

*These notes relate to the Health Boards (Membership and Elections)  
(Scotland) Act 2009 (asp 5) which received Royal Assent on 22 April 2009*

# **HEALTH BOARDS (MEMBERSHIP AND ELECTIONS) (SCOTLAND) ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 2 – Health Board elections***

20. Subsection (1) inserts new subsection (10A) into section 2 of the 1978 Act. New subsection (10A) provides that Schedule 1A will make provision for the elections of individuals to be members of Health Boards.
21. Subsection (2) inserts new section 105(2A) into the 1978 Act. It provides that election regulations made under new paragraph 12(1) of Schedule 1A will be subject to affirmative resolution procedure.
22. Subsection (3) inserts new Schedule 1A into the 1978 Act, which makes provision for Health Board elections.
23. Paragraph 1 provides that an election held under Schedule 1A is known as a “Health Board election”.
24. Paragraph 2 provides for the timing of Health Board elections. It provides that election regulations will specify the day on which a Health Board must hold the first election in the Health Board area. This day could be different for different Health Board areas. Health Board elections will be held on a fixed 4 year cycle. However, a Health Board election may be held in a Health Board area before the day specified if the Scottish Ministers make an order under section 77 of the 1978 Act to declare that a Health Board is in default.
25. Paragraph 3 provides for electoral wards. It provides that each Health Board area is to be comprised of a single electoral ward unless election regulations specify that a Health Board area is to be divided into more than one ward. If regulations specify such a division then they must also specify the number of wards, the boundaries of those wards and the number of elected members to be elected in each ward. Also, before regulations specifying such a division are made, the Scottish Ministers must consult the Local Government Boundary Commission for Scotland and the Commission must give them advice about the boundaries of the wards.
26. Paragraphs 4 to 8 deal with the conduct of elections. Paragraph 4 provides that election regulations must appoint a returning officer for a Health Board election and sets out that election regulations will make provision about the tenure and vacation of office of a returning officer, the functions of a returning officer, the payment of a returning officer’s fees and expenses, and any other matters relating to the returning officers as the Scottish Ministers consider appropriate.
27. Paragraph 5 provides that the nomination of a candidate must be made within the period specified in election regulations and in accordance with any other requirements made in

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those regulations. It also provides that a candidate may withdraw from a Health Board election at any time before the end of the nomination period set out in regulations.

28. Paragraph 6 makes provision for uncontested elections. If, at the end of the nomination period, the number of nominated candidates in an electoral ward is equal to or less than the number to be elected for that ward then—
  - (a) the Health Board election is not to be held in the ward, and
  - (b) on the day on which the election was supposed to be held, the returning officer must—
    - (i) declare the nominated candidates (if there are any) to be deemed to have been elected as elected members for the ward (so they are all effectively elected without a vote being held), and
    - (ii) if the number of nominated candidates is less than the number that is to be elected for that ward, declare the number of vacancies in the ward.
29. Paragraph 7 makes provision for contested elections. The number of members that are to be elected for a ward are to be elected at a poll. Sub-paragraph (2) provides that at the poll, each individual entitled to vote may do so by marking on the ballot paper the voter's first preference from the nominated candidates. The voter can then express a second preference for another candidate and, if the voter wishes, subsequent preferences from amongst the candidates. This is the basic structure of a single transferable vote (STV) system. Sub-paragraph (3) states that election regulations must, in particular, make provision about the manner in which and period during which votes may be cast (for example, postal voting, electronic voting, or traditional ballots at polling stations), the form and content of ballot papers, the manner in which the number of votes which will secure the return of a candidate as an elected member is to be calculated (that is to say, the mathematical formula to be used in the STV system), the procedure for counting votes, and the declaration of the result of the poll.
30. Paragraph 8 makes provision about the eligibility of individuals to be candidates. Sub-paragraph (1) provides that an individual is disqualified from being a candidate in a Health Board election if they hold one of the public offices specified in the sub-paragraph. Sub-paragraph (2) provides that election regulations may make further provision about who is qualified to be a candidate in a Health Board election, and the circumstances in which an individual may be disqualified from being a candidate and may, in particular, disqualify individuals holding a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.
31. Paragraph 9 makes provision about entitlement to vote (in other words, the franchise of Health Board elections). Sub-paragraph (1) provides that an individual is entitled to vote at a Health Board election if the individual is aged 16 or over and meets any further criteria specified in election regulations. Sub-paragraph (2) sets out that the further criteria may, in particular, provide that an individual is eligible to vote only if they are registered in the register of local government electors at an address in the Health Board area, and would be entitled to vote at a local government election in an electoral area falling wholly or partly in the Health Board area, or would be if they were 18 or over. Sub-paragraph (3) provides that election regulations may determine, or set out the criteria for determining, the electoral ward in which an individual is entitled to vote. It also provides that an individual cannot vote more than once in the same Health Board area, nor in more than one Health Board area.
32. Paragraph 10 makes provision about election expenses. It provides that election regulations may make provision about the expenses which may be incurred by any person in connection with the Health Board election.
33. Paragraph 11 deals with what happens when there is a vacancy amongst the elected members of a Health Board. It applies if a returning officer declares a vacancy in

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an electoral ward due to an insufficient number of candidates and also if an elected member vacates office before the end of the usual period. It provides that the Scottish Ministers may direct the Health Board with the vacancy to invite an unelected candidate to fill the vacancy (election regulations can set out criteria for determining which unelected candidate is to be invited) or alternatively the Scottish Ministers can appoint an individual to fill the vacancy. Clearly the first of these options would not be available if the vacancy arose due to an insufficient number of candidates in the first place.

34. If a vacancy arises in a Health Board area less than 6 months before the date of the next scheduled Health Board election, the Scottish Ministers may, instead of taking action to direct the Health Board to invite an unelected candidate or appoint an individual to fill the vacancy, direct the Health Board to leave the vacancy unfilled until the next Health Board election in the Health Board area (paragraph 11(3)). Paragraph 11 also provides that an individual who fills a vacancy is to be treated as if that individual was an elected member of the Health Board (sub-paragraph (4)).
35. Paragraph 12 confers power on the Scottish Ministers to make election regulations. It provides that the Scottish Ministers may make election regulations in relation to any matter specified in new Schedule 1A as something in relation to which provision may be made by election regulations. It also provides that the election regulations may make further provision about Health Board elections (if it is something not already provided for in new Schedule 1A).
36. It also provides that election regulations may apply an enactment (with or without modifications specified in the regulations) or disapply an enactment to Health Board elections.