



Health Boards (Membership and Elections) (Scotland) Act 2009

2009 asp 5

Elected members of Health Boards

2 Health Board elections

(1) In section 2 of the 1978 Act (Health Boards), after subsection (10) insert—

“(10A) Schedule 1A makes provision for the election of individuals to be members of Health Boards.”.

(2) In section 105 of the 1978 Act (regulations etc.)—

- (a) in subsection (2), for “(3) and” substitute “(2A) to”, and
- (b) after subsection (2) insert—

“(2A) No regulations shall be made under paragraph 12(1) of Schedule 1A (Health Board elections) unless a draft has been laid before, and approved by resolution of, the Scottish Parliament.”.

(3) After Schedule 1 to the 1978 Act insert—

“SCHEDULE 1A

(introduced by section 2(10A))

HEALTH BOARD ELECTIONS

Health Board elections

1 An election held under this Schedule is known as a “Health Board election”.

Timing of Health Board elections

2 (1) A Health Board must hold the first Health Board election in the Health Board area on the day specified in election regulations.

- (2) Election regulations may specify different days for the first election in different Health Board areas.
- (3) A Health Board must hold subsequent Health Board elections on the first Thursday falling after the end of the period of 4 years beginning with the day of the previous election.
- (4) But a Health Board election may be held in a Health Board area before the day specified in sub-paragraph (3) if the Scottish Ministers make an order under section 77 specifying the date of a Health Board election in that area.

Electoral wards

- 3 (1) 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.
- (2) If regulations specify such a division they must also specify—
 - (a) the number of electoral wards in the Health Board area,
 - (b) the boundaries of those wards, and
 - (c) the number of elected members to be elected in each ward.
- (3) Before regulations specifying such a division are made—
 - (a) the Scottish Ministers must consult the Local Government Boundary Commission for Scotland, and
 - (b) the Commission must give the Scottish Ministers advice about the boundaries of the electoral wards which the Health Board is to be divided into.

Conduct of election

- 4 (1) Election regulations must appoint an individual as the returning officer for each ward in which a Health Board election is to be held.
- (2) Election regulations may make provision about—
 - (a) the tenure and vacation of office of a returning officer,
 - (b) the functions of a returning officer,
 - (c) a returning officer's fees and expenses,
 - (d) any other matters relating to returning officers that the Scottish Ministers consider appropriate.
- 5 (1) The nomination of a candidate must be made—
 - (a) within the period specified in election regulations (the "nomination period"), and
 - (b) in accordance with any other requirement made in those regulations.
- (2) A candidate may withdraw from a Health Board election at any time before the end of the nomination period.

- 6 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 of elected members to be elected for that ward—
- (a) the Health Board election is not to be held in the ward, and
 - (b) on the day on which the election was to be held the returning officer must—
 - (i) declare the nominated candidates (if any) to be deemed to have been elected as elected members for the ward, and
 - (ii) if the number of nominated candidates is less than the number of elected members to be elected for the ward, declare the number of vacancies in the ward.
- 7 (1) In any other case, the elected members are to be elected for the electoral ward at a poll held in accordance with this paragraph.
- (2) At the poll, each individual entitled to vote may vote by marking on the ballot paper—
- (a) the voter's first preference from among the candidates, and
 - (b) if the voter wishes to express a further preference for one or more candidates, the voter's second and, if the voter wishes, subsequent preferences from among those candidates.
- (3) Election regulations must, in particular, make provision about—
- (a) the manner in which and period during which votes may be cast,
 - (b) the form and content of ballot papers,
 - (c) the manner in which the number of votes which will secure the return of a candidate as an elected member is to be calculated,
 - (d) the procedure for counting votes,
 - (e) the declaration of the result of the poll.

Candidates

- 8 (1) An individual is disqualified from being a candidate in a Health Board election if the individual is—
- (a) a member of the European Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the House of Lords,
 - (d) a member of the Scottish Parliament, or
 - (e) a local authority councillor.
- (2) Election regulations may make further provision about—
- (a) who is qualified to be a candidate in a Health Board election, and
 - (b) the circumstances in which an individual may be disqualified from being a candidate,
- and, in particular, may disqualify from being a candidate an individual holding a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.

Franchise

- 9 (1) An individual is entitled to vote at a Health Board election if the individual—
- (a) is aged 16 or over, and
 - (b) meets any further criteria specified in election regulations.
- (2) Such further criteria may, in particular, provide that an individual is entitled to vote at a Health Board election only if the individual—
- (a) is registered in the register of local government electors in respect of an address in the Health Board area, and
 - (b) 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 so entitled if aged 18 or over).
- (3) Election regulations may determine, or set out the criteria for determining, the electoral ward in which an individual is entitled to vote.
- (4) Election regulations may not entitle an individual to vote—
- (a) more than once in the same Health Board area, nor
 - (b) in more than one Health Board area.

Election expenses

- 10 Election regulations may make provision about the expenses which may be incurred by any person in connection with a Health Board election.

Vacancies

- 11 (1) This paragraph applies if—
- (a) a returning officer declares a vacancy in an electoral ward (see paragraph 6), or
 - (b) an elected member vacates office before the end of the period mentioned in paragraph 10A(1) of Schedule 1.
- (2) The Scottish Ministers may—
- (a) direct the Health Board with the vacancy to invite an unelected candidate to fill the vacancy, or
 - (b) appoint, in accordance with any provision made by election regulations, an individual to fill the vacancy.
- (3) If a vacancy arises less than 6 months before the date of the next Health Board election in the Health Board area where it arises, the Scottish Ministers may, instead of taking action under sub-paragraph (2), direct the Health Board to leave the vacancy unfilled until that next election.
- (4) An individual who fills a vacancy is to be deemed to be an elected member of the Health Board elected for the ward in which the vacancy occurred.
- (5) In sub-paragraph (2)(a), an “unelected candidate” is an individual who—
- (a) was a nominated candidate in the last Health Board election to be held in the Health Board area, and

(b) is identified by criteria specified in election regulations.

Election regulations

- 12 (1) The Scottish Ministers may make regulations (“election regulations”) in relation to any matter specified in this Schedule as something in relation to which provision may be made by election regulations.
- (2) Election regulations may make further provision about Health Board elections (in so far as not already provided for in this Schedule).
- (3) In particular, election regulations may provide that an enactment applies (with or without modifications specified in the regulations) or does not apply to Health Board elections.
- (4) In sub-paragraph (3), “enactment” includes an Act of the Scottish Parliament and any instrument made under such an Act.”.

3 Scottish Ministers' powers in relation to elected members

In section 77(2) of the 1978 Act (content of order declaring Health Board to be in default)—

- (a) in paragraph (a), after “appointment” insert “or, as the case may be, election”,
and
- (b) in paragraph (b), after “appointment” insert “or, as the case may be, election”.