

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

**NATIONAL HEALTH SERVICE
REPRESENTATION OF THE PEOPLE**

**The Health Board Elections (Scotland)
Amendment Regulations 2010**

Made - - - - 2010
Coming into force - - 15th February 2010

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(1) 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. These Regulations may be cited as the Health Board Elections (Scotland) Amendment Regulations 2010 and come into force on 15th February 2010.

Amendment of the Health Board Elections (Scotland) Regulations 2009

- 2.—(1) The Health Board Elections (Scotland) Regulations 2009(2) are amended as follows.
(2) After regulation 5 insert—

(1) 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 \(c.46\)](#).

(2) [S.S.I. 2009/352](#).

“Application of the 1983 Act

5A.—(1) Without prejudice to regulation 6, the following provisions of the 1983 Act⁽³⁾ apply, with modifications, to a Health Board election.

(2) Section 60 (personation) of the 1983 Act⁽⁴⁾ applies to a Health Board election with the following modifications—

(a) for subsection (2) substitute—

“(2) A person shall be deemed to be guilty of personation at a Health Board election if that person votes by post as some other person whether that other person is living or dead or is a fictitious person.”; and

(b) in subsection (3) omit “who has applied for a ballot paper for the purpose of voting in person or”.

(3) Section 61 (other voting offences) of the 1983 Act⁽⁵⁾ applies to a Health Board election with the following modifications—

(a) omit subsections (1), (2A), (3), (3A), (4), (6A) and (6B);

(b) for subsection (2) substitute—

“(2) A person shall be guilty of an offence if that person votes either—

(a) more than once in the same Health Board area; or

(b) in more than one Health Board area.”;

(c) for subsection (6) substitute—

“(6) For the purposes of this section a person who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.”; and

(d) in subsection (7)(a) for “below” substitute “as applied to a Health Board election by the Health Board Elections (Scotland) Regulations 2009”.

(4) Section 65 (tampering with nomination papers, ballot papers etc.) of the 1983 Act⁽⁶⁾ applies to a Health Board election with the following modifications—

(a) any reference to—

(i) a local government election; or

(ii) a parliamentary or local government election,

is to be read as a reference to a Health Board election.

(b) in subsection (1)(b)—

(i) omit “postal voting statement or”; and

(ii) for “declaration of identity or official” substitute “covering”;

(c) omit subsection (1)(e); and

(d) in subsection (3) omit “, a presiding officer”.

(3) Omit the cross heading to regulation 6 (application of Part 3 of the 1983 Act).

(3) “the 1983 Act” is defined in the Health Board Elections (Scotland) Regulations 2009 as the [Representation of the People Act 1983 \(c.2\)](#).

(4) Section 60 provides that an offence under that section is a corrupt practice; the penalties for a corrupt practice are found in section 168 of 1983 Act.

(5) Section 61 was relevantly amended by the [Representation of the People Act 1985 \(c. 50\)](#) Schedule 2, paragraph 2, the [Greater London Authority Act 1999 \(c.29\)](#) Schedule 3, paragraph 10, the [Electoral Administration Act 2006 \(c.22\)](#) section 38(3) and the [Local Electoral Administration and Registration \(Scotland\) Act 2006 \(asp 14\)](#). Section 61 provides that an offence under that section is an “illegal practice”; the penalties for an illegal practice are found in section 169 of the 1983 Act.

(6) Section 65 was amended by the [Representation of the People Act 1985 \(c.50\)](#), Schedule 3, paragraph 2, and the [Electoral Administration Act 2006 \(c.22\)](#), Schedule 1, paragraph 72.

- (4) In rule 5 of the Schedule (voters - eligibility)—
- (a) before “An individual” insert “(1)”;
 - (b) at the end insert—
 - “(2) A voter may not vote in more than one Health Board area.
 - (3) A voter may not vote more than once in the same Health Board area.”.

St Andrew’s House,
Edinburgh
Date

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Board Elections (Scotland) Regulations 2009 (“the principal Regulations”) which set out the arrangements for pilot Health Board elections.

Regulation 2(2) inserts regulation 5A into the principal Regulations, which applies modified provisions of the Representation of the People Act 1983 to Health Board elections. These are section 60 (presentation), section 61 (voting more than once) and section 65 (offences relating to nomination and ballot papers).

Regulation 2(4) amends rule 5 of the Schedule to the principal Regulations to provide that an individual may not vote in more than one Health Board area and may not vote more than once in the same Health Board area.