

EXECUTIVE NOTE

DRAFT : THE HEALTH BOARD ELECTIONS (SCOTLAND) REGULATIONS 2009

AND

THE HEALTH BOARDS (MEMBERSHIP) (SCOTLAND) REGULATIONS 2009 SSI 2009/302

The Health Board Elections (Scotland) Regulations 2009 have been made in exercise of the powers conferred by sections 2(10A) and 105(7) of, and by paragraphs 12(1), (2) and (3) of Schedule 1A to the National Health Service (Scotland) Act 1978 (“the 1978 Act”) and all other powers enabling them to do so. This instrument is subject to draft affirmative procedure.

The Health Boards (Membership) (Scotland) Regulations 2009 have been made in exercise of the powers conferred by sections 2(10) and 105(7) of, and by paragraphs 2(2), 10A(3) and 11(a) of Schedule 1 to the 1978 Act and all other powers enabling them to do so. This instrument is subject to negative resolution procedure.

Policy Objectives

These regulations will enable the delivery of pilot elections to the health boards in Fife and Dumfries and Galloway. Within the regulations are set out the rules and procedures that will govern Health Board elections that are due to take place in 2 pilot Health Board areas, while stipulating the total number of members and the number of each type of member.

The Health Boards (Membership and Elections) (Scotland) Act 2009 (“the 2009 Act”) was passed by the Parliament in March 2009, that Act made amendments to the 1978 Act for the purposes of establishing Health Board elections. The 2009 Act inserted a new Schedule 1A into the 1978 Act which requires “election regulations” to set out the detail, including the date of, Health Board elections. The Health Board Elections (Scotland) Regulations (“the Elections Regulations”) fulfil those requirements.

Section 1(2) of the 2009 Act substituted paragraph 2 of Schedule 1 to the 1978 Act, which sets out the constitution of Health Boards. The categories of members are: appointed members, councillor members and elected members. Paragraph 2(2) provides that regulations must specify the total number and number of each type of member of Health Boards. Paragraph 2(1)(a) sets out the categories of members. The Health Boards (Membership) (Scotland) Regulations (“the Membership Regulations”) does this for the health boards in the pilot areas.

As a result of the introduction of Health Board elections, the Schedule to the Membership Regulations amends the Health Boards (Membership and Procedure) (Scotland) Regulations 2001. These amendments reflect the new categories of Health Board member set out by the 2009 Act.

Consultation

The original drafts of both the Election and Membership Regulations were submitted to the Scottish Parliament prior to the commencement of the Stage 1 committee. This allowed a clearer understanding of the intent of the Health Boards (Membership and Elections) (Scotland) Bill during its passage through Parliament. The changes incorporated in the 2009 Act as a result of the Parliamentary process have been reflected in these regulations.

In further developing the detail of the regulations a steering group, chaired by the Scottish Government's Director of Health Delivery, has been established. This group includes the Chair of the Electoral Registration Officers Group as well as government officials tasked with delivery of this legislation, electoral officials and public / patient involvement officials. The work of this steering group has been augmented by meetings with the health boards involved in the pilots and with the local electoral officials who will deliver elections in those areas. This approach has been designed to ensure best practice is adhered to with regard to the elections, while taking account of local issues.

Electoral Process

The pilot elections will take place on 10 June 2010. This date has been discussed and agreed with elections officials that will be responsible for the delivery of the elections. In order to adopt a simple administrative approach, as far as is practicable, existing local government electoral processes have been adhered to. The Schedule to the Elections Regulations contains the Health Board Election Rules.

Delivery of the Election

The Health Boards involved in the pilot will have responsibility for delivery of the election in their area. In adopting a consistent and simple administrative approach to the pilot elections the Elections Regulations have been drafted so as to use existing electoral processes and procedures as used for Local Government elections or in National Park Authority elections.

The Local Government structures that are in place to support elections, which involve Electoral Registration Officers, Returning Officers, procedures around the conduct of the election and the count of the vote are all utilised for the Health Board elections. The use of an all postal election is currently in place for National Park elections and so, for the purposes of the pilot, it is considered appropriate that the system is used for the health board elections.

16 and 17 year olds

The elections will allow 16 and 17 year olds to participate. This was subject to a great deal of debate in Parliament and agreement was reached on a way to utilise existing local government registers of voters in order to identify eligible 16 or 17 year old voters on the day of the election. Section 4 of the Representation of the People Act 1983 is specific about those allowed to be registered. Working in consultation with Electoral Registration Officers, and utilising the local government register of voters, anyone born before 1 December 1993 will be able to vote or stand as a candidate.

Candidates

The criteria for candidates to stand for election is designed to be consistent with the criteria for appointment as a member of a Health Board (set out in Health Boards (Membership and Procedure) (Scotland) Regulations 2001 as amended by the Membership Regulations in relation to Health Board elections). The Elections Regulations also set out, for the purposes of paragraph 10A(3) of Schedule 1 to the 1978 Act, the listing of restricted posts in relation to an election to a Health Board.

Number of Members

Paragraph 2(3) of Schedule 1 to the 1978 Act makes two stipulations as to the numbers of members:

“(a) the total number of councillor members and elected members of a Board must amount to more than half the total of members, and

(b) a Board must contain at least one councillor member for each local authority whose area is wholly or partly within the area of the Board.”

Setting this out in statute ensures the local councillor and elected members will make up the majority of members on a Health Board.

Regulation 3 of the Membership Regulations sets out, in a tabular format, the number of each category of members that will make up a Health Board in the two pilot areas of Fife and Dumfries and Galloway.

The policy drivers behind the numbers contained in the table are to ensure that Health Boards remain effective and able to carry out the range of duties expected of them but also that the size of a Health Board should be proportionate to the size of population that they serve.

In the case of Dumfries and Galloway, the Board will be made up of a total of 21 members: 10 elected members; 1 councillor member and 10 appointed members. The appointed members are anticipated to include a Chairperson, an Area Partnership Forum Member and an Area Clinical Forum member.

In Fife, the Board will be made up of a total of 25 members: 12 elected members, 1 councillor member, and 12 appointed members. Again the appointed members are anticipated to include a Chairman, an Area Partnership and an Area Clinical Forum member.

Transition

The pilot elections will take place on 10 June 2010. This date has been discussed and agreed with elections officials that will be responsible for the delivery of the election. In order to adopt a simple administrative approach, as far as is practicable, existing local government electoral processes have been adhered to. Those elected take up post on the day after an election at which they are elected, this is on the face of the 2009 Act at section 2(6) which inserts a new paragraph 10A into Schedule 1 to the 1978 Act..

To ensure that elected members are able to function as full Health Board members and properly discharge their responsibilities they will undergo both national and local training to equip them fully with the skills and expertise required.

Accountability / Disqualification

Health Boards will remain accountable to Scottish Ministers and through them to Parliament. The Membership Regulations make consequential amendments to the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 in order to reflect the different categories of member. These amendments also ensure that elected members cannot be removed by Scottish Ministers, as is the case for the other categories of member. The conduct of elected members will remain subject to the Standards Commissioner.

The Membership Regulations also update the disqualification criteria for members of Health Boards to ensure consistency with the new provisions of the 1978 Act.

Costs

The estimated costs of holding the elections to the pilot areas of Fife Health Board and Dumfries and Galloway Health Board are consistent with the financial memorandum set out in support of the original Health Board (Membership and Elections) (Scotland) Bill.

Costs to deliver the elections in the 2 pilot areas are estimated to be in the region of £2.1 million. Offsetting the reduction in non executives appointed to a Board there will be additional on-going costs to pay elected members. This is estimated to be in the region of £90,000 per year for both pilot areas.

Health Delivery Directorate
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