



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

2009 asp 5

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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

## 2009 asp 5

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 12th March 2009 and received Royal Assent on 22nd April 2009**

An Act of the Scottish Parliament to make provision about the constitution of Health Boards; to provide for piloting of the election of certain members of Health Boards; to require the Scottish Ministers to report on those pilots; to confer a power to extend those elections to all Health Board areas following publication of that report; and for connected purposes.

### *Constitution of Health Boards*

#### **1 Constitution of Health Boards**

- (1) Schedule 1 (Health Boards) to the National Health Service (Scotland) Act 1978 (c.29) (the “1978 Act”) is amended as follows.
- (2) For paragraph 2 substitute—
  - “2 (1) A Health Board is to consist of the following types of members—
    - (a) a chairman, and other members, appointed by the Scottish Ministers (“appointed members”),
    - (b) councillors appointed by the Scottish Ministers following nomination by local authorities in the area of the Health Board (“councillor members”), and
    - (c) individuals elected as members of the Health Board at an election held under Schedule 1A (“elected members”).
  - (2) Regulations must, in relation to each Health Board, specify—
    - (a) the total number of members of the Board, and
    - (b) the number of each type of member.
  - (3) But—
    - (a) the total number of councillor members and elected members of a Board must amount to more than half the total number of members, and
    - (b) a Board must contain at least one councillor member for each local authority whose area is wholly or partly within the area of the Board.

- (4) The conditions imposed by sub-paragraph (3) do not apply during any period when an elected member or, as the case may be, councillor member vacates office and the vacancy has not been filled.”
- (3) In paragraph 2A, for “persons appointed under paragraph 2 above” substitute “appointed members”.
- (4) In paragraph 3—
- (a) for “Appointments under paragraph 2 shall be made” substitute “An appointed member may be appointed only”, and
- (b) sub-paragraph (a) is omitted.
- (5) After paragraph 3 insert—
- “3A A person appointed as chairman of a Health Board may not be an employee of that Health Board.”.
- (6) Before paragraph 11 insert—
- “10A(1) An elected member holds office for a period beginning with the day after the day of the Health Board election at which the member was elected and ending on the day of the next following Health Board election in the Health Board area.
- (2) An elected member vacates office on becoming—
- (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.
- (3) Regulations may specify further circumstances in which an elected member must vacate office before the end of that period and, in particular, may specify that an elected member is to vacate office on becoming the holder of a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.”.
- (7) In paragraph 11(a), for “chairman and members of Health Boards” substitute “appointed members and councillor members (including provision specifying circumstances in which the Scottish Ministers may determine that such a member is to vacate office)”.
- (8) In paragraph 12, after “appointment” insert “or, as the case may be, election”.

*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”.

*Pilot scheme and action following pilot***4 Pilot scheme**

- (1) Ministers may by order (the “pilot order”) appoint a day on which sections 1 to 3 are to come into force in respect of the Health Board areas specified in the order.

- (2) Ministers may make one pilot order only (but this does not affect Ministers' power to modify or revoke the order).
- (3) The pilot order may bring sections 1 to 3 into force with such modifications as Ministers consider appropriate.
- (4) An order to which this subsection applies may be made only if a draft of it has been laid before, and approved by a resolution of, the Scottish Parliament.

This subsection applies to—

- (a) a pilot order (or order amending a pilot order) which adds to, replaces or omits any part of the text of sections 1 to 3, and
- (b) an order revoking the pilot order.

## **5 Report on pilot scheme**

- (1) At least 2 but no later than 5 years after the earliest Health Board election to be held in a Health Board area specified in the pilot order, Ministers must publish a report containing—
  - (a) a description of the changes made to the 1978 Act by sections 1 to 3 and how the constitution of Health Boards was changed by those sections coming into force in the Health Board areas specified in the pilot order,
  - (b) a description of the Health Board elections held in the specified Health Board areas, and
  - (c) an evaluation (carried out by an independent person) of—
    - (i) the level of public participation in the Health Board elections,
    - (ii) whether having elected members on Health Boards led to increased engagement with patients and other members of the public or improved local accountability of the Health Board in the specified Health Board areas, and
    - (iii) the cost of holding the Health Board elections and the estimated cost of holding future Health Board elections in all Health Board areas.
- (2) The report may contain—
  - (a) such other information, and
  - (b) an evaluation of such other matters,as Ministers consider appropriate.
- (3) Ministers must appoint a person to carry out the evaluation referred to in subsection (1)(c) at least 3 months before the first Health Board election is held.
- (4) Ministers must lay a copy of the published report before the Scottish Parliament.
- (5) For the purposes of paragraph (c) of subsection (1), and without prejudice to the generality of that paragraph, a person is not independent if he or she is—
  - (a) an employee of any Health Board mentioned in the pilot order,
  - (b) a member of any Health Board mentioned in the pilot order, or
  - (c) a member of staff of the Scottish Administration.

**6 Termination of pilot scheme**

- (1) The pilot order is revoked on the day falling 7 years after the earliest Health Board election to be held in a Health Board area specified in the pilot order (but this does not affect Ministers' power to revoke the order on an earlier date).
- (2) If—
  - (a) the pilot order is revoked before a roll-out order is made, or
  - (b) a question of whether to resolve to approve a draft roll-out order is put to a meeting of the Scottish Parliament but is not agreed by the Parliament,
 then, on the day the pilot order is revoked or on the day after the question is put (as the case may be), subsections (3) and (4) come into force.
- (3) The following provisions of this Act are repealed—
  - (a) section 1(6) and (8),
  - (b) sections 2 to 5,
  - (c) subsections (1) and (2) of this section (except in so far as bringing this subsection and subsection (4) into force), and
  - (d) section 7,
 and the amendments of the 1978 Act made by provisions so repealed are accordingly to cease to have effect.
- (4) Paragraph 2 of Schedule 1 to the 1978 Act is amended as follows—
  - (a) in sub-paragraph (1)—
    - (i) after sub-paragraph (a) insert “and”,
    - (ii) sub-paragraph (c) and the word “and” immediately preceding it are repealed,
  - (b) for sub-paragraphs (3) and (4) substitute—
 

“(3) At least one councillor member must be appointed for each local authority whose area is wholly or partly within the area of the Board.”.

**7 Roll-out**

- (1) Ministers may by order (a “roll-out order”) appoint a day on which sections 1 to 3 are to come into force in respect of Health Board areas not specified in the pilot order.
- (2) When a roll-out order is made section 6 is repealed.
- (3) A roll-out order may not be made unless—
  - (a) a report has been published under section 5(1), and
  - (b) a draft of the roll-out order has been laid before, and approved by a resolution of, the Scottish Parliament.
- (4) Before laying a draft of a roll-out order before the Scottish Parliament, Ministers must—
  - (a) lay before the Scottish Parliament—
    - (i) a copy of the proposed draft roll-out order, and
    - (ii) a statement of their reasons for proposing to make the draft roll-out order,

- (b) publicise the proposed draft roll-out order in such manner as they consider appropriate, and
- (c) have regard to—
  - (i) any representations about the proposed draft roll-out order,
  - (ii) any resolution of the Scottish Parliament about the proposed draft roll-out order, and
  - (iii) any report by a committee of the Scottish Parliament about the proposed draft roll-out order,made during such period as Ministers may specify when laying the copy proposed draft roll-out order.
- (5) The period so specified must—
  - (a) be no shorter than 60 days, and
  - (b) include at least 30 days during which the Scottish Parliament is not dissolved or in recess.
- (6) When laying a draft of a roll-out order before the Scottish Parliament, Ministers must—
  - (a) where any representation, resolution or report is made in pursuance of subsection (4)(c), lay a statement giving details of any representations, resolution or report and of their response, and
  - (b) where the draft roll-out order includes material changes to the proposed draft roll-out order, lay a statement giving details of the proposed revisions and of their reasons for them.
- (7) A roll-out order may make such provision adding to, replacing or omitting any part of the text of, or otherwise modifying, any enactment (including this Act) as Ministers consider appropriate.

*Final provisions*

**8 Minor and consequential amendments**

The schedule contains minor and consequential amendments.

**9 Key terms**

In this Act—

the “1978 Act” means the National Health Service (Scotland) Act 1978 (c.29),

“Health Board” means a board constituted by an order under section 2(1)(a) of the 1978 Act,

“Health Board election” means an election held under Schedule 1A to the 1978 Act (as inserted by section 2(3) of this Act),

“Ministers” means the Scottish Ministers,

“pilot order” has the meaning given by section 4(1),

“roll-out order” has the meaning given by section 7(1).

**10 Orders**

- (1) An order made under this Act is to be made by statutory instrument.
- (2) Such an order may—
  - (a) make different provision for different purposes (in particular, for different Health Board areas), and
  - (b) contain any supplementary, incidental, consequential, transitional, transitory or saving provision which Ministers consider appropriate.

**11 Commencement**

- (1) Sections 1 to 3 come into force in accordance with sections 4 and 7.
- (2) Sections 4, 5, 6(1) and (2), 7, 9, 10, 12 and this section come into force on Royal Assent.
- (3) Section 6(2) provides for the commencement of section 6(3) and (4) in particular circumstances.
- (4) Section 8 and the schedule come into force on such day as Ministers may by order appoint.

**12 Short title**

This Act is called the Health Boards (Membership and Elections) (Scotland) Act 2009.

SCHEDULE  
*(introduced by section 8)*

MINOR AND CONSEQUENTIAL AMENDMENTS

*National Health Service (Scotland) Act 1978 (c.29)*

- 1 In paragraph 4 of Schedule 1 to the 1978 Act, for the words from “the”, where it second occurs, to “prescribed” substitute “—
- (a) the chairman of a Health Board,
  - (b) such other members of a Health Board as may be prescribed, and
  - (c) such members of committees and sub-committees of a Health Board as may be prescribed.”.

*Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)*

- 2 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the specified authorities), in the list headed “*National Health Service bodies*”, after “any Health Board” insert “, but Part 1 does not apply to appointments made under Schedule 1 to the National Health Service Scotland Act 1978 (c.29) of the following persons to a Health Board—
- (a) a councillor member,
  - (b) an appointed member who is appointed by virtue of the member—
    - (i) holding a post in a university with a medical or dental school,
    - (ii) being employed as an officer of the Health Board, or
    - (iii) being a member of a body set up by a Health Board which represents health care professionals working in the Health Board area.”.



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