HEALTH BOARD ELECTIONS (SCOTLAND) BILL

EXPLANATORY NOTES

(and Other Accompanying Documents)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Health Board Elections (Scotland) Bill introduced in the Scottish Parliament on 31 March 2006:
   - Explanatory Notes;
   - a Financial Memorandum; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 63–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Govan Law Centre on behalf of Bill Butler, the member in charge of the Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill is in two Parts:
   • election of members; and
   • miscellaneous and general.

5. Commentary explaining the provisions introduced by each Part is provided below.

COMMENTARY ON PARTS

Part 1: Election of members

6. Section 2 of the National Health Service (Scotland) Act 1978 (c.29) (‘the 1978 Act’) permits the Scottish Ministers to constitute Health Boards for such areas, and for the purpose of exercising such functions relating to the health service, as may be determined by them, in accordance with Schedule 1 of the 1978 Act. Schedule 1 makes provision for the constitution of Health Boards, and the appointment of members to Health Boards. It gives the Scottish Ministers power to make regulations and issue directions as regards the operation of Health Boards generally.

7. Section 1 amends paragraph 1 of Schedule 1 to the 1978 Act by inserting new paragraphs 1A, 1B, and 1C. Paragraphs 1A and 1B require a simple majority of Health Board positions to be reserved for members elected in accordance with the Bill (50% of positions plus no more than two members). If the Scottish Ministers decide to reduce the number of appointed members of a Health Board before the day of the poll at elections under the Bill, Paragraph 1C provides for elected members to remain in office until the end of their term. Section 1(2) amends paragraph 2 of Schedule 1 of the 1978 Act to preserve the status quo as regards Special Health Boards. The Bill does not extend to Special Health Boards.

8. Section 1(6) requires an election to be held within 3 months where a casual vacancy arises due to (a) an elected member having resigned, died or become disqualified under sections 2 or 3, or (b) the Scottish Ministers increasing the number of appointed members, so that the Health Board positions reserved for elected members no longer constitutes a simple majority.
Section 1(7) provides that an elected member may serve until the end of his or her term, or such earlier date where the Health Board is dissolved by the Scottish Ministers.

9. **Section 2** sets out the criteria for nomination and holding office as an elected member. Candidates and elected members must be aged 18 or over and entitled to vote at a local government election within the Health Board area, assuming that election was taking place on the same day as the Health Board election. A candidate and elected member’s only or principal home must be within the geographical boundaries of the Health Board. Accordingly, where an elected member relocates outwith the Health Board area, he or she ceases to be an elected member.

10. **Section 3** sets out the criteria for persons being disqualified from nomination as a candidate for election, and from holding office as an elected member. In addition to the categories of persons generally excluded from seeking or holding public office under UK electoral legislation, the following additional categories of persons are disqualified under the Bill:

   - the chief officer of the Health Board, any person directly accountable to him or her or the Health Board, and any person who holds paid office with the Health Board if they give advice to it on a regular basis, or speak on its behalf to the media;
   - a Member of the European, UK, or Scottish Parliaments, or a local government councillor.
   - medical staff who have been disqualified under Part II of the National Health Service (Scotland) Act 1978 or Part II of the National Health Service Act 1977 (this requirement is currently applicable to members appointed to Health Boards from The Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (SSI 2001/302)).

11. **Section 4** makes provision for the resignation and removal of elected members. An elected member may resign his or her office by giving written notice to the Health Board’s chief officer. An elected member may be removed from office by the Health Board where he or she fails to attend any meeting of the Health Board for a period of six consecutive months without reasonable cause in the opinion of the Health Board.

12. **Section 5** sets out the criteria for entitlement to vote at a Health Board election. To be entitled to vote, a person must be aged 18 years or over, and entitled to vote at a local government election for an electoral ward falling wholly or partly within the Health Board’s geographical boundaries. A person’s name must appear on the register of local government electors at an address within the Health Board area. The linkage to local government elections in this section means that a potential voter must meet the qualifying criteria set out the Representation of the People Act 1983 (c.2). Section 2 of the 1983 Act provides that a person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he or she is:

   - registered in the register of local government electors for that area;
   - not subject to any legal incapacity to vote (age apart);
These documents relate to the Health Board Elections (Scotland) Bill (SP Bill 63) as introduced in the Scottish Parliament on 31 March 2006

- a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and
- of voting age (that is, 18 years or over).

13. **Section 6** provides that the Returning Officer for a Health Board election will be the same person who acts as the Returning Officer for the council with the largest number of councillors (which failing, the largest electorate) within the Health Board area. The Returning Officer’s expenses in conducting an election must be met by the Health Board, who may also pay such fee as they consider appropriate.

14. **Section 8** introduces **schedule 1** which details the arrangements under which direct elections to Health Boards must be conducted. **Schedule 1** is in four parts:
   - *elections* – rules on the nomination of candidates, the method of election (including uncontested elections), the form of ballot papers, and absent voters;
   - *issue and receipt of ballot papers* – rules on the issuing of ballot papers, covering envelopes and postal communications, the counting of votes, rejected ballot papers, declaration of result, sealing up and delivery of documents after the poll, orders for production of documents, the retention and public inspection of documents, and the death of a candidate at a contested election;
   - *election expenses* – rules on the amount of election expenses to be incurred by a candidate or third party, election expense returns, and the effect of misdescriptions; and
   - *timetable for the proceedings at elections to Health Boards*.

Part 2: Miscellaneous and general

15. **Section 9** makes provision for the Scottish Ministers to issue guidance on the payment of expenses and fees to returning officers, the form for electoral notices and documents, and the practice to be followed in relation to the operation of procedure under Schedule 1 generally.

16. **Section 11** clarifies the meaning of various expressions used in the Bill.

17. **Section 12** introduces **schedule 2** which makes changes to other legislation needed as a consequence of this Bill. **Paragraph 1 of schedule 2** amends paragraph 11 to Schedule 1 of the 1978 Act to ensure that the power of the Scottish Ministers to regulate the appointment, tenure and vacation of office of Health Board members does not affect the Bill’s requirements. **Paragraph 2 of schedule 2** makes consequential amendments to *The Health Boards (Membership and Procedure) (Scotland) Regulations 2001* (SSI 2001/302).

18. **Section 13** enables the Scottish Ministers to modify **schedule 1** from time to time as they see fit. **Section 13(2)** gives the Scottish Ministers a free-standing power to make orders containing such ancillary provision as may be necessary or expedient for the purposes or in consequence of the Bill. The orders, which will be made by statutory instrument, are subject to affirmative resolution procedure.
FINANCIAL MEMORANDUM

INTRODUCTION

19. The Bill introduces a postal ballot for Health Board elections on a four yearly cycle. The first election would take place on 1 May 2008. The responsibility for conducting postal ballots is placed upon local authorities. The returning officer of the local authority with the largest number of councillors within the Health Board’s area would act as the returning officer for Health Board elections. The Bill requires Health Boards to reimburse local authorities for the cost of running elections. In addition, the Bill authorises Health Boards to pay an additional fee to returning officers as they consider appropriate. All costs incurred in implementing the Bill would be met from existing Health Board expenditure.

SUMMARY OF COSTS

20. The expenditure of Health Boards in Scotland amounted to almost £7 billion in 2004/05. Costs are presented on a per annum basis as Health Board accounts are presented on a financial year basis. Health Boards would be expected to budget for the cost of the elections over each four year cycle, while expenditure would only be incurred during the election year. Budgeting could commence in financial years 2006/07 and 2007/08 for the first elections in May 2008, and thereafter over 2009/10, 2010/11, 2011/12 and 2012/13 for elections in May 2012 and so on. Accordingly, for the first elections under the Bill the total annual costs would be between £600,000 and £1.2 million. For elections thereafter annual costs (net of inflation) would be as reasonably estimated in the table below.

<table>
<thead>
<tr>
<th>Turnout %</th>
<th>Total annual cost</th>
<th>Notional average cost per annum per Health Board</th>
<th>Cost per registered elector per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>£300,000</td>
<td>£21,000</td>
<td>7.5 pence</td>
</tr>
<tr>
<td>40</td>
<td>£400,000</td>
<td>£29,000</td>
<td>10 pence</td>
</tr>
<tr>
<td>50</td>
<td>£500,000</td>
<td>£36,000</td>
<td>12.5 pence</td>
</tr>
<tr>
<td>60</td>
<td>£600,000</td>
<td>£43,000</td>
<td>15 pence</td>
</tr>
</tbody>
</table>

21. The costings in the table are based upon the experience of Stevenage Borough Council which has carried out a number of pilot ‘postal vote only’ elections. The empirical evidence from Stevenage is that the overall cost of running a postal ballot works out at £1 per vote cast.

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1 When the expenditure of Special Health Boards is included, the figure was £7.8 billion in 2004/05. See Scottish Health Statistics: [http://www.isdscotland.org/isd/files/Costs_R086_2005.xls](http://www.isdscotland.org/isd/files/Costs_R086_2005.xls)
whereas the cost per vote cast at a polling station was approximately £1.50. The costs per registered elector in the table relate to those eligible to vote, as opposed to votes cast. The table illustrates that the precise costs of Health Board elections has a margin of uncertainty based upon voter turnout. Basic costings for the ballot itself can be stated with a high degree of certainty (see paragraph 23). Additional costs may be incurred in consequence of the resignation, death or disqualification of an elected member. Costs would only be incurred where there was a contested election for a casual vacancy. The average total costs to a Health Board for carrying out a contested election for a casual vacancy is estimated at between £84,000 and £172,000 (on a turnout of 30% to 60%, respectively) using the Stevenage figure.

22. Costings may be significantly lower than those set out in the table, as paragraph 22(4) of schedule 1 to the Bill permits ballot papers, covering envelopes and postal communications to be sent within one envelope to multiple electors within one household. To ensure confidentiality, each elector will receive their own individual ballot paper and a personal covering envelope to cast their vote. There are approximately 4 million potential electors in Scotland, yet only around 2 million households. A saving of 50% on initial postage costs can therefore be made.

23. The cost of posting 2 million envelopes to every household in Scotland using the Royal Mail’s Mailsort 700 service is around £319,000. Thereafter postal costs would depend upon electoral turnout, with costs only being incurring where electors posted their ballot paper using the covering envelope and business reply service.

**COSTS TO THE SCOTTISH EXECUTIVE**

24. No costs expected.

**COSTS TO LOCAL AUTHORITIES**

25. The costs as estimated in the table would be reimbursed by Heath Boards under the Bill.

**COSTS TO HEALTH BOARDS**

26. Costs would not exceed those set forth in the table. A full cycle of Health Board elections would cost no more than 50 pence, per person, in Scotland.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

27. No costs expected.

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[http://www.royalmail.com/portal/rm/content1?catId=400109&mediaId=3100105](http://www.royalmail.com/portal/rm/content1?catId=400109&mediaId=3100105)
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

28. On 27 March 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Health Board Elections (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
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EXPLANATORY NOTES

AND OTHER ACCOMPANYING DOCUMENTS


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