

## POLICY NOTE

### THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (AMENDMENT OF SPECIFIED AUTHORITIES) ORDER 2020

SSI 2020/82

The above instrument was made in exercise of the powers conferred by section 3(2)(a) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003. The instrument is subject to affirmative procedure.

**Purpose of the instrument: The purpose of the instrument is to remove councillors appointed by Scottish Ministers to the Public Health Scotland Board following nomination by the Convention of Scottish Local Authorities (COSLA) from the remit of the Commissioner for Ethical Standards in Public Life in Scotland.**

#### Policy Objectives

This instrument sets out an amendment to schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (2003 Act) to allow COSLA to nominate councillors for appointment by the Scottish Ministers to the Public Health Scotland (PHS) Board. One of the key principles of the Public Health Reform programme has been for national and local government to adopt more innovative and effective partnership approaches to improving the health of Scotland's population and to creating greater equality in health. The Scottish Government and COSLA have worked together to develop the model for PHS which includes a commitment to their shared leadership and shared accountability in relation to the new body. PHS was constituted as a Special Health Board by the Public Health Scotland Order 2019 and this instrument is required to amend the 2003 Act in relation to the governance arrangements for the new body. The intention is for the PHS Board to include councillor members appointed by the Scottish Ministers following nomination by COSLA.

The rationale behind stakeholder member appointments to NHS Boards in Scotland was established in "Rebuilding our National Health Service – A plan for action, a plan for change", published in May 2001. The key message was the requirement to build partnerships across NHSScotland. Several categories of appointment have been removed from the remit of the Commissioner. These include the appointment of officers employed by the relevant NHS Board and councillor members appointed to territorial Health Boards by the Scottish Ministers following nomination by local authorities in the area of the relevant Health Board. Procedures for the nomination of councillor members for appointment to the PHS Board will follow a merit based selection process administered by COSLA at national level, with oversight from Scottish Government. The intention is for the PHS Board composition to reflect the partnership with local government, through COSLA, which has been fundamental to the reform programme. This will maximise the contribution which councillors can make to the planning and scrutiny of PHS services, harnessing their particular knowledge, perspective and skills and ensuring COSLA council members are fully engaged in the work of the PHS Board.

#### Consultation

A six week public consultation was launched in May 2019 seeking views on the role, structure and expected functions of PHS, with discussion of its proposed interface with other bodies, partnerships and statutory frameworks. This followed recommendations from a Review of

Public Health in Scotland (report<sup>1</sup> published 2016) and the publication of Scotland's Public Health Priorities<sup>2</sup> in 2018 by Scottish Government and COSLA.

The consultation proposed that the PHS Board would include one or more councillor members nominated by COSLA. Respondents expressed broad support for the establishment of PHS and the proposals contained within the consultation. The proposed approach involving shared leadership, accountability and decision making with COSLA was welcomed. While most respondents supported the notion of COSLA nominated Board members, it was highlighted by some that the process leading to their nomination should still be conducted in a transparent way through appropriate channels. As noted above, the nomination process will be merit based and the decision to appoint will be made by the Scottish Ministers. A full list of those consulted and who agreed to the release of this information is attached to the consultation report<sup>3</sup> published on the Scottish Government website.

The Commissioner has indicated that she is content that the Order will remove councillors appointed by the Scottish Ministers to the PHS Board following nomination by COSLA from her regulatory remit.

### **Impact Assessments**

Impact assessments have not been prepared for this instrument. The changes made to schedule 2 of the 2003 Act by this instrument will have no impact, other than providing clarification that these COSLA nominated councillor member appointments are not covered by the Commissioner's remit. A full range of impact assessments accompanied the Public Health Scotland Order 2019. The amendments to the 2003 Act included in this instrument relate to the administration of a specific element of the PHS Board member selection process and do not affect the objectives, functions and potential effects of the body.

### **Financial Effects**

No Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Population Health Directorate  
*January 2020*

---

<sup>1</sup> <https://www.gov.scot/publications/2015-review-public-health-scotland-strengthening-function-re-focusing-action-healthier-scotland/pages/1/>

<sup>2</sup> <https://www.gov.scot/publications/scotlands-public-health-priorities/>

<sup>3</sup> <https://www.gov.scot/publications/public-health-scotland-analysis-responses-public-consultation/>