

CLERK/ CHIEF EXECUTIVE – GOVERNANCE

Executive Summary

1. This paper invites the Corporate Body to agree that the current two Assistant Chief Executives (and Assistant Clerks) - Michelle Hegarty and David McGill jointly cover the role of Clerk Chief Executive for the period there is a vacancy between Paul Grice leaving on 30 September 2019 and a successor being formally appointed.

Background

The Scotland Act 1998

2. Schedule 2 paragraph 3 of the Scotland Act 1998 requires the Corporate Body to appoint Assistant Clerks, paragraph 5 provides that the Corporate Body may delegate any of its functions to the Presiding Officer or the Clerk and section 20 of the Act deals with the operation of the office of the Clerk. In particular, section 20(3) provides that “*The Clerk’s functions may be exercised by any Assistant Clerk if the office of Clerk is vacant or the Clerk is for any reason unable to act.*”

3. We consider that section 20(3) is wide enough in scope to apply to *all* statutory functions of the Clerk (created under the Scotland Act or any other enactment). We are of the view that the purpose of section 20(3) is to ensure continuity of functions generally.

4. The statutory functions of the Clerk outside the Scotland Act 1998 are set out below.

Public Finance and Accountability (Scotland) Act 2000 - Under Section 16 of the Public Finance and Accountability (Scotland) Act 2000 the Clerk of the Parliament is the Principal Accountable Officer.

The Interests of Members of the Scottish Parliament Act 2006 - Section 1(2) of this Act provides that the register must be kept by the Clerk and written statements must be lodged with the Clerk (s3(3) & s5(2)). There are further obligations on the Clerk in terms of deletion of interests under Section 8.

Lobbying (Scotland) Act 2016 - Section 3 of this Act requires the Clerk to establish and maintain the lobbying register.

The Scottish Parliament (Elections etc.) Order 2015 - The Clerk’s role under this Order relates to receiving information such as certificates confirming the result of an election or by-election and on receipt entering the details into a book kept for that purpose at the Scottish Parliament.

Acting Assistant Clerk Considerations

5. Section 20(3) of the Scotland Act 1998 provides that any of the Clerk's functions can be exercised by any Assistant Clerk if the office of the Clerk is vacant. It is enabling – placing the Assistant Clerk(s) directly in the Clerk's shoes. It does not direct which Assistant Clerk is to exercise any specific function.

6. Michelle Hegarty and David McGill have been appointed as Assistant Chief Executives and they have been formally delegated by the Clerk with responsibility for various functions within the organisation. They are also both Assistant Clerks and we can also confirm that there is nothing which would necessitate all the statutory functions noted above to be exercised by one Assistant Clerk.

Publication

7. This paper can be published.

Conclusion

8. Under section 20(3) of the Scotland Act 1998, the Assistant Clerks are acting in substitution for the Clerk rather than as his delegate. In the circumstances, we invite the Corporate Body to agree that the current two Assistant Chief Executives (and Assistant Clerks) jointly cover the role of Clerk Chief Executive for the period there is a vacancy between Paul Grice leaving on 30 September 2019 and a successor being formally appointed.

9. We would also recommend for there to be agreement between the two (as there is now) as to how these responsibilities are divided in practice and to be allocated based on their respective areas of responsibility. However, both would still have the full authority of Assistant Clerks. Should the Corporate Body agree with this, Michelle Hegarty would generally have responsibility for the non-parliamentary business areas and her appointment as Assistant Clerk would include responsibility as the Principal Accountable Officer while David McGill would generally have responsibility for the business and procedural areas.

10. The Corporate Body is invited to agree the arrangements set out in this paper.

Clerk/ Chief Executive's Office

September 2019