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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 302**

**NATIONAL HEALTH SERVICE**

**REPRESENTATION OF THE PEOPLE**

**The Health Boards (Membership) (Scotland) Regulations 2009**

*Made - - - - 26th August 2009*

*Laid before the Scottish Parliament 31st August 2009*

*Coming into force in accordance with regulation 1(2)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(10) and 105(7) of, and by paragraphs 2(2), 10A(3) and 11(a) of Schedule 1 to, the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Health Boards (Membership) (Scotland) Regulations 2009.

(2) Subject to regulation 4 these Regulations come into force on 12th October 2009.

**Interpretation**

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

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

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

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

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

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

“specified Health Board” means a Health Board specified in column 1 of the table in regulation 3.

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(a) 1978 c.29. Section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24; paragraph 2 of Schedule 1 was substituted, and paragraph 10A of Schedule 1 inserted, by the Health Boards (Membership and Elections) Act 2009 (asp 5) (“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) Schedule 1A was inserted by section 2(3) of the 2009 Act.

### Number of members of specified Health Boards

3. Following the first Health Board election in a specified Health Board area—

- (a) the total number of members in relation to the specified Health Board is the number mentioned in the corresponding entry in column 2,
- (b) the number of appointed members in relation to the specified Health Board is the number mentioned in the corresponding entry in column 3,
- (c) the number of councillor members in relation to the specified Health Board is the number mentioned in the corresponding entry in column 4, and
- (d) the number of elected members in relation to the specified Health Board is the number mentioned in the corresponding entry in column 5.

<i>Column 1</i> <i>Health Board</i>	<i>Column 2</i> <i>Total number of members</i>	<i>Column 3</i> <i>Number of appointed members</i>	<i>Column 4</i> <i>Number of councillor members</i>	<i>Column 5</i> <i>Number of elected members</i>
Fife	25	12	1	12
Dumfries and Galloway	21	10	1	10

### Transitional provision

4.—(1) Until the elected members take up office in terms of paragraph 10A(1) of Schedule 1 to the Act following the first Health Board election in the areas of the specified Health Boards all the members of those Health Boards shall continue to be appointed by the Scottish Ministers.

(2) Regulation 5 and the Schedule have effect from the day on which the elected members take up office in terms of paragraph 10A(1) of Schedule 1 to the Act following the first Health Board election in the areas of the specified Health Boards.

### Amendment of the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 for specified Health Boards

5. The Health Boards (Membership and Procedure) (Scotland) Regulations 2001(a) are amended in terms of the Schedule in respect of the specified Health Boards.

*NICOLA STURGEON*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
26th August 2009

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(a) S.S.I. 2001/302, as amended by S.S.I. 2004/212 and 2005/208.

## SCHEDULE

Regulation 5

### AMENDMENT OF THE HEALTH BOARDS (MEMBERSHIP AND PROCEDURE) (SCOTLAND) REGULATIONS 2001 FOR THE SPECIFIED HEALTH BOARDS

- 1.—(1) In regulation 1(2) (interpretation)—
- (a) omit the definitions of “the 1997 Act” and “the Charity Commissioners”; and
  - (b) insert in the appropriate alphabetical positions—
    - ““appointed member” has the meaning given by paragraph 2(1)(a) of Schedule 1 to the 1978 Act;”;
    - and
    - ““councillor member” has the meaning given by paragraph 2(1)(b) of Schedule 1 to the 1978 Act;”.
- (2) In regulation 2 (appointment and term of office)—
- (a) omit paragraph (1);
  - (b) in paragraph (2) for “the members” substitute “the appointed members and the councillor members”; and
  - (c) in paragraph (3) for “a member” substitute “an appointed member or a councillor member”.
- (3) In regulation 5 (resignation and removal of members)—
- (a) in paragraph (1) after “appointment” insert “or, as the case may be, during the period mentioned in paragraph 10A(1) of Schedule 1 to the Act<sup>(a)</sup>,”;
  - (b) in paragraph (2) for “a member” substitute “an appointed member or a councillor member”; and
  - (c) in paragraph (3) for “a member” substitute “an appointed member or a councillor member”.
- (4) For regulation 6 (disqualification) substitute—

#### “Disqualification

- 6.—(1) Subject to paragraph (3), an individual is disqualified from being a member if the individual—
- (a) is an undischarged bankrupt;
  - (b) is an incapable adult (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000<sup>(b)</sup>);
  - (c) has, during the 5 years before the day the individual becomes a member, 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 three months or longer without the option of a fine;
  - (d) is disqualified from being included in any list kept under Part 1 or Part 2 of the Act or any list kept under equivalent legislation in England and Wales or Northern Ireland;

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(a) Paragraph 10A was inserted by section 1(6) of the 2009 Act.

(b) 2000 asp 4.

- (f) 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
  - (g) 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>.
- (2) In paragraph (1) “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.
- (3) The Scottish Ministers may direct that in relation to any appointed member or councillor member any disqualification so directed shall not apply in relation thereto.”

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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.

## EXPLANATORY NOTE

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

These Regulations specify the total number of members, and the number of each type of member, of Fife and Dumfries and Galloway Health Boards (“the specified Health Boards”), following a Health Board election in the area of those Health Boards.

The areas for which the specified Health Boards are constituted are the areas in which the 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 3 contains a table setting out the number of appointed members, councillor members and elected members, and the total number of members for the specified Health Boards.

Regulation 4 provides that until the day after the first Health Board election the members of the specified Health Boards will continue to be appointed by Scottish Ministers.

Regulation 5 and the Schedule make amendments to the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (S.S.I. 2001/302), consequential to Health Board elections in relation to the specified Health Boards.

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