the current bar on individuals being appointed as Electoral Commissioners if they have been engaged in political activity, from ten to five years. Further, the Government intends to disapply the bar to allow the appointment of a minority of Commissioners with recent experience of political life. These proposals are broadly in line with the Committee for Standards in Public Life (CSPL) recommendations.

The combined ballot paper

9. We agree that, on the next occasion, separate ballot papers must be provided for the election of constituency and regional MSPs. However, we note that the suggestion to combine the ballot papers stemmed from a desire to highlight the importance of the regional vote, which is sometimes perceived as having secondary status. The return to separate ballot papers leaves this issue unaddressed. It may be that there are better ways to highlight the significance of the regional vote, for example, through central voter information campaigns as well as the campaigns run by the political parties themselves. (Paragraph 44)

20. The Government has already announced that separate ballot papers will be used for the constituency and regional ballots in the 2011 Scottish Parliament elections. Under Section 13 of the Political Parties, Elections and Referendums Act 2000, the promotion of public awareness of electoral systems in the United Kingdom, including the Scottish Parliament elections, is the responsibility of the Electoral Commission.

Contingency planning

10. There was a shocking lack of accountability for the decision to alter the ballot papers in the Glasgow and Lothians regions to accommodate a larger than expected number of candidates. We are concerned that we have never received a satisfactory explanation for this decision. The lack of robust contingency plans for eventualities such as this was in part due to the successive delays in ministerial decision-making. Delays of this nature (even if they are well-intentioned, for example, to allow for consultation) should not be allowed to jeopardise the integrity of the electoral process (Paragraph 48)

21. Last minute decisions on the design of the ballot papers in Glasgow and the Lothians partly stemmed in part from the lack of time between the close of nominations and the polling date. The Government has already announced that the timetable for the Scottish Parliament elections will be changed to provide for close of nominations to take place 23 days before polling day. The Government will also consider with the Elections Policy and Planning Group adjustments to the election timetable so that the postal vote procedure is handled in an effective and timely manner in future elections. In addition the decision to manually count the ballot papers for the 2011 Scottish Parliament election will mean that the requirement for the ballot paper to be restricted to a certain size in order to allow for electronic counting will no longer apply. This should allow more freedom in the design of the ballot paper.

Party descriptions

11. We support further research into a new format for ballot papers, particularly the questions of candidate order and the use of party descriptions in addition to registered party names. Any change would need to be subject to extensive testing. It may be that moving away from alphabetical order in favour of a lottery system would increase the potential for confusion. (Paragraph 52)

22. As part of the consultation process, the Government commissioned research to specifically ascertain the views of ordinary voters on, amongst other things, the design of the ballot paper. The overwhelming view of voters was that, on the constituency ballot paper, candidates should continue to be listed alphabetically by surname and, on the regional ballot paper, the parties should be listed alphabetically by registered party name with the party description taking second place on the paper. The main reason given for this view was that voters already know who they are going to vote for when they arrive at the polling station and alphabetical order makes it easier to find the appropriate candidate/party. Voters also wanted the party description to be included as it helps to distinguish between parties with similar sounding names.

23. The Government is therefore of the view that in future there should be separate ballot papers for the constituency and regional votes, in alphabetical order, by party name in the case of the regional ballot paper with independents grouped together in alphabetical order by name. Registered descriptions will continue to be used on the regional ballot paper but will be placed second after the registered party name. They will not be able to be used on the constituency ballot paper where only the registered party name will appear. The

Government will give consideration as to whether or not political parties should be able to use the word 'Scottish' in their party name where it does not form part of their registered party name.

24. However, the Government is aware that the Electoral Commission are planning to undertake work on ballot paper design which will be complete in September. The Government will consider the Electoral Commission's findings and, prior to the next Scottish Parliament elections, will work in partnership with the Electoral Commission and electoral administrators to ensure the final design is thoroughly tested with voters.

Secrecy of the ballot

12. The secrecy of the ballot is of prime importance in a democratic society. To jeopardise it simply because of the demands of an electronic counting system is perverse. We strongly support the measures to ensure the secrecy of the ballot outlined in the Gould Report. (Paragraph 54)

25. The Government agrees with this recommendation. The secrecy of the ballot is a key concern of voters and candidates. The return to manual counting provides the possibility of a return to folding ballot papers. The legislation currently provides for candidates standing for election to participate in the sealing of ballot boxes.

E-counting

13. There has been a severe loss of confidence in e-counting. The experience of its use in the Scottish Parliament and local government elections revealed a fundamental lack of transparency. The checks and balances of a manual system must be retained. Candidates and observers must have access to ballot papers in order to ensure that procedures are followed correctly and that recounts can be asked for. Until these problems are resolved, we do not support the use of e-counting for future elections. (Paragraph 60)

26. The Government has already announced that the 2011 Scottish Parliament elections will be counted manually. Before any decision is taken to use e-counting at any future Scottish Parliament elections, the Government will ensure that the necessary checks and balances are in place.

Overnight counting

14. We are confident that the next Scottish Parliamentary elections, decoupled from the local government ballot, can be counted manually on the night without risk to the system. Future arrangements for counting should be considered as part of the research into counting systems that we have recommended earlier in this Report. (Paragraph 63)

27. There is a strong tradition in the UK for overnight counting in order to get the results quickly. The focus group research commissioned by the Government, suggests that voters

favour the overnight count. The Government has therefore decided that there should be no change from the current arrangements, that the count should take place as soon as practicable after the polls close. The final decision on when it is practicable that the count should take place, given local circumstances, will remain a matter for individual Returning Officers.

Postal voting

15. No voter should receive their postal vote so late that there is no realistic possibility of returning it in time to be counted. In 2007, understandable confusion was caused by the fact that the instructions did not match the ballot paper. These problems must not be repeated. We support further research into the use of advanced voting in person which may have advantages in terms of increasing turnout as well as reducing costs and bureaucracy. In addition, there should be a restriction on eligibility for postal votes. (Paragraph 67)

28. The Government has already accepted the Gould Report recommendation that the timetable for the Scottish Parliament elections will be changed to provide for close of nominations to take place 23 days before polling day. The Government will also consider with the Elections Policy and Planning group adjustment to the elections timetable so that the postal vote procedure is handled in an effective and timely manner in future elections.

29. Advanced voting strategies are under active consideration by the Government. The Government will continue to look at ways of making voting more accessible, including access to postal voting, and will shortly be publishing a strategy. *The Governance of Britain* Green Paper supports investigating the modernisation of voting methods, as well as explicitly supporting the continued investigation into the benefits of electronic voting including remote electronic voting. At the May 2007 English local elections there were 12 Pilot schemes which investigated the following ways of modernising the voting process:

- e-voting
- electronic counting
- advance voting
- signing for ballot papers

30. These schemes were then evaluated by the Electoral Commission. The evaluations of these pilots and the findings in the Gould report will inform the Government's approach to improving the electoral process and in developing a strategy for electoral modernisation. These improvements will focus on:

- Ensuring that the conduct of elections is secure, transparent and accountable;
- Improving participation—ensuring the voting process is universally accessible for all eligible people;
- Making the voting process more convenient and responsive to the needs of voters;

- Improving the reputation and credibility of the processes being used (e.g. remote e-voting and e-counting);
- Increasing integrity in the electoral process.

'Decoupling' the elections

16. The decision to 'decouple' the dates of the Scottish Parliament and local government elections appears to offer a simple way to eliminate the complexity of holding a combined election. In principle, we believe that two or more votes in different elections or referenda should not be held on the same day. (Paragraph 73)

31. The Government does not agree that it is always necessary to hold elections on separate days. Sometimes, as has happened in the past, there is a positive advantage in combining elections in the same day in order to increase voter turnout and to reduce the administrative burden and costs.

32. The combination of elections at the May 2007 Scottish Parliament and local government elections was unusual in that it involved the Additional Member System, where the voter placed one X for a constituency candidate and one X for a regional party, and the Single Transferrable Vote system, where the voter was asked to rank candidates in order of preference using 1, 2, 3... etc. The research into the views of ordinary voters showed that voters found this particular combination of different methods of voting confusing.

33. The decision to combine the elections was taken by the Scottish Parliament but the Scottish Executive have indicated in their response to the Gould report that they intend bringing forward legislation to decouple the elections and have consulted on how best to achieve this. The Government considers that decoupling of the Scottish local government elections from the Scottish Parliament elections will resolve the issues of fragmentation in decision-making that Mr Gould identifies.

A Chief Returning Officer for Scotland

17. We also have concerns about voter registration. In many cases, electoral registers are outdated. This needs to be a priority for returning officers. If a Chief Returning Officer were to be appointed, he or she might be well placed to intervene to improve this situation. (Paragraph 75)

18. The proposal to establish a Chief Returning Officer for Scotland deserves further consideration, both in terms of its potential benefits for Scotland and in its implications for the way in which elections are run across the UK. What is important is that there should be a clear line of accountability for each aspect of election planning and organisation. It may be possible to achieve this by strengthening and realigning one of the existing bodies, rather than creating a new post. (Paragraph 80)

34. The Government agrees that electoral registration can be improved. The Electoral Commission have statutory responsibility for the setting of performance standards for

electoral registration officers and are currently consulting on this. Standards will help registration officers identify where performance can be improved.

35. The Government agrees that a considered examination of the structures required for administering elections in Scotland is necessary for the reasons set out above (in paragraph 14).

Returning Officers

19. We recommend that further consultation should take place with electoral officials in Scotland before implementing any proposals affecting the status of returning officers. (Paragraph 83)

36. Electoral officials will be fully involved in any discussions about their status as returning officers. Many electoral administrators consider that they are already ‘professional’ elections officers, with Deputy Returning Officers, in particular, fully engaged in elections work during the period of planning for an election event.

Electoral legislation

20. We welcome the undertaking from the Scotland Office that no new electoral legislation will be introduced in the six months prior to an election. This should go some way towards providing a more certain framework for election planning. We also welcome Ministers’ acceptance of the need for consolidation of electoral law. However, we are not convinced that current plans go far enough. The Scotland Office needs to co-ordinate its activities with other government departments (in particular, the Ministry of Justice) as part of a wider project to overhaul UK electoral law. (Paragraph 87)

37. The Government accepts this recommendation as far as it applies to the legislation governing the conduct of the Scottish Parliament elections. A comprehensive review of the Scottish Parliament (Elections etc.) Order will be undertaken prior to the 2011 elections. In particular, the Government will review the electoral rules with the aim of ensuring that appropriate discretion is provided to Returning Officers such that tasks should be prescribed in detail only where necessary. The Scotland Office will establish a legislation reference group to assist with this task, composed of electoral administrators, the Electoral Commission and legal advisors. The Scotland Office is in regular contact with the Ministry of Justice and the Scottish Executive over the co-ordination of UK electoral law.

Putting the voter’s interests first

21. We were deeply concerned by the events of 3 May. Bureaucratic delay cannot be allowed to undermine Scotland’s long democratic tradition. We agree with Mr Gould that the voter should be placed at the heart of the electoral process. This may seem an obvious statement, but it was the failure to consider the voter’s perspective that led to many of the problems of the 3 May elections in Scotland. We are pleased to note the Minister’s statement that “putting ordinary voters front and centre of this has

got to be the motif for moving this process on” and we expect the Scotland Office to act accordingly. (Paragraph 88)

38. The Government strongly agrees that the voter has to be at the centre of any electoral system. That is why the Government commissioned research to find out voters’ views on the parts of the electoral process which specifically impact on them. The results of this research has informed the Government’s response to the Gould reports and on issues which particularly impact on the voter, such as the design of the ballot paper and the timing of the count, the Government has given priority to the views of voters.

22. The independent review of the Scottish elections needs to be seen as an opportunity to restore fully the integrity of the electoral process, and not to bring about a ‘quick fix’ by accepting only the simplest and least controversial recommendations. Although some proposals can be implemented immediately, others will require significant further research. Throughout our inquiry, witnesses have indicated that the problems underlying the 3 May experience are unlikely to be unique to Scotland. The Scotland Office therefore needs to co-ordinate its action with other government departments as well as bodies such as the Electoral Commission and local electoral officials to ensure that the integrity of the UK’s complex electoral landscape is restored. (Paragraph 89)

39. As the Government has readily acknowledged in response to the Gould report, the key task is now to re-build the confidence of voters in casting their vote. The steps the Government has set out in response to both the Gould report and this report are, the Government believes, the right ones to take to ensure that the problems of the 2007 election never happen again. However, the Government is aware that further consideration is required on some of the issues raised in the Gould report and is committed to working with others involved in the electoral process to ensure that future elections go smoothly.