

2004 No. 3318

**HEALTH CARE AND ASSOCIATED PROFESSIONS
HEALTH PROFESSIONS**

**The Health Professions Council (Election Scheme) Rules
Order of Council 2004**

Made - - - - - 17th November 2004
Laid before Parliament 15th December 2004
Coming into force - - 7th January 2005

At the Council Chamber, Whitehall, the 17th day of November 2004

By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in exercise of the powers conferred on it by article 41(2) and paragraph 2 of Schedule 1 to the Health Professions Order 2001(a), and of all other powers enabling it in that behalf, the Health Professions Council has made the Health Professions Council (Election Scheme) Rules 2004 as set out in the Schedule to this Order:

And whereas by articles 41(1) and 42 of the Health Professions Order 2001 such Rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken the Rules into consideration, are pleased to, and do hereby, approve them.

This Order may be cited as the Health Professions Council (Election Scheme) Rules Order of Council 2004 and shall come into force on 7th January 2005.

A. K. Galloway
Clerk of the Privy Council

(a) S.I. 2002/254.

SCHEDULE

THE HEALTH PROFESSIONS COUNCIL (ELECTION SCHEME) RULES 2004

The Health Professions Council, in exercise of its powers under article 41(2) of and paragraph 2 to Schedule 1 to the Health Professions Order 2001(a), and of all other powers enabling it in that behalf and after consulting in accordance with article 41(3) of that Order, hereby makes the following Rules—

Citation and Commencement

1. These rules may be cited as the Health Professions Council (Election Scheme) Rules 2004 and shall come into force on 7th January 2005.

Interpretation

2.—(1) In these Rules—

“due date” has the meaning given in rule 3(1);

“elector” means a person who, on the day 28 days before the nomination day determined in accordance with rule 5(1), is registered in that part of the register to which an election relates;

“electronic address” means any number or address used for the purpose of receiving communications which are sent electronically, the processing of which on receipt is intended to produce writing or images;

“expenditure” has the meaning given in rule 14(2);

“home country” means England, Scotland, Wales or Northern Ireland;

“home country representation requirement” means the requirement in paragraph 2(2)(c) of Schedule 1 to the Order that, of the registrant members and alternate members, at least one member shall be appointed from each of the home countries and that member shall live or work wholly or mainly in the country concerned;

“Independent Scrutineer” means the person appointed in accordance with rule 4;

“nomination day” shall be construed in accordance with rules 5(1) and 13(2)(a);

“the Order” means the Health Professions Order 2001;

“percentage differential vote” means the difference, expressed as a percentage, between the percentage of votes cast for a candidate and the percentage of votes which that candidate would have received if each candidate from his part of the register had received an equal share of the votes cast;

“polling day” shall be construed in accordance with rules 8(2) and 13(2)(b); and

“Returning Officer” shall be construed in accordance with rule 3.

(2) Any requirement in these rules for any material to be received by the Returning Officer by a fixed date means that it shall be valid only if delivered to or received by post at the offices of the Council not later than 5 p.m. on that date unless (other than in the case of a nomination form required by rule 5(6), a consent to nomination required by rule 6(1), the withdrawal of a nomination under rule 7 or a return of election expenses under rule 15) it is sent electronically to the Returning Officer by the fixed date.

Returning Officer

3.—(1) Not less than six months before the end of the full term of office of any registrant member or alternate member (referred to in these Rules as the “due date”), the Council shall, as regards the election to be held in respect of that vacancy, appoint a Returning Officer and may at the same time appoint a Deputy Returning Officer who shall be entitled to carry out the functions of the Returning Officer if he is absent or unable to act.

(2) The person appointed as the Returning Officer or the Deputy Returning Officer may be the Registrar or an employee of the Council but may not be a member of the Council.

(3) The Returning Officer shall be responsible for the conduct of the election, in accordance with these Rules, for which he is appointed.

(4) The Returning Officer shall be responsible for the publication, printing and distribution of the notice under rule 5(2).

(a) S.I. 2002/254.

(5) The Returning Officer and any Deputy Returning Officer shall cease to hold office when the election for which he is appointed (including any further election held under rule 13) has been completed, but if the Returning Officer or Deputy Returning Officer resigns (which he must do if he becomes a candidate), dies or becomes unable to act before that election has concluded the Council may appoint another person in his place.

(6) The Returning Officer may appoint such persons as he considers appropriate to assist in the conduct of the election.

(7) The Returning Officer may delegate any administrative function in the conduct of the election to the Independent Scrutineer.

Independent Scrutineer

4.—(1) The Council shall, not less than five months before the due date, appoint an Independent Scrutineer to supervise the conduct of the election.

(2) The person appointed as Independent Scrutineer shall be a person who, in the reasonable belief of the Returning Officer, has the experience and capacity to carry out the functions set out in this rule in a fair and competent manner.

(3) The Independent Scrutineer shall be responsible for arranging the printing and distribution of the ballot material, in so far as is required by these Rules, and for counting the votes cast in accordance with these Rules.

(4) The Independent Scrutineer shall arrange for the printing and distribution of the ballot material by the most cost effective method deemed appropriate by the Returning Officer.

(5) The Returning Officer shall provide the Independent Scrutineer with such financial resources as the Returning Officer thinks fit to carry out the functions described in paragraphs (3) and (4).

Nominations

5.—(1) Not less than five months before the due date the Returning Officer shall fix and publish the date of the nomination day in such manner as the Returning Officer sees fit.

(2) Not less than twenty-one days before the nomination day the Returning Officer shall send to each elector a notice specifying the date of the nomination day and the address to which nominations are to be returned.

(3) The requirement to send an elector a notice under rule 5(2) shall be treated as satisfied if it is sent to him electronically to an electronic address notified to the Council by that elector as a contact address.

(4) A candidate for election as a registrant member or alternate member shall be nominated by six electors who are registered in the same part of the register as the candidate.

(5) A candidate—

(a) may only be nominated as a registrant member or an alternate member (but not both) to represent a part of the register in which he is registered and, if a person is registered in more than one part of the register, may only be nominated or elected to represent one part of the register at any one time;

(b) must live or work wholly or mainly in the United Kingdom;

(c) must not be the subject of any allegation, investigation or proceedings by the Council or any other body responsible for regulating or licensing a health or social care profession concerning his fitness to practice;

(d) must be wholly or mainly engaged in the practice, teaching or management of the profession in respect of which he is registered and seeks election or in research in those fields.

(6) A nomination shall be valid only if—

(a) it is made on the nomination form available from the Returning Officer;

(b) it is made on one or more nomination forms signed by the electors nominating the candidate and received by the Registrar by the nomination day; and

(c) the candidate has consented to his nomination in the form required by rule 6(1) and that consent has been received by the Registrar by the nomination day.

(7) An elector may nominate not more than six candidates and, if an elector purports to nominate more than six candidates, his signature shall be valid only on the first six nominations received by the Returning Officer or, where two or more forms are received by the Returning Officer at the same time, in the order in which the Returning Officer in fact sees them.

Consent of and statements from nominated candidates

6.—(1) A candidate for election shall, on or before the nomination day, deliver to the Returning Officer a written statement which identifies and is signed by the candidate confirming that the candidate—

- (a) is willing to stand for election;
- (b) is wholly or mainly engaged in the practice, teaching or management of the profession in respect of which he is registered and seeking election or in research in those fields;
- (c) lives or works wholly or mainly in a home country (and the statement shall identify that country); and
- (d) is not subject to any allegation, investigation or proceedings by the Council or any other body responsible for regulating or licensing a health or social care profession concerning his fitness to practise.

(2) A candidate may supply to the Returning Officer, on or before the nomination day—

- (a) an election statement, including particulars of the candidate's qualifications and career, of such length and in such form as the Returning Officer shall specify; and
- (b) a passport-sized photograph of the candidate sent in such electronic format as the Returning Officer shall specify as an acceptable electronic format.

(3) Subject to the following provisions of this rule, any election statement received by the Returning Officer on or before the nomination day which is in accordance with paragraph (2)(a), together with any photograph received by the Returning Officer on or before nomination day which is in accordance with paragraph (2)(b), shall be printed and sent by the Independent Scrutineer with the ballot papers issued under rule 9 to electors eligible to vote for the candidate.

(4) The requirement to send any material to an elector under paragraph (3) shall be treated as satisfied if—

- (a) the material is sent to him electronically by the Independent Scrutineer to an electronic address notified to the Council by that elector as a contact address; or
- (b) a notice is sent to him electronically by the Independent Scrutineer to an electronic address notified to the Council by that elector as a contact address informing him of—
 - (i) the availability of that material on a website;
 - (ii) the electronic location of that website; and
 - (iii) the place on that website where the material may be accessed, and how it may be accessed, and the material is available continuously on that website throughout the period beginning with the date on which the notice was sent and ending with the date on which the result of the election is declared.

(5) Where any material is available on a website for a part but not all of the period mentioned in paragraph (4)(b) and the failure to make that material available throughout that period is wholly attributable to circumstances which it would not have been reasonable to have expected the Council to prevent or avoid, that failure shall not invalidate the election of any person.

(6) The Returning Officer shall not be required by this rule to issue an election statement of a length greater than that specified by the Council and, if a candidate's election statement exceeds the specified length the issued statement shall end at the last complete sentence within the specified length.

(7) The Returning Officer shall not be required by this rule to issue an election statement which, in the Returning Officer's opinion, is or may be libellous, scandalous or untrue on matters of fact and may either edit the statement before issuing it or decide not to issue it.

(8) Every candidate who supplies material under paragraph (2) shall be deemed to have agreed—

- (a) that the decision of the Returning Officer not to issue the whole or any part of it shall be final; and
- (b) to indemnify the Returning Officer and the Council against any liability to any third party which arises by reason of issuing that material.

Withdrawal of nomination

7. A candidate may withdraw his candidature by notice in writing signed by the candidate and received by the Returning Officer by the nomination day and in that event the nomination of that candidate shall be disregarded for the purposes of the election.

Additional nominations, uncontested vacancies and polls

8.—(1) If, after the nomination day, the Returning Officer determines, having regard to all the nominations received and to any continuing registrant members and alternate members of the Council, it would not be possible to appoint from the nominated candidates a Council that would meet the home country representation requirement, he may extend the time allowed for the nomination of candidates and take such measures as he considers appropriate to facilitate the nomination of candidates from the unrepresented home country (including modifying the time limits in rule 6 above).

- (2) If after the time allowed for the nomination of candidates has expired, in respect of any vacancy for a registrant member or alternate member to represent any part of the register—
- (a) there is only one candidate nominated for the vacancy, the Returning Officer shall declare the candidate so nominated to have been elected;
 - (b) there is more than one candidate nominated for the vacancy, the Returning Officer shall cause a poll to be held.
- (3) When a poll is to be held the Returning Officer shall fix a polling day and shall publish in such manner as he sees fit—
- (a) the date, which shall not be less than twenty-one days later than the date of publication;
 - (b) the names, addresses and home countries of all candidates; and
 - (c) subject to paragraph (4) the names and addresses of the persons nominating each candidate.
- (4) If more than six nominations are received in relation to any one candidate, the Returning Officer shall publish in connection with that candidature the six nominations earliest received, or where several nominations are on one form, the first six mentioned on that form.
- (5) Subject to rule 10, a vote shall not be valid unless made on a ballot paper received from the Independent Scrutineer and returned to him by polling day.
- (6) No elector may vote both electronically and by post in any election and, if an elector does so, only the vote first received by the Independent Scrutineer shall be valid.

Postal Voting

- 9.—(1) The Independent Scrutineer shall arrange for the distribution by post of ballot papers, together with lists of candidates and their nominators, any election statements (with any photographs of the candidates included on them) and return envelopes.
- (2) The return envelopes shall be addressed to the Independent Scrutineer at the offices of the Council or to such other address as the Returning Officer may determine.
- (3) The ballot papers and the lists of candidates and nominators shall be in such form as the Returning Officer may determine and, in particular, where there are vacancies for a registrant member and alternate member to represent the same part of the register, the Returning Officer may provide for the polls for those vacancies to be conducted using the same ballot paper.
- (4) The Independent Scrutineer shall at least eight days before the polling day send to the registered address of each elector entitled to vote in the poll the ballot paper, the lists of candidates and their nominators, a return envelope and any statements issued in accordance with rule 6(3) (with any photographs of the candidates included on them).
- (5) An elector shall only be entitled to vote for candidates from that part of the register in which he is registered but shall be entitled to vote in an election even if he lives or works outside the United Kingdom.
- (6) The elector shall record his vote on the ballot paper in accordance with the instructions on the ballot paper.
- (7) The elector shall enclose the ballot paper in the return envelope and seal the envelope without making on it any distinguishing mark and return the envelope and its contents to the address given on the return envelope so that it is received there by polling day.
- (8) The Independent Scrutineer may replace a ballot paper or a return envelope which is inadvertently spoiled or destroyed if an application is made to the Returning Officer in writing which includes an undertaking by the applicant that he has not marked and will not mark more than one ballot paper nor vote electronically in the same election.

Electronic voting

- 10.—(1) Subject to paragraph (2), a vote shall not be valid unless it is made in accordance with rule 9.
- (2) A vote shall be valid if it is cast electronically on a website voting facility using the form or method approved by the Independent Scrutineer.
- (3) The Independent Scrutineer may require such evidence as he thinks fit to satisfy himself that a vote cast electronically on a website voting facility is valid.

Declaration of Election

- 11.—(1) Immediately after the polling day the Independent Scrutineer shall cause—
- (a) the ballot papers to be withdrawn from the envelopes and for the votes validly cast for each candidate to be counted;
 - (b) the electronic votes validly cast for each candidate to be counted; and

(c) the total votes validly cast for each candidate to be calculated.

(2) A vote shall be deemed to have validly cast if, but only if, it has been cast in accordance with these Rules.

(3) If in any poll the same number of votes is cast for each of two or more candidates, the Returning Officer shall, where necessary to decide the result of the election, determine by lot which of the candidates shall be deemed to have obtained the highest or the next highest number of votes for the purposes of these Rules.

(4) When the Returning Officer declares the result of an election, he shall certify in writing—

(a) the name of each person elected and that person's home country;

(b) if a poll has been held, the names and home countries of all other candidates, the total number of votes cast and the numbers of votes cast respectively for the persons elected and for every other candidate; and

(c) whether, having regard to all the results that he is certifying, a Council comprising the persons elected as registrant members and alternate members, when taken together with any continuing registrant members and alternate members, would meet the home country representation requirement and if not, which home country would not be represented,

and shall present the certificate to the Council at their next meeting.

Appointment of members

12.—(1) The council, upon receipt of the Returning Officers' certificate shall—

(a) where the Returning Officer certifies that the home country representation requirement would be met, appoint the persons elected as registrant members and alternate members of the Council; and

(b) where the Returning Officer certifies that the home country representation requirement would not be met proceed in accordance with paragraphs (2) to (4).

(2) The Council shall identify from the Returning Officer's certificate which home country would not be represented ("the unrepresented home country").

(3) The Council shall appoint, from among all the candidates from the unrepresented home country, the person who received the highest percentage differential vote in place of the person elected to be the registrant member or alternate member to represent his part of the register unless doing so would remove a person who would be the only alternate member or registrant member from another home country.

(4) In that event the Council shall appoint the candidate from the unrepresented home country with the next highest percentage differential vote, in place of the person elected to be the registrant member or alternate member to represent his part of the register, whose appointment would not remove a person who would be the only alternate member or registrant member from another home country.

(5) If there is more than one unrepresented home country, the process described in paragraphs (3) and (4) shall be carried out first in respect of the unrepresented home country with a candidate who has received the highest percentage differential vote amongst the candidates of unrepresented home countries, and where necessary next in respect of the home country with a candidate who has received the next highest percentage differential vote amongst the candidates of unrepresented third countries, unless the process has to be carried out in a different order to ensure that the home country representation requirement is met, in which case the Council shall determine the order in which it is carried out.

(6) A person appointed in accordance with paragraphs (3) and (4) shall be treated for all purposes as if he was elected and appointed as a registrant member or an alternate member in accordance with rule 12(1)(a).

(7) The Council shall ensure that at least one registrant member and one alternate member is appointed from each part of the register and that the number of members from each part of the register is equal.

Death, resignation, etc.

13.—(1) If—

(a) a candidate dies after the nomination day but before the election for the vacancy for which he has been nominated has taken place;

(b) a candidate who has been elected dies or resigns before taking up office; or

(c) after an election has taken place a vacancy remains unfilled due to an insufficiency of nominations, the withdrawal of candidates, a declaration under rule 17 that a person's election is invalid or for any other reason,

the Returning Officer shall as soon as practicable, cause a further election to be held in respect of the vacancy.

(2) For the purpose of paragraph (1) the Returning Officer shall—

(a) fix and publish another nomination day;

- (b) if necessary, fix and publish another polling day; and
 - (c) proceed with the further election,
- in accordance with these Rules, subject to such modifications as the circumstances may require.

(3) The death or resignation of a candidate shall not affect the validity of the nomination of another candidate for the same vacancy and any such nomination in respect of the first election shall, subject to the rule 17(4), be deemed to be a valid nomination for a further election for the same vacancy held under this rule.

Expenditure by Candidates

14.—(1) The expenditure incurred by or on behalf of a candidate in the conduct or management of any election shall not exceed £500.

(2) For the purposes of these Rules “expenditure” means any relevant expenditure made or incurred between the date on which the Returning Officer published the notice required by rule 5(1) and polling day and includes—

- (a) the cost of preparing pamphlets or circulars;
- (b) the cost of advertisements in newspapers or elsewhere;
- (c) the cost of meetings convened for the purpose of the election (including a share in the costs of such meetings arranged by or for candidates jointly); and
- (d) postal and telephone charges incurred in connection with the election,

but excludes the reasonable travelling and subsistence expenses of the candidate and the candidate’s family, the reasonable travelling and subsistence expenses of other persons which are not defrayed by or on behalf of the candidate and any costs incurred by the Council, the Returning Officer of the Independent Scrutineer under rules 6 and 9.

Return of expenses

15.—(1) Not later than fourteen days after the appointment of members in accordance with rule 12 every person appointed as a registrant member or alternate member shall provide to the Returning Officer, in such form as he may determine, a true and complete return of all expenditure incurred by him or on his behalf in the conduct or management of the election.

(2) The Returning Officer shall publish all statements of expenditure received under this rule in such manner as the Council may determine.

Validity of Election

16.—(1) The certificate of the Returning Officer under rule 11 shall be conclusive evidence of the facts stated in it unless in respect of the election of any person a written notice of protest signed by not less than twenty-five electors registered in that part of the register to which the election relates is received by the Returning Officer within twenty-eight days of that certificate being presented to the Council.

(2) A protest may be made on one or more of the following grounds—

- (a) that the election of that person was not in accordance with the requirements of these Rules;
- (b) that the election of that person was furthered by conduct which, if the election was regulated by the Representation of the People Act 1983(a), would be a corrupt practice by way of bribery, treating or undue influence under sections 113, 114 and 115 of that Act (bribery, treatment and undue influence); or
- (c) that the person elected contravened the expenditure limit specified in rule 14 or failed to make a return of election expenses in accordance with rule 15.

(3) If any candidate who is appointed in accordance with rule 12 fails to submit a return of election expenses in accordance with rule 15, or if a return submitted under that rule indicates that expenditure has been incurred in excess of that authorised under rule 14, the Returning Officer shall make a report on the matter to the Council.

Protests or Reports

17.—(1) Any protest or report under rule 16 shall be considered by the Council at its next meeting.

(2) The Council shall afford the person concerned an opportunity of making a reply in writing to the protest or the report, and may if it thinks fit hear oral statements from representatives of the persons signing the protest, from the Returning Officer and from the person concerned.

(a) 1983 c. 2.

- (3) If the Council is satisfied—
- (a) that the expenditure incurred by on behalf of the person concerned in the conduct or management of the election exceeded the limit specified in rule 14;
 - (b) that the person concerned has failed to furnish a true and complete return of election expenses as required by rule 15;
 - (c) that the election of the person concerned was furthered by conduct of the kind described in rule 16(2)(b); or
 - (d) that the election of the person concerned was in some other respect not in accordance with the requirements of these Rules.

then (unless, in case (d), it appears to the Council that the election was conducted substantially in accordance with the requirements of these Rules and that any non-compliance with those requirements did not affect the result) the Council may declare that person's election invalid, and in that event the resulting vacancy shall be filled by a further election as provided by rule 13.

(4) If the Council declare the election of any person invalid it shall consider whether in the circumstances of the case it should also declare that person to be disqualified from being nominated as a candidate in any further election held pursuant to paragraph (3) and, if it declares the person to be so disqualified, any nomination of that person shall be rejected as invalid by the Returning Officer.

(5) Any declaration made by the Council under this rule shall be published and shall be binding upon all persons.

Commencement of office

18.—(1) Subject to paragraph (2), a person who is appointed as a registrant member or alternate member shall take office as a member of the Council immediately after the expiration of the term of office of the member previously elected to represent the same part of the register as the new member.

(2) Any person who is the subject of any protest or report made under rule 17 shall not take office until such protest or report has been considered and disposed of by the Council.

Filling of vacancies

19. Before appointing a person to fill a vacancy under paragraph 8(1)(a) of Schedule 1 to the Order the Council may cause a by-election to be held in respect of the vacancy and in that event these Rules shall apply to any such by-election but subject to such necessary modifications as the Council may determine.

Sealed with the common seal of the Health Professions Council on 8th November 2004.



Norma Brook
President

Marc Seale
Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves Rules of the Health Professions Council which provide for an election scheme to elect the registrant and alternate members of the Health Professions Council. A registrant member and an alternate member is to be appointed in respect of each part of the register maintained by the Health Professions Council, and generally that will be the candidate who polls the most votes in respect of each contested vacancy. However, there is also a requirement derived from paragraph 2(2)(c) of Schedule 1 to the Health Professions Order 2001 that, of the registrant and alternate members, at least one member shall be elected from each of the countries of the United Kingdom, so there are special arrangements to ensure that this requirement is met.

The election scheme also contains measures relating to: the appointment of a returning officer and an independent scrutineer; the nominations process; the holding of polls (including arrangements for both postal and electronic voting); and the declaration of results and the subsequent appointment of registrant and alternate members to the Health Professions Council. It includes special provisions relating to the expenditure of candidates, and for dealing with issues such as the death or withdrawal of candidates—and for dealing with protests. Provision is also made for the re-running elections, where necessary, and for the holding of by-elections.

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1727 12/2004 141727 19585

ISBN 0-11-051445-9



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