

*Draft Regulations laid before the Scottish Parliament under section 105(2A) of the National Health Service (Scotland) Act 1978, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**NATIONAL HEALTH SERVICE**

**REPRESENTATION OF THE PEOPLE**

**The Health Board Elections (Scotland) Regulations 2009**

*Made* - - - - 2009

*Coming into force* - - 12th October 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(10A) and 105(7) of, and by paragraph 12(1), (2) and (3) of Schedule 1A to the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

In accordance with section 105(2A) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Health Board Elections (Scotland) Regulations 2009.

(2) These Regulations come into force on 12th October 2009.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1978 Act” means the National Health Service (Scotland) Act 1978;

“the 1983 Act” means the Representation of the People Act 1983(b);

“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000(c);

“absent voter” has the meaning given by rule 7(3);

“absent voters list” has the meaning given by rule 8(1);

“adjudicator” has the meaning given by rule 11(2);

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(a) 1978 c.29. Section 2(10A) was inserted by section 2(1) of the Health Boards (Membership and Elections) Scotland Act 2009 (asp 5) (“the 2009 Act”). Section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5(1) and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, Part I, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60. Schedule 1A was inserted by section 2(3) of the 2009 Act. Section 108(1) contains the relevant definition of “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1983 c.2.

(c) 2000 c.41.

“appointed member” has the meaning given by paragraph 2(1)(a) of Schedule 1 to the 1978 Act**(a)**;

“ballot paper” means a ballot paper as described in rule 22;

“candidate statement” is a statement in terms of rule 14(2);

“councillor member” has the meaning given by paragraph 2(1)(b) of Schedule 1 to the 1978 Act;

“the count” has the meaning given by rule 32(1)(a);

“counting agent” means a person appointed under rule 20;

“elected member” has the meaning given by paragraph 2(1)(c) of Schedule 1 to the 1978 Act;

“election” means a Health Board election;

“election court” has the meaning given by section 202(1) of the 1983 Act**(b)**;

“election day” means the day on which a Health Board election is held;

“election notice” has the meaning given by rule 4(1);

“election petition” means a petition presented under Part 3 of the 1983 Act as that Part is applied to Health Board elections by regulation 6;

“electoral area” has the meaning given by section 204(1) of the 1983 Act**(c)**;

“Health Board” means a Health Board constituted under section 2(1)(a) of the 1978 Act**(d)**;

“Health Board election” has the meaning given by paragraph 1 of Schedule 1A to the 1978 Act;

“local government area” has the meaning given by section 204(1) of the 1983 Act**(e)**;

“nomination period” has meaning given by rule 1;

“register of local government electors” means a register maintained under section 9(1)(b) of the 1983 Act**(f)**;

“registration officer” means an officer appointed in accordance with section 8 of the 1983 Act**(g)**;

“relevant registration officer” has the meaning given by rule 6;

“returning officer” means the returning officer for a Health Board election in terms of rule 2;

“voter” means an individual entitled to vote at a Health Board election in terms of paragraph 9 of Schedule 1A to the 1978 Act and rule 5; and

“voting pack” is a pack described in rule 21(2).

(2) Any reference in these Regulations to a numbered rule is a reference to the rule set out in the Schedule.

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- (a) Paragraph 2 was substituted by section 1(2) of the 2009 Act.
  - (b) The definition of “election court” was amended by the Greater London Authority Act 1999 (c.29), Schedule 3, paragraph 38.
  - (c) The definition of “electoral area” was amended by the Local Government etc (Scotland) Act 1994 (c.39) (“the 1994 Act”), Schedule 13, paragraph 130(8)(a).
  - (d) Section 2(1)(a) was amended by the Health and Social Security Adjudications Act 1983, Schedule 7, paragraph 1, the National Health Service and Community Care Act 1990 (c.19), section 28(a), the National Health Service Reform (Scotland) Act 2004 (asp 7), Schedule 1, paragraph 1 and the Smoking, Health and Social Care Act 2005 (asp 13), Schedule 2, paragraph 2.
  - (e) The definition of “local government area” was substituted by the 1994 Act, Schedule 13, paragraph 130(8)(c).
  - (f) Section 9 was substituted by the Electoral Administration Act 2006 (c.22), Schedule 2, paragraph 1.
  - (g) Section 8 was relevantly amended by the 1994 Act, Schedule 13, paragraph 130(2).

### **Date of first elections in pilot areas**

3. The first election in each Health Board area to which the Health Boards (Membership and Elections) (Scotland) Act 2009 (Commencement No. 1) Order 2009(a) applies is to be held on 10th June 2010.

### **Health Board election rules**

4. The Schedule contains rules applying to Health Board elections.

### **Identification of unelected candidate to fill vacancy**

5.—(1) For the purposes of paragraph 11(2)(b) of Schedule 1A to the 1978 Act, the “unelected candidate” who is to be invited to fill a vacancy is the individual who was credited at the last stage of the count at which a candidate was deemed to be elected with the greatest number of votes amongst the candidates who were not elected.

(2) If that individual does not accept the invitation to be an elected member, the invitation may be extended to the individual with the next greatest number of votes at that stage.

(3) If two or more individuals were credited with the same number of votes, being the greatest or next greatest number of votes as specified in paragraph (1) or (2), the individual to be invited to fill the vacancy is to be determined by lot.

(4) If no individual fulfils the criteria specified in paragraph (1), (2) or (3) the Scottish Ministers may appoint an individual to fill the vacancy provided that individual would be qualified to be a candidate at a Health Board election in terms of rule 10(1) and would not be disqualified from being a candidate in terms of rule 10(2).

### **Application of Part 3 of the 1983 Act**

6. Part 3 of the 1983 Act applies to a Health Board election as it applies to an election of councillors in Scotland(b) subject to the following modifications—

- (a) any reference to—
  - (i) an election under the local government Act; or
  - (ii) a local government election (except for the reference in the definition of “elective office” in section 185),is to be read as a reference to a Health Board election;
- (b) any reference to—
  - (i) a local authority (except for the reference in the definition of “public office” in section 185); or
  - (ii) an authority,is to be read as a reference to a Health Board;
- (c) any reference to an election agent is to be read as a reference to a counting agent appointed under rule 20;
- (d) any reference to councillors is to be read as a reference to elected Health Board members, with the exception of the reference in the definition of “public office”;

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(a) S.S.I. 2009/242 appointed 24th June 2009 as the day on which sections 1 to 3 of the 2009 Act came into force in respect of Fife and Dumfries and Galloway Health Board areas for the purpose of piloting Health Board elections in those areas.

(b) Part 3 of the 1983 Act is applied to the election of councillors by S.S.I. 2007/42. Article 4 of that instrument provides that sections 120 to 126, 128(3)(a) and (4), 130 to 133, 135 and 135A, 144 and 145 of the 1983 Act do not apply to such elections.

(e) for section 138 substitute—

“**138.**—(1) In the case of an election petition questioning a Health Board election, two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part of this Act the petition shall be deemed to be a separate petition against each respondent.

(2) Where two or more election petitions are presented relating to the same Health Board election they shall be tried together.”;

(f) in section 147(2), for “constituency or local government area” substitute “Health Board area”;

(g) in section 159(3), for “councillor of any local authority in Scotland” substitute “member of any Health Board”;

(h) for section 160(4), substitute—

“(4) Subject to the provisions of subsection (4A) below and section 174 below, a candidate or other person reported by an election court personally guilty of a corrupt or illegal practice shall during the relevant period specified in subsection (5) below be incapable of voting at any Health Board election in Scotland.”;

(i) in section 160(4A), for “(4)(a)(i)” substitute “(4)”;

(j) omit section 160(5A);

(k) for section 173 substitute—

“**173.**—(1) Subject to subsection (2) below, a person convicted of a corrupt or illegal practice shall, during the relevant period specified in subsection (3) below, be incapable of voting at any Health Board election in Scotland.

(2) The incapacity imposed by subsection (1) above applies only to a person convicted of a corrupt practice under section 60, 62A or 62B above or of an illegal practice under section 61 above.

(3) For the purposes of subsection (1) above the relevant period is the period beginning with the date of the conviction and ending—

(a) in the case of a person convicted of a corrupt practice, five years after that date, or

(b) in the case of a person convicted of an illegal practice, three years after that date,

except that if (at any time within that period of five or three years) a court determines on an appeal by that person against the conviction that it should not be upheld, the relevant period shall end at that time instead.

(4) Any incapacities or other requirements applying to a person by virtue of subsection (1) above apply in addition to any punishment imposed under section 168 or 169 above but each of those subsections has effect subject to section 174 below.”; and

(l) in section 185—

(i) for the definition of “appropriate officer” substitute—

““appropriate officer” means the chairman of the Health Board for which the Health Board election in question was held;”;

(ii) for the definition of “candidate” substitute—

““candidate” means an individual nominated as a candidate in a Health Board election;”;

(iii) for the definition of “declaration as to election expenses” substitute—

““declaration as to election expenses” means a statement made by a candidate under rule 56(1) of the Health Board election rules in the Schedule to the Health Board Elections (Scotland) Regulations 2009;”;

(iv) in the definition of “public office” after “councillor” insert “elected member of a Health Board”;

(v) for the definition of “return as to election expenses” substitute—

““return as to election expenses” means a statement made by a candidate under rule 56(1) of the Health Board election rules in the Schedule to the Health Board Elections (Scotland) Regulations 2009;”.

St Andrew’s House,  
Edinburgh  
Date

A member of the Scottish Executive

## SCHEDULE

Regulation 4

### HEALTH BOARD ELECTION RULES

#### PART 1

##### TIMETABLE

###### *Timetable*

1. A Health Board election is to be conducted in accordance with the following timetable—

<i>Proceeding</i>	<i>Time</i>
1. Publication of election notice	At least 49 (but no more than 56) days before the election day.
2. Nomination period	Begins when election notice is published and ends at 5.00 p.m. on the day falling 35 days before the election day.
3. Sending of voting packs	At least 28 (but no more than 33) days before the election day.
4. Poll closes	4.00 p.m. on the election day.

#### PART 2

##### RETURNING OFFICERS

###### *Returning officers*

2.—(1) The returning officer responsible for conducting a Health Board election is to be the returning officer, appointed under section 41 of the 1983 Act, for elections of councillors for the local government area in which the greatest number of the population in the Health Board area reside.

(2) A returning officer may authorise any person to perform any of the officer's functions (but such an authorisation affects neither the returning officer's responsibility for delegated functions nor the officer's ability to perform those functions personally).

(3) An election may not be questioned on grounds of defect in the title, or want of title, of the returning officer if that officer was then acting in the office giving the right to conduct the election.

###### *Payments to returning officers*

3.—(1) The Health Board—

- (a) must pay any expenses properly incurred by the returning officer in conducting an election; and
- (b) may pay the returning officer an appropriate fee for conducting the election as the Board considers appropriate.

(2) A Health Board may make advance payments on account of expenses which the returning officer considers will be incurred.

## PART 3

### ELECTION NOTICE

#### *Notice of election*

4.—(1) The returning officer must publish notice of a Health Board election (an “election notice”) in such form as he or she thinks fit subject to the requirements specified in paragraph (2).

(2) The notice must specify—

- (a) the nomination period;
- (b) the place—
  - (i) where forms of nomination papers may be obtained; and
  - (ii) to which completed nomination papers must be delivered;
- (c) when the returning officer expects to issue voting packs; and
- (d) when the poll closes.

## PART 4

### VOTERS

#### *Voters – eligibility*

5. An individual aged 16 or over is entitled to vote at a Health Board election if, on the day on which the election notice is published, the individual—

- (a) is registered in a 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).

#### *Registration officers*

6. The “relevant registration officer” for a Health Board area is the registration officer for each local government area comprised in or forming part of the Health Board area.

#### *Absent voters*

7.—(1) A person may apply to a relevant registration officer to have the person’s voting pack for a Health Board election delivered to an address other than the address in respect of which the person is registered, or will be at the time of the next Health Board election, in the register of local government electors maintained by that officer.

(2) The relevant registration officer must grant an application if—

- (a) it is not invalid, in terms of paragraph (6); and
- (b) the officer is satisfied that the applicant is registered, or will be at the time of the next Health Board election, in the register of local government electors, in respect of an address in the Health Board area.

(3) A person whose application is granted under this rule is known as an “absent voter”.

(4) The relevant registration officer must notify an applicant of the officer’s decision on an application as soon as is reasonably practicable.

(5) Such a notification must, where an application is refused, give the reason for refusal.

(6) An application is invalid (and must not be granted) if received during the 35 days before the day of an election in which the person is entitled to vote.

(7) A relevant registration officer who receives an invalid application must notify the applicant to explain why the application is invalid.

### *Absent voters list*

**8.**—(1) Each relevant registration officer must keep a list (the “absent voters list”) of the names of every absent voter together with the alternative addresses provided by them.

(2) A relevant registration officer must remove a voter from the absent voters list if the voter asks to be removed.

(3) A request for removal from the absent voters list may not be made during the 35 days before the day of an election in which the person is entitled to vote.

(4) Each relevant registration officer must make the absent voters list available for inspection at such place and times as the officer considers appropriate.

### *Duty to supply free copy of registers to returning officer*

**9.**—(1) Each relevant registration officer must, free of charge and as soon as is reasonably practicable after publication of an election notice, supply the returning officer with—

- (a) an extract of the register of local government electors containing the details of every voter entitled to vote in the election; and
- (b) an extract of the absent voters list containing the details of every absent voter entitled to vote in the election.

(2) Extracts must be provided in printed and data form.

(3) A returning officer may not disclose any information contained in the extracts, or make use of any such information, except for the purposes of the election.

## PART 5 CANDIDATES

### *Candidates*

**10.**—(1) An individual is qualified to be a candidate at a Health Board election if—

- (a) aged 16 or over;
- (b) registered in the register of local government electors in respect of an address in the Health Board area; and
- (c) not disqualified from being a candidate.

(2) An individual is disqualified from being a candidate if the individual(a)—

- (a) is an appointed member or a councillor member of the Health Board;
- (b) holds a post included in the list kept by the Health Board under rule 11;
- (c) is an undischarged bankrupt;
- (d) is an incapable adult (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000)(b);
- (e) is disqualified from being elected under Part 3 of the 1983 Act;
- (f) has, during the 5 years before being nominated as a candidate, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland of an offence for which the sentence imposed was imprisonment (whether suspended or not) for a period of 3 months or longer without the option of a fine; or

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(a) Paragraph 8(1) of Schedule 1A to the 1978 Act also disqualifies individuals from being candidates in a Health Board election if they are members of the European Parliament, the House of Commons, the House of Lords, the Scottish Parliament or local authority councillors.

(b) 2000 asp 4.



- (g) is disqualified from being included in—
    - (i) any list kept under Part 1 or 2 of the 1978 Act; or
    - (ii) any list kept under equivalent legislation in England and Wales or Northern Ireland;
  - (h) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986<sup>(a)</sup> or equivalent legislation in Northern Ireland; or
  - (i) is disqualified from being a charity trustee by virtue of section 69(2)(c) or (d) of the Charities and Trustee Investment (Scotland) Act 2005<sup>(b)</sup>.
- (3) “Undischarged bankrupt” means an individual—
- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
  - (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);
  - (c) who is the subject of—
    - (i) a bankruptcy restrictions order or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985<sup>(c)</sup> or the Insolvency Act 1986<sup>(d)</sup>; or
    - (ii) a bankruptcy restrictions undertaking entered into under either of those Acts; or
  - (d) who has been adjudged bankrupt (and has not been discharged), or is subject to any other kind of order, arrangement or undertaking analogous to those described above, in England and Wales, Northern Ireland, the Channel Islands, the Isle of Man or the Republic of Ireland.

*List of restricted posts*

- 11.—**(1) Each Health Board must keep a list of Health Board posts which involve—
- (a) giving advice on a regular basis to the Board (or to any of its committee or sub-committees), or
  - (b) speaking on the Board’s behalf on a regular basis to journalists or broadcasters.
- (2) The person appointed under section 3(1) of the Local Government and Housing Act 1989<sup>(e)</sup> (the “adjudicator”) may give advice to a Health Board about the determination of any question arising by virtue of the Board’s duty to keep the list (and the Health Board must have regard to that advice when preparing and maintaining the list).
- (3) An individual holding a Health Board post included in the list (or which the Health Board is proposing to so include) may apply to the adjudicator for the post to be exempt from the list.
- (4) A Health Board must give the adjudicator any information which the adjudicator may reasonably require for the purposes of determining such an application.
- (5) If the adjudicator is satisfied that a post to which such an application relates does not involve any of the activities described in paragraph (1), the adjudicator must direct that the post—
- (a) is not to be considered a restricted post; and
  - (b) is to be removed from (or is not to be included in) the list,
- and a Health Board must comply with such a direction.
- (6) The adjudicator must give priority to any such application which states that it is being made for the purpose of enabling the applicant to be a candidate in a forthcoming Health Board election.

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(a) 1986 c.46.  
 (b) 2005 asp 10. Section 69(2)(d) was amended by the Charities Act 2006 (c.50), Schedule 8, paragraph 211.  
 (c) 1985 c.66.  
 (d) 1986 c.45.  
 (e) 1989 c.42. Section 3(i) was amended by the Local Government and Public Involvement in Health Act 2007 (c.28), section 202.

### *Nomination papers*

**12.** The returning officer must ensure that nomination papers, in such form as the returning officer thinks fit, are available during the nomination period at the place specified in the election notice.

### *Nomination*

**13.—(1)** A candidate is nominated if a completed nomination paper is delivered to the place specified in the election notice during the nomination period.

(2) A nomination paper is completed if it—

- (a) states the candidate's full name and address;
- (b) states that the candidate consents to nomination;
- (c) is signed by the candidate and one witness; and
- (d) states the witness' full name and address.

(3) If the candidate commonly uses a surname or forename which is different from any other name the candidate has, the nomination paper may state the commonly used name in addition to the other name.

### *Candidate statements*

**14.—(1)** A candidate may submit a candidate statement to the returning officer (together with the candidate's nomination paper or at any other time before the nomination period ends).

(2) A candidate statement is a statement by the candidate—

- (a) not exceeding 250 words;
- (b) addressed to the voters in the Health Board election; and
- (c) which relates to that election only.

(3) A candidate statement may not include a description of a candidate which is likely to lead electors to associate the candidate with a registered political party unless—

- (a) the party is, on the day falling two days before the end of the nomination period, registered in respect of Scotland in the Great Britain register mentioned under Part 2 of the 2000 Act;
- (b) the description consists of either—
  - (i) the name of the party registered under section 28 of the 2000 Act; or
  - (ii) a description of the party registered under section 28A(a) of the 2000 Act; and
- (c) the description is authorised by a certificate—
  - (i) issued by or on behalf of the party's registered nominating officer; and
  - (ii) received by the returning officer during the nomination period.

(4) A candidate statement may not include a description of a candidate which is likely to lead electors to associate the candidate with two or more registered political parties unless—

- (a) the parties are, on the day falling two days before the end of the nomination period, registered in respect of Scotland in the Great Britain register mentioned under Part 2 of the 2000 Act, and
- (b) the description is registered for the use of the parties under section 28B(b) of the 2000 Act; and
- (c) the description is authorised by a certificate—
  - (i) issued by or on behalf of each party's registered nominating officer; and

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(a) Section 28A was added by the Electoral Administration Act 2006 (c.22), Part 7, section 49(1).

(b) Section 28B was added by the Electoral Administration Act 2006, Part 7, section 49(1).

(ii) received by the returning officer during the nomination period.

(5) “Registered political party” means a party registered under Part 2 of the 2000 Act on the day falling two days before the end of the nomination period.

#### *Withdrawal of nomination*

**15.**—(1) A nominated candidate may withdraw from an election for the purposes of paragraph 5(2) of Schedule 1A to the 1978 Act by delivering a notice of withdrawal to the returning officer at the place to which completed nomination papers must be delivered.

(2) A notice of withdrawal must be—

- (a) in such form as the returning officer thinks fit; and
- (b) signed by the candidate and one witness.

#### *Prohibition of nomination in more than one Health Board election*

**16.**—(1) A candidate who is nominated in relation to more than one Health Board election must withdraw in accordance with rule 15 from all but one of the elections.

(2) If such a candidate does not so withdraw the candidate is to be treated as having withdrawn from every election for which the candidate was nominated.

#### *Validity of nomination*

**17.**—(1) A candidate ceases to be nominated if—

- (a) the candidate withdraws before the nomination period ends;
- (b) the candidate is treated as having withdrawn under rule 16(2);
- (c) the candidate is disqualified by rule 10 (or becomes so disqualified before the nomination period ends);
- (d) the candidate dies before the nomination period ends; or
- (e) the returning officer decides, no later than 24 hours after the nomination period ends, that the candidate’s nomination paper is invalid.

(2) A returning officer may decide that a nomination paper is invalid only if it is not completed in accordance with rule 13(2).

(3) If a returning officer decides that a nomination paper is invalid, the officer must—

- (a) endorse on the paper the decision and the reasons for it;
- (b) sign the paper; and
- (c) send notice of the decision to the candidate’s address as stated on the paper.

(4) A returning officer’s decision on validity of a nomination paper is final (but does not prevent the validity of a nomination from being questioned on an election petition).

#### *Correction of minor errors in nomination paper*

**18.**—(1) A returning officer may, no later than 24 hours after the nomination period ends, correct minor errors in a nomination paper.

(2) Anything done by a returning officer under this rule may not be questioned other than in proceedings on an election petition.

#### *Inspection of nomination papers*

**19.** The returning officer must make nomination papers available for inspection (and copying) at such reasonable times between the end of the nomination period and the poll closing as the returning officer considers appropriate.

*Counting agents*

**20.**—(1) The returning officer must, no later than 24 hours after the nomination period ends, give each candidate written notice of the maximum number of counting agents each candidate may appoint.

(2) A candidate may appoint one or more counting agents (up to the maximum number determined by the returning officer) by giving the returning officer written notice of the counting agent's names and addresses no later than 21 days before the election day.

(3) A counting agent is entitled to attend—

- (a) the sending of voting packs (if appointed before they are sent); and
- (b) the count.

## PART 6

### VOTING PACKS AND BALLOT PAPERS

*Voting packs*

**21.**—(1) The returning officer must send a voting pack to each voter at—

- (a) the address in respect of which the voter is registered; or
- (b) if the voter is an absent voter, at the voter's alternative address.

(2) A voting pack must contain—

- (a) a ballot paper;
- (b) a copy of any candidate statements submitted by the candidates named on the ballot paper;
- (c) instructions for completing the ballot paper and returning it to the returning officer (including details of the address to which it is to be returned and the deadline for returning it);
- (d) information about how to obtain those instructions in other forms (for example in Braille, in audible form or in a language other than English); and
- (e) an envelope with the address to which the ballot paper is to be returned printed on it and which the voter may use to return the ballot paper (a "covering envelope").

(3) The returning officer may refuse to include a candidate statement in voting packs if the officer considers any of its content to be unlawful.

(4) The cost of returning the ballot paper in the covering envelope must be pre-paid by the returning officer.

(5) The returning officer may use—

- (a) a universal service provider within the meaning of section 4(3) and (4) of the Postal Services Act 2000(a); or
- (b) a commercial delivery firm,

for the purpose of sending voting packs.

(6) Where such a provider or firm is used—

- (a) voting packs must be counted and delivered by the returning officer to the provider or firm; and
- (b) the officer must obtain a receipt for that delivery endorsed by the provider or firm.

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(a) 2000 c.26.

### *Ballot papers*

**22.**—(1) A ballot paper must be in such form as the returning officer thinks fit subject to the requirements specified in paragraph (2).

(2) The ballot paper must—

- (a) contain the names and addresses of the nominated candidates as shown on the respective nomination papers (arranged alphabetically by surname);
- (b) have a unique number (being a number, letters, a combination of letters and numbers or other identifying mark) printed on the back; and
- (c) contain an official mark.

(3) The official mark must be kept secret (and must not be the same as the official mark used at a Health Board election held in the same Health Board area at any time during the previous 5 years).

(4) If a candidate's nomination paper states that the candidate has a commonly used forename or surname, the commonly used name (instead of any other name) must appear on the ballot paper.

### *Marking of lists when voting packs sent*

**23.**—(1) The returning officer must first send voting packs to every voter in the officer's extract of the absent voters list and must—

- (a) mark the unique number of the ballot paper contained in the voting pack sent to a voter against the entry corresponding to that voter in that extract; and
- (b) mark with the letter "A" each entry corresponding to an absent voter in the officer's extracts of the register of local government electors so as to denote—
  - (i) that the voter is an absent voter; and
  - (ii) that a voting pack has been sent to the voter's alternative address.

(2) The returning officer must then send a voting pack to every voter in the officer's extract of the register of local government electors (other than those marked "A") and must mark the unique number of the ballot paper contained in the voting pack sent to a voter against the entry corresponding to that voter in that extract.

(3) If the returning officer is satisfied that 2 or more entries in the absent voters list or the register of local government electors relate to the same voter, the officer must not issue more than one voting pack to that voter.

### *Notice of sending of voting packs*

**24.**—(1) The returning officer must give each candidate at least 48 hours' notice of the time and place at which the officer will send voting packs to voters.

(2) If the returning officer subsequently requires to send more voting packs to voters, the officer must, as soon as is reasonably practicable, notify each candidate of the time and place at which this will occur.

### *Voter without ballot paper*

**25.**—(1) A voter who has not received a voting pack by the day falling 7 days before the day on which the poll closes may apply to the returning officer for a replacement voting pack.

(2) Such an application—

- (a) may be made in writing or in person; and
- (b) must include evidence of the voter's identity.

(3) The returning officer must issue a replacement voting pack only if—

- (a) the application is made at least 24 hours before the poll closes; and

- (b) the officer—
  - (i) is satisfied as to the voter’s identity; and
  - (ii) has no reason to doubt that the voter did not receive the original voting pack.
- (4) The returning officer must keep a list containing—
  - (a) the name and address of each voter to whom a replacement voting pack is issued; and
  - (b) the number of the ballot paper contained in missing voting pack and of its replacement in respect of each such voter.
- (5) Rules 21 and 22 apply to replacement voting packs as they apply to any voting pack (although a returning officer may hand a replacement voting pack to a voter in person).

## PART 7

### CASTING OF VOTES

#### *Casting of votes*

**26.** A voter casts a vote in a Health Board election by delivering a completed ballot paper to the returning officer at the address specified for that purpose in the voting pack.

#### *Ballot papers received late*

**27.** A ballot paper received by the returning officer after the poll closes is not to be counted unless the returning officer considers it reasonable to do so.

#### *Prohibition of disclosure of vote*

**28.** No voter may be required to state for whom the voter cast a vote in any legal proceedings.

#### *Notification of requirement of secrecy*

**29.** Every person attending proceedings in connection with the sending of voting packs or the receipt of ballot papers must maintain and aid in maintaining the secrecy of the voting and must not, except for some purpose authorised by law—

- (a) communicate, before the poll closes, to any person any information obtained at those proceedings as to the official mark; and
- (b) communicate, at any time, to any person any information obtained at those proceedings as to the number on the back of any ballot paper.

#### *Spoilt ballot papers and covering envelopes*

**30.—**(1) If a voter inadvertently does something to the voter’s ballot paper so that it cannot be used as such (a “spoilt ballot paper”), the voter may return (by hand or by post) the spoilt ballot paper and the covering envelope to the returning officer.

(2) If a voter inadvertently does something to the voter’s covering envelope so that it cannot be used as such (a “spoilt covering envelope”), the voter may return (by hand or by post) the spoilt covering envelope to the returning officer.

(3) On receipt of a spoilt ballot paper and covering envelope or spoilt covering envelope, the returning officer must send (or give by hand) another voting pack or, as the case may be, covering envelope, to the voter unless the returning officer considers it is too late for a ballot paper to be returned before the poll closes.

(4) If the returning officer sends or gives a voter another voting pack in accordance with this rule, the officer must mark the unique number of the ballot paper contained in the voting pack against the entry corresponding to that voter in the officer’s extract of the register of local government electors.

## PART 8 THE COUNT

### *Ballot boxes*

**31.**—(1) The returning officer must provide one or more ballot boxes for the receipt of ballot papers.

(2) Every ballot box must be marked with—

- (a) the words “ballot papers”; and
- (b) the name of the Health Board for which the Health Board election is held.

(3) Every covering envelope received by the returning officer before the poll closes is to be placed in a ballot box (other than those returned under rule 30).

(4) The returning officer must make provision for the safe custody of every ballot box.

(5) Every ballot box must be opened at the count.

### *The count*

**32.**—(1) The returning officer must—

- (a) make arrangements for the counting of votes (known as “the count”) as soon as practicable after the poll closes; and
- (b) give written notice to the counting agents of the time and place at which the count will occur.

(2) The returning officer must so far as practicable proceed continuously with the count allowing only time for refreshment.

(3) But the returning officer may, with the agreement of the counting agents, exclude any hours between 7 p.m. in the evening and 9 a.m. on the following morning.

### *Electronic counting*

**33.**—(1) In these rules “electronic counting system” means such computer hardware and software, other equipment, data and services as is necessary in order to—

- (a) read electronically the votes marked and the unique number printed on each ballot paper;
- (b) calculate the number of votes cast for each candidate at the Health Board election; and
- (c) ensure the retention of a record of the votes cast for each candidate, without identifying the voters who cast those votes.

(2) The returning officer must conduct the count by means of an electronic counting system (and may do anything in connection with the count by electronic means in order to enable the count to be so conducted).

But if it is impossible or impracticable to conduct the count, or any part of it, using the electronic counting system, the returning officer may make arrangements for the count, or any part of it, to be conducted by other means.

(3) References in rules 38 to 43 to ballot papers and parcels of ballot papers include references to ballot papers and parcels in electronic form.

### *Attendance at the count*

**34.**—(1) Nobody may attend the count other than—

- (a) the returning officer and the officer’s staff;
- (b) the candidates and their partners; and
- (c) the counting agents,

but the returning officer may permit other persons to attend the count if the officer is satisfied that doing so would not impede the efficient counting of the votes.

(2) The returning officer must give the counting agents such reasonable facilities for overseeing the count, and such information about the count, as the officer can give consistently with the orderly conduct of the proceedings and the performance of the officer's duties.

*Opening of ballot boxes and covering envelopes*

**35.**—(1) The count is begun by the returning officer opening each ballot box.

(2) The returning officer must then—

- (a) count and note the number of covering envelopes; and
- (b) open each covering envelope separately.

(3) If a covering envelope does not contain a ballot paper the returning officer must—

- (a) mark the covering envelope with the word “rejected”;
- (b) attach to it the contents (if any) of the envelope; and
- (c) place the envelope in a separate receptacle (the “rejected votes box”).

(4) If a covering envelope does contain a ballot paper, the returning officer must place it in a different receptacle from the rejected votes box.

*Counting of ballot papers*

**36.** The returning officer must count all the ballot papers which have been removed from the covering envelopes and record the number counted.

*Rejected ballot papers*

**37.**—(1) A ballot paper is void and not to be counted if—

- (a) it does not bear a unique number in a form capable of being read by electronic means;
- (b) the figure “1” is not placed on it in a manner which indicates a first preference for a candidate;
- (c) the figure “1” is placed on it in that manner in respect of more than one candidate;
- (d) anything is written or marked on it by which the voter can be identified (except for the unique number printed on the back); or
- (e) it is unmarked or void for uncertainty.

(2) But a ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place;
- (b) otherwise than by means of a figure indicating a first or subsequent preference; or
- (c) by more than one mark,

is not void and must be counted if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences and the way the paper is marked does not itself identify the voter or allow the voter to be identified.

(3) The returning officer must mark the word “rejected” on any ballot paper which is not to be counted and place the paper in the rejected votes box.

(4) A counting agent may object to the returning officer's decision not to count a ballot paper.

(5) If such an objection is made, the returning officer must mark the words “rejection objected to” on the ballot paper to which the objection relates.

(6) The returning officer must prepare a statement showing—

- (a) the number of ballot papers which are not to be counted by virtue of each of subparagraphs (a) to (e) of paragraph (1); and
- (b) the number of covering envelopes placed in the rejected votes box by virtue of rule 35(3).



*First stage*

**38.**—(1) The returning officer must sort the valid ballot papers into parcels according to the candidates for whom first preference votes are given.

(2) The returning officer must then—

- (a) count the number of ballot papers in each parcel;
- (b) credit the candidate receiving the first preference vote with one vote for each ballot paper in that candidate’s parcel; and
- (c) record those numbers.

(3) The returning officer must also ascertain and record the total number of valid ballot papers.

*The quota*

**39.**—(1) The returning officer must divide the total number of valid ballot papers by a number exceeding by one the number of elected members to be elected in the Health Board election.

(2) The result of that division (rounding down any decimal places), increased by one, is the number of votes needed to secure the return of a candidate as an elected member (the “quota”).

*Return of elected members*

**40.**—(1) If, at any stage of the count, the number of votes for a candidate equals or exceeds the quota, the candidate is deemed to be elected.

(2) A candidate is returned as an elected member when the candidate is declared to be elected in accordance with rule 49.

*Transfer of ballot papers*

**41.**—(1) If, at the end of any stage of the count, the number of votes credited to a candidate exceeds the quota and one or more vacancies remain to be filled, the returning officer must (unless rule 45 applies) sort the ballot papers received by that candidate into further parcels so that they are grouped—

- (a) according to the next available preference given on those papers; and
- (b) if no such preference is given, as a parcel of non-transferable papers.

(2) The returning officer must—

- (a) transfer each parcel of ballot papers referred to in paragraph (1)(a) to the continuing candidate for whom the next available preference is given on those papers; and
- (b) credit the candidate with an additional number of votes calculated in accordance with paragraph (3).

(3) The vote on a ballot paper transferred under paragraph (2) has a value (the “transfer value”) calculated as follows—

A divided by B

Where—

A = the value which is calculated by multiplying the surplus of the transferring candidate by the value of the ballot paper when received by that candidate, and

B = the total number of votes credited to the transferring candidate.

(4) For the purposes of paragraph (3)—

“transferring candidate” means the candidate from whom the ballot paper is being transferred; and

“the value of the ballot paper” means—

- (i) for a ballot paper on which a first preference vote is given for the transferring candidate, one; and

- (ii) for any other ballot paper, the transfer value of the ballot paper when received by the transferring candidate.

*Transfer of ballot papers – supplementary provisions*

**42.**—(1) If, at the end of any stage of the count, the number of votes credited to two or more candidates exceeds the quota, the returning officer must—

- (a) first sort the ballot papers of the candidate with the highest surplus; and
- (b) then transfer the transferable papers of that candidate.

(2) If the surpluses in respect of two or more candidates are equal, the transferable ballot papers of the candidate who had the highest number of votes at the end of the most recent preceding stage at which they had unequal numbers must be transferred first.

(3) If the number of votes credited to two or more candidates were equal at all stages, the returning officer must decide, by lot, which candidate's transferable papers are to be transferred first.

*Exclusion of candidates*

**43.**—(1) If one or more vacancies remain to be filled and—

- (a) the returning officer has transferred all ballot papers which are required by rule 41 or this rule to be transferred; or
- (b) there are no ballot papers to be transferred under rule 41 or this rule,  
the returning officer must (unless rule 45 applies) exclude from the election at that stage the candidate with the lowest number of votes.

(2) The returning officer must sort the ballot papers for the excluded candidate into parcels so that they are grouped—

- (a) according to the next available preference given on those papers; and
- (b) if no such preference is given, as a parcel of non-transferable papers.

(3) The returning officer must—

- (a) transfer each parcel of ballot papers referred to in paragraph (2)(a) to the continuing candidate for whom the next available preference is given on those papers; and
- (b) credit the candidate with an additional number of votes calculated in accordance with paragraph (4).

(4) The vote on a ballot paper transferred under paragraph (3) has a transfer value of one (unless the vote was transferred to the excluded candidate under rule 41 or this rule in which case it has the same transfer value as when transferred to the excluded candidate).

*Exclusion of candidates – supplementary provisions*

**44.**—(1) If, when a candidate is to be excluded under rule 43—

- (a) two or more candidates have the same number of votes; and
- (b) no other candidate has fewer votes,  
the returning officer must exclude the candidate who had the lowest number of votes at the end of the most recent preceding stage at which they had unequal numbers.

(2) If the number of votes credited to those candidates was equal at all stages, the returning officer must decide, by lot, which of those candidates to exclude.

*Filling of last vacancies*

**45.** If, at any stage of the count, the number of continuing candidates is equal to the number of vacancies remaining—

- (a) the continuing candidates are deemed to be elected; and
- (b) no further transfer is to be made.

### *Recount*

**46.**—(1) A candidate or a counting agent may require the returning officer to conduct a recount or further recount but only if the candidate or counting agent was present at the completion of the count or the previous recount.

(2) The returning officer may refuse to conduct a recount or further recount if the officer considers the request to conduct it is unreasonable.

(3) The candidates and counting agents present at the completion of the count or a recount must be given a reasonable opportunity to exercise the right to require a recount or further recount before any further steps are taken by the returning officer.

### *Decisions during the count*

**47.** The returning officer’s decision (express or implied) on any question arising in respect of—

- (a) a ballot paper;
- (b) the exclusion of a candidate; or
- (c) the transfer of votes.

is final except to the extent that it may be reviewed on an election petition.

### *Counting of votes by means other than electronic counting*

**48.**—(1) If the returning officer makes arrangements in accordance with rule 33(2) for the count (or any part of it) to be conducted other than by means of an electronic counting system, these rules apply with the following modifications.

(2) For rule 37(1)(a) substitute—

“(a) it does not bear the official mark,”.

(3) In rule 45, the existing text is treated as paragraph (1) and the following new paragraph is inserted—

“(2) If only one vacancy remains unfilled and the number of votes then credited to any one continuing candidate (the “highest continuing candidate”) is equal to or greater than the total number of votes then credited to all the other continuing candidates—

- (a) the highest continuing candidate is deemed to be elected; and
- (b) no further transfer is to be made.”.

## PART 9

### DECLARATION OF THE RESULT

#### *Declaration of result of poll*

**49.** When the count (or a recount) results in all the vacancies being filled and no recount (or further recount) is to be held, the returning officer must as soon as is reasonably practicable—

- (a) declare to be elected the candidates who have been deemed to be elected as elected members of the Health Board for which the election was held;
- (b) give notice of the names of the elected candidates to the chairman of the Health Board; and
- (c) give public notice of—
  - (i) the names of the elected candidates;
  - (ii) the number of first and subsequent preference votes for each candidate;
  - (iii) the number of ballot papers transferred and their transfer values at each stage of the count;
  - (iv) the number of votes credited to each candidate at each stage;

- (v) the number of non-transferable ballot papers at each stage; and
- (vi) the content of the statement prepared under rule 37(6).

*Declaration of result where no poll held*

**50.** If the returning officer makes a declaration under paragraph 6 of Schedule 1A to the 1978 Act—

- (a) the declaration must be made before 11 a.m. on the day on which it is to be made; and
- (b) the returning officer must give public notice of the details of the declaration.

## PART 10

### DOCUMENTS RELATING TO A HEALTH BOARD ELECTION

*Sealing up of ballot papers*

**51.**—(1) As soon as is reasonably practicable after the result of a Health Board election has been declared, the returning officer must—

- (a) seal up—
  - (i) the valid ballot papers into packets; and
  - (ii) the rejected ballot papers and the rejected covering envelopes together in one packet; and
- (b) store an electronic copy of the information stored in the electronic counting system in a suitable device.

(2) The returning officer must not open the things sealed up under paragraph (1)(a).

(3) As soon as is reasonably practicable after the electronic copy mentioned in paragraph (1)(b) has been stored, the returning officer must ensure—

- (a) that all electronic data or records relating to the Health Board election are removed from the electronic counting system; and
- (b) that any copy of the data or records, other than the copy mentioned in paragraph (1)(b), is destroyed in a manner which ensures that the confidentiality of the data or records is preserved.

*Delivery of documents*

**52.**—(1) The returning officer must then deliver to the chairman of the Health Board for which the election was held—

- (a) the things mentioned in rule 51(1);
- (b) the extracts of the register of local government electors and absent voters list sent to the officer under rule 9 and marked in accordance with rules 23 and 30(4);
- (c) the list kept under rule 25(4); and
- (d) the statement prepared under rule 37(6).

(2) The returning officer must mark on each thing to be forwarded—

- (a) a description of it;
- (b) the date on which the poll closed; and
- (c) the name of the Health Board for which the election was held.

(3) No person is permitted to open or inspect anything forwarded to a Health Board chairman unless authorised by a sheriff principal or the Court of Session under rule 53.

### *Orders for production of documents*

**53.**—(1) A relevant sheriff principal or an election court may make an order for the inspection or production (including, if necessary, the opening) of anything forwarded to a Health Board chairman under rule 52.

(2) But a relevant sheriff principal may make such an order only if satisfied that it is required for the purpose of—

- (a) instituting or proceeding with a prosecution for an offence in relation to ballot papers; or
- (b) for the purpose of an election petition.

(3) An order under paragraph (1) may be made subject to such conditions as the sheriff principal or the election court considers appropriate.

(4) In making or carrying into effect an order under paragraph (1) care must be taken that the vote of any particular voter is not disclosed until it has been proved that—

- (a) the voter voted in the Health Board election in question; and
- (b) the vote has been declared by a competent court to be invalid.

(5) An appeal lies to the Court of Session from an order of a sheriff principal made under paragraph (1).

(6) Any power given to a sheriff principal under this rule may be exercised otherwise than in open court.

(7) If an order is made for the production by a Health Board chairman of anything in the chairman's possession relating to a Health Board election—

- (a) the production of the thing by the chairman is conclusive evidence that the thing relates to that election; and
- (b) any mark made on the thing in accordance with rule 52(2) is evidence that thing is what it is stated to be by the mark.

(8) In this rule, “relevant sheriff principal” means—

- (a) the sheriff principal having jurisdiction in the Health Board area (or any part of it) for which the election in question was held; or
- (b) where more than one sheriff principal has such jurisdiction, any such sheriff principal.

### *Retention of documents*

**54.**—(1) The chairman of a Health Board must retain among the records of the Health Board—

- (a) for four years, the electronic copy mentioned in rule 51(1)(b); and
- (b) for one year, everything else forwarded to the chairman under rule 52.

(2) At the expiry of the period of four years or, as the case may be, one year, the Health Board chairman must destroy anything retained under this rule unless directed not to do so by a sheriff principal or the Court of Session under rule 53.

## PART 11

### ELECTION EXPENSES

#### *Candidates' election expenses*

**55.**—(1) A candidate at a Health Board election must not incur expenses on account of or in respect of the conduct or management of the election in excess of £250 (regardless of whether the expenses are incurred before, during or after the election).

(2) If a candidate's election expenses exceed £250, any candidate or counting agent who—

- (a) incurred (or authorised the incurring of) those expenses; or

(b) knew or ought reasonably to have known that election expenses would exceed £250, is guilty of an illegal practice for the purposes of Part 3 of the 1983 Act.

*Election expenses statements*

**56.**—(1) No later than 35 days after the day on which the result of a Health Board election is declared, every candidate at the election must deliver to the returning officer a statement of all payments made by that candidate on account of or in respect of the conduct or management of the election together with all bills or receipts relating to such payments.

(2) The statement must be in such form as the returning officer thinks fit.

(3) The returning officer must, as soon as is reasonably practicable, forward the statement to the chairman of the Health Board for which the election was held.

(4) Rule 54 applies to a statement forwarded to a chairman as if the statement was something forwarded to the chairman under rule 52.

## PART 12

### SPECIAL RULES RELATING TO INELIGIBLE CANDIDATES

*Special rules where candidate becomes ineligible after end of nomination period*

**57.**—(1) This rule applies if a candidate, during the period from the end of the nomination period to the declaration of the result of the poll—

(a) dies; or

(b) becomes disqualified from being a candidate within the meaning of rule 10(2).

(2) If the result of the poll is such that the candidate is not declared to be elected as an elected member, the result of the poll stands.

(3) If the result of the poll is such that the candidate is declared to be elected as an elected member the returning officer must, when declaring the result, declare that—

(a) the candidate is no longer eligible to be a candidate (or has died); and

(b) accordingly there is a vacancy to be filled in accordance with paragraph 11 of Schedule 1A to the 1978 Act.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out the arrangements for Health Board elections.

The areas for which Fife and Dumfries and Galloway Health Boards are constituted are the areas in which the Health Board election pilot scheme, for the purposes of section 4 of the Health Boards (Membership and Elections) (Scotland) Act 2009 (“the 2009 Act”), will be conducted. Sections 1 to 3 of the 2009 Act came into force for the areas of the specified Health Boards on 24th June 2009 (S.S.I. 2009/242).

Regulation 2 contains definitions.

Regulation 3 stipulates the date of the first election in those Health Board areas.

Regulation 4 introduces the Schedule containing rules applying to Health Board elections.

Regulation 5 defines “unelected candidate”. By virtue of paragraph 11 of Schedule 1A to the National Health Service (Scotland) Act 1978 (as inserted by section 2(3) of the 2009 Act) if a returning officer declares a vacancy in an electoral ward or an elected member vacates office early, Scottish Ministers may direct the Health Board to fill the vacancy with an unelected candidate.

Regulation 6 applies the procedures introduced by Part 3 of the Representation of the People Act 1983 in relation to legal proceedings to Health Board elections with appropriate modifications.

Rule 1 in the Schedule sets out the timetable according to which a Health Board election must be conducted.

Rule 2 designates that the returning officer for Health Board elections is the returning officer for the local government area in which the larger number of the population of the Health Board area resides.

Rule 3 provides for the payment of expenses and, if considered appropriate, a fee to the returning officer.

Rule 4 requires the returning officer to publish an election notice for each Health Board election.

Rule 5 prescribes the eligibility criteria for voters at a Health Board election. Eligibility is based on registration in a register of local government electors.

Rules 7 and 8 establish procedures for absent voting.

Rule 6 designates the registration officers for each local government area within a Health Board area as the relevant registration officers for that Health Board area.

Rule 9 imposes a duty upon each relevant registration officer to supply to the returning officer extract copies of the absent voters list and the register of local government electors containing details of those entitled to vote in a Health Board election.

Rules 10 and 11 detail the eligibility criteria for candidates at a Health Board election.

Rules 12 to 19 specify the procedures relating to the nomination of candidates.

Rule 20 sets out the procedure for appointing counting agents.

Rules 21 to 25 set out arrangements for the issue of voting packs and the form of ballot papers.

Rules 26 to 30 set out arrangements for the casting of votes in a Health Board election.

Rules 31 to 48 sets out arrangements for the receipt of ballot papers (rule 31) and for the counting of ballot papers.

Rules 49 and 50 detail the procedure for the declaration of the result of a Health Board election.

Rules 51 to 54 detail the procedures for dealing with documents relating to a Health Board election.

Rules 55 and 56 set out provisions relating to candidates' election expenses.

Rule 57 details the rules which apply when a candidate for a Health Board election becomes ineligible after the end of the nomination period.

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