

*These notes relate to the Health Boards (Membership and Elections)
(Scotland) Act 2009 (asp 5) which received Royal Assent on 22 April 2009*

HEALTH BOARDS (MEMBERSHIP AND ELECTIONS) (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Constitution of Health Boards

9. This section amends Schedule 1 to the 1978 Act. That Schedule currently contains provision about the constitution of Health Boards. In particular, it contains provisions about the appointment of Health Board members (who are currently all appointed by the Scottish Ministers in accordance with this Schedule).
10. Subsection (2) substitutes a new paragraph for the existing paragraph 2 of Schedule 1 to the 1978 Act. New paragraph 2(1) specifies the three different types of member that will comprise a Health Board. These are—
 - “appointed members” (a chairman and other members appointed by the Scottish Ministers);
 - “councillor members” (councillors appointed by the Scottish Ministers following nomination by local authorities in the area of the Health Board); and
 - “elected members” (individuals elected as members of the Health Board at an election).
11. New paragraph 2(2) provides that regulations must specify, in respect of each Health Board in Scotland, the total number of members of the Board and the number of that total which is to be represented by each type of member. Those numbers may differ from Board to Board.
12. New paragraph 2(3) provides that (a) the total number of councillor members and elected members of a Health Board must amount to more than half the total number of members and (b) a Board must contain at least one councillor member from each local authority whose area is wholly or partly within the area of the Health Board. The regulations cannot specify numbers which would not be in accordance with those two conditions.
13. New paragraph 2(4) provides that these conditions do not apply during any period when an elected member or councillor member vacates office and the vacancy has not been filled. This ensures that in the event of a vacancy arising the Health Board will still be able to carry out its functions.
14. Subsection (3) amends paragraph 2A of Schedule 1 to the 1978 Act to ensure that it continues to be a requirement in the case of a prescribed Health Board that at least one of the appointed members must hold a post in a university with a medical or dental school. A “prescribed Health Board” is one which is prescribed in regulations as requiring a member holding one of these posts. Currently these are the Health Boards which have at least one university in their area with a medical or dental school.

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15. Subsection (4) amends paragraph 3 of Schedule 1 to the 1978 Act to ensure that it continues to be a requirement that appointed members may be appointed only after consultation with universities and other relevant organisations. It also removes the existing sub-paragraph (a) of paragraph 3 to remove the requirement to consult each local authority in the area of the Health Board concerned. This is because local authorities will have their own councillor members. Under the current arrangements, the Scottish Ministers would normally appoint at least one councillor to each Health Board. Existing paragraph 3(a) ensured that such an appointment could not be made without the local authority being consulted. New paragraph 2 of Schedule 1 now provides for local authorities to nominate the councillor member to be appointed.
16. Subsection (5) inserts new paragraph 3A into Schedule 1 to the 1978 Act. New paragraph 3A stipulates that a person appointed as chairman of a Health Board may not be an employee of that Health Board.
17. Subsection (6) inserts new paragraph 10A into Schedule 1 to the 1978 Act. New paragraph 10A(1) sets out the usual period that an elected member holds office for. Paragraph 10A(2) provides that an elected member vacates office if they become the holder of one of the public offices specified in the paragraph. Paragraph 10A(3) provides that regulations may specify further circumstances in which an elected member must vacate office before the end of the period that they normally hold office for and, in particular, may specify that an elected member must 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.
18. Subsection (7) amends paragraph 11(a) of Schedule 1 to the 1978 Act to ensure that it continues to be the case that regulations may make provision about the appointment, tenure and vacation of office of appointed members. This will also apply to councillor members.
19. Subsection (8) amends paragraph 12 of Schedule 1 to the 1978 Act to ensure that it continues to be the case that the proceedings of a Health Board are not invalidated by any vacancy in membership or by any defect in the appointment of any member. This will also apply to councillor members and elected members.