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Kenneth Gibson MSP
Convener
Finance and Public
Administration Committee
Scottish Parliament
EDINBURGH
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18 February 2026

Dear Kenneth,

I am writing under the terms of the Written Agreement between the Scottish Government and the Finance and Public Administration Committee of the Scottish Parliament which requires the Scottish Ministers, before granting any non-statutory guarantees or indemnities in excess of £2.5m (including those without limit), to present their proposals to the Finance and Public Administration Committee of the Scottish Parliament.

This contingent liability relates to the requirement to indemnify Regional and Constituency Returning Officers and the Convener of the Electoral Management Board for Scotland at the forthcoming Scottish Parliament elections against uninsured claims that arise out of the conduct of their duties. The indemnity will also apply to any Scottish Parliament by-elections which may occur before the next ordinary general election in May 2031. Similar indemnities were agreed by the Scottish Parliament for the May 2016 and 2021 Scottish Parliament elections. Prior to 2016, indemnities at Scottish Parliament elections were provided by the UK Government.

Regional and Constituency Returning Officers (collectively known as “Returning Officers”) are independent officers appointed by statute, under section 12(6) of the Scotland Act 1998 and article 14 of the Scottish Parliament (Elections etc.) Order 2015.

The Electoral Management Board for Scotland was established under section 1, and the Convener is appointed, by the Scottish Ministers, under section 2 of the Local Electoral Administration (Scotland) Act 2011. Sections 4A and 5A of the same Act provide for the Convener to give directions to ROs and Electoral Registration Officers at Scottish Parliament elections. ROs and Electoral Registration Officers are required to comply with any directions which are issued.

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As such, Returning Officers and the Convener are personally liable for the conduct of the Scottish Parliament elections. As a result of their personal liability, they are exposed to a variety of legal risks and potential challenges. The legal risks can vary from minor claims for injury at polling booths, to significant election petitions and associated legal costs.

Although Returning Officers and the Convener act independently of government, they are all appointed local authority officers. Existing local authority insurance normally covers Returning Officers for liability for damages arising out of wrongful acts in the performance of official duties; reasonable legal expenses for defending any proceedings; and costs arising out of holding another election.

While this local authority insurance, coupled with a local authority's employers and public liability insurance, will cover most risks to which Returning Officers may be exposed at Scottish Parliament elections, they could be liable for claims of a type not covered by insurance policies. They could also be liable for claims that exceed the insurance limits in any existing cover.

In the light of this, the Scottish Government proposes to provide Returning Officers and the Convener with a specific indemnity for Scottish Parliament elections to supplement the local authorities' insurance policies which have been arranged locally. The indemnity will cover Returning Officers or the Convener for costs (including reasonable legal costs and reasonable expenses) incurred in connection with a Scottish Parliament election, which arise in relation to their discharge of responsibilities as a Returning Officer or Convener but fall outside of the scope of any locally arranged insurance cover, and where all other forms of recourse have been exhausted.

The indemnity will be limited to the extent that:

- (a) it will not cover any costs which arise in whole or part from any deliberate or wilful negligence by a Returning Officer or the Convener;
- (b) it will not generally cover any excess costs in local authority insurance policies (although individual claims for excess costs will be judged on their merits);
- (b) it will not cover situations where the local authorities' insurance policy offers an alternative means of cover;
- (d) it will not cover any penalty imposed in relation to a criminal offence; and
- (e) it will not cover any claim relating to the use of a motor vehicle where such use should have been covered by a valid insurance policy but was not.

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The indemnity will cover costs arising in relation to Scottish Parliament elections, including by-elections, where the date of the poll is on or before 3rd April 2031. Any claim must be made within 13 months of the poll at the election to which it relates. The UK Government provides similar indemnities in relation to reserved elections.

The likelihood of this indemnity being called upon is small. The volume of claims which have been made at previous UK national elections has been low. There has never been an election petition in connection with a Scottish Parliament election, and, purely for comparison purposes, the only recent significant payments made under indemnities provided at other UK elections were £24,035.75 at the 2009 European Parliamentary election and £250,000 for legal costs arising out of an election petition against Winchester following the 1997 General Election.

There have been only two election petitions in Scotland since the Second World War. The first, in 1964, related to a dispute over election expenses and the second, in 2015, related to a false statement of fact by the winning candidate. Neither of these petitions related to the actions of the Returning Officer, however the Returning Officer for Orkney and Shetland was named as Second Respondent in the 2015 petition. The Returning Officer did not make a claim against the UK Government's indemnity in that case as their costs were met by the local authority.

In order to recognise the possible liability that ROs could be exposed to, the Scottish Government has agreed to broaden the indemnity given to also cover costs incurred as the result of an election petition intimated and served on the RO relating to an election for which they were responsible, which directly or indirectly relates to the discharge of their responsibilities as RO at that election. The intention here being to cover litigation similar to that which occurred in 2015 regarding the Orkney and Shetland election.

Beyond that amendment, this indemnity is very similar to that issued in 2015 and 2021. It covers any losses, liability, damages, costs (including, reasonable legal costs), claims, proceedings, and/or reasonable expenses arising from the actions of a Returning Officer or the Convener flowing from their respective duties at a Scottish Parliament election, in addition to potential costs related to election petitions.

The possibility of a successful claim in the future cannot be ruled out. The potential risk associated with election petitions could be significant. For example, the costs for the Winchester election petition in 1997 (which related to voided ballot papers where there was a close result), following the UK general election of that year, amounted to £250,000. If a petition involving a Returning Officer went to a full trial and ran for a number of days it is conceivable that the bill for legal costs could be significant. It is also conceivable that there could be more than one petition associated with a single election. The costs of an election petition might not be completely covered through existing insurance arrangements and may require the indemnity to be called upon. However, although there is always the risk of a claim, the risk of a significant claim, is minimal. However, since that risk exists, the indemnity is technically unlimited. If the indemnity were called upon, provision for any payment will be met from the Scottish Consolidated Fund.

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As there is a need for this contingent liability to be in place before the election on 7th May 2026, I would greatly appreciate it if the Committee could consider this issue before dissolution. I would be happy to address any questions the Committee might have either by writing or in person.

Yours Sincerely,

GRAEME DEY

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