HEALTH BOARD ELECTIONS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Health Board Elections (Scotland) Bill introduced in the Scottish Parliament on 31 March 2006. It has been prepared by Govan Law Centre on behalf of Bill Butler MSP, the member in charge of the Bill, in accordance with Rule 9.3.3A of the Parliament’s Standing orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 63–EN.

POLICY OBJECTIVE OF THE BILL

2. The objective of the Bill is to make provision for local public elections to National Health Service Boards in Scotland. The Bill achieves this by requiring a simple majority of Health Board members to be directly elected by way of a postal ballot. The Bill has no other impact upon the constitution or operation of Health Boards or the powers of the Scottish Ministers in that regard. It does not deal with Special Health Boards which generally have a Scotland-wide or specialist function, for example the Scottish Ambulance Service or the State Hospitals.

3. The aim of the Bill is to democratise Scotland’s Health Boards. Direct elections would provide the public with a mechanism to influence health service delivery within their local communities. The democratisation of health service boards would confer locally generated legitimacy on the decision making process for local health services. This would lead to greater openness, transparency, and local accountability between board members and the communities they serve. Public confidence and trust would be significantly improved if representatives of the local community had a direct role in the decision-making process of their Health Boards.

BACKGROUND

The current legal position

4. The National Health Service (Scotland) Act 1978 (c.29) allows for the establishment of area-based health boards to assess health needs and administer the provision of relevant health care. At as 31 March 2006, there were 11 mainland and 3 island Health Boards in Scotland.1 In

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1 Ayrshire and Arran, Borders, Dumfries and Galloway, Fife, Forth Valley, Grampian, Greater Glasgow, Highland, Lanarkshire, Lothian, Orkney, Shetland, Tayside and the Western Isles. Argyll and Clyde Health Board was dissolved on 31 March 2006, and its geographical boundaries taken over by NHS Highland, and NHS Greater Glasgow.
September 2001, Health Boards became unified with NHS Trusts.\(^2\) NHS Trusts have now been dissolved and are now operating divisions within NHS Boards. The overall function of the unified boards is a strategic one, which can be summarised as follows:

- **strategic development** – the boards are responsible for the development of a single local health plan,
- **resource allocation** in accordance with strategic objectives laid out in the health plan,
- **implementation** of the health plan, and
- **performance management** of the local NHS system.

5. The current membership of Health Boards comprises of:

- **non-executive lay members** – NHS Board Chair, Trust Chairs and up to two other lay members. These members are appointed by the Scottish Ministers after open competition.
- **non-executive stakeholder members** - Local Authority members, Chair of the Area Partnership Forum, Chair of the Area Clinical Forum, University Medical School member.
- **executive members** – NHS Board Chief Executive, Trust Chief Executives, Director of Nursing, Director of Public Health, and the NHS Board Director of Finance.

**Problems with the current system**

6. Recent decisions made by Health Boards across Scotland, and elsewhere in the UK, have been met by a great deal of public concern and dismay. There is an increasing perception that consultations carried out by Health Boards, regarding the provision of local health services, have pre-determined results and do not take public opinion into consideration.

7. There is a growing sense of public disempowerment where Health Boards can act freely in direct opposition to the wishes of local communities. This has resulted in a public increasingly inclined to mobilise and organise around health issues. This mobilisation tends to develop in response to unpopular Health Board actions, rather than in advocacy of new initiatives.

8. Since the Bill’s sponsor was first elected to the Scottish Parliament he has been contacted by many constituents concerned about changes made to local health service provision. Constituents were frustrated and angry about decisions made by Health Boards which they perceived to be completely against the views of their community. Such feelings are commonplace to many communities across Scotland when changes are being proposed to their local health services.

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CONSULTATION

Support for the Bill’s principles

9. The draft proposal for the Bill was lodged on 2 March 2005. The final proposal was lodged on 15 June 2005. The following 30 MSPs supported the Bill within the one month period from the date of the final proposal: Marlyn Glen, Trish Godman, Scott Barrie, Kate Maclean, Margaret Jamieson, Janis Hughes, Mr Richard Baker, Paul Martin, Cathie Craigie, Karen Whitefield, Bristow Muldoon, Maureen Macmillan, Johann Lamont, Ms Rosemary Byrne, Tommy Sheridan, Frances Curran, Rosie Kane, Carolyn Leckie, Colin Fox, Mr Duncan McNeil, Mark Ballard, Chris Ballance, Pauline McNeill, John Swinburne, Jackie Baillie, Mr Kenneth Macintosh, Mr Mark Ruskell, Stewart Stevenson, Shona Robison, Mrs Margaret Ewing.

10. The Member undertook a wide ranging consultation on the general principles of the proposed Bill between June and September 2004. Respondents were invited to address 16 sets of questions, 15 of which made provision for a multiple choice answer, as well providing an opportunity for additional comments. There were 160 responses to the consultation, including 44 individuals, 23 politicians, 16 local authorities, 14 Health Boards, 4 community councils and 3 trade unions. An overwhelming 85% of respondents supported the general principles of the Bill.

Proportion of Health Board members to be elected

11. Almost 90% of consultation responses supported at least 50% or more of Health Board places being subject to direct public election. Section 1 of the Bill makes provision for a simple majority (50% + no more than 2 members) of Health Board places being reserved for direct public election. The chairman would still be appointed by the Scottish Ministers, however, elected members would have majority control on the Board. Elected members would receive no remuneration.

Electoral constituencies

12. No decisive view was discernable from the consultation exercise on whether Health Board elections should be based upon the entire health board area or smaller districts within that area. Some respondents, such as North Lanarkshire Council, suggested that given the nature of health service provision it is necessary to consider the needs of those living within the health board area as a whole. For example, Lanarkshire has three major hospitals which serve the majority of the local population and therefore decisions need to be taken on a wider geographical basis. For this reason, and for administrative consistency and effectiveness, the Bill therefore opts for electoral constituencies which mirror the geographical boundaries of each Health Board.

Method of election

13. The majority of respondents favoured the ‘first past the post’ electoral system, although there was significant support for the ‘single transferable vote’ (STV) system. Paragraph 7 of schedule 1 to the Bill makes provision for a ‘first past the post’ electoral system in the context of a multi-member constituency. For example, if there were 5 elected positions within a Health Board area, the five candidates with the highest poll of the vote would be elected. Section
3(1)(c) of the Bill prohibits a Member of the European, United Kingdom, or Scottish Parliaments, or a local government councillor from standing at Health Board elections. The Bill’s policy is that Health Board elections should not be party political. The need for STV is therefore not apparent, there being no votes to transfer as such. Section 7 of the Bill provides that elections shall take place by postal ballot only. This is intended to keep administrative costs as low as possible, while facilitating a respectable electoral turnout by making the voting process convenient and simple.

Election cycle, frequency and term of office

14. Most respondents favoured a staggered cycle of elections, as opposed to all candidates being subject to election at the same time. West Dunbartonshire Council expressed concern that staggered elections would add significantly to the administrative cost of holding elections. In the interest of public finance and administrative efficiency the Bill utilises a single cycle of elections. Section 1(4) of the Bill provides that the first poll at elections to Health Boards will take place on Thursday 1st May 2008. This is outwith the cycle of local government elections in order to avoid excessive administrative demands being placed on local government returning officers and their staff. The most popular preferences for the term of office were 3 and 4 years. Section 1(5) provides for a four yearly cycle of elections. This is consistent with the term of office for Members of the Scottish Parliament and local councillors.

Nomination requirements

15. The majority of respondents supported a requirement for candidates to be nominated by local people within the Health Board area. Paragraph 4 of schedule 1 to the Bill requires candidates to secure the support of ten nominations from members of the local community. Nominators must be registered on the register of local government electors at an address within the Health Board area.

Disqualification for nomination and election

16. The consultation revealed overwhelming support for the imposition of qualifying and disqualifying criteria for candidates wishing to stand for Health Board elections. Section 2 of the Bill requires prospective candidates to be eligible to vote at a local government election for an electoral ward within the Health Board area, in addition to having their only or principal home within the Health Board area at all times. For example, if an elected Health Board members relocates to another part of the UK they would automatically cease to be an elected Health Board member. The policy rationale is to ensure that elected members live within their Health Board area.

17. Section 3 imposes electoral disqualification criteria similar to that applicable in local government or national political elections. Additional disqualifying criteria (with respect to where medical staff have been disqualified under Part II of the National Health Service (Scotland) Act 1978 or Part II of the National Health Service Act 1977) has been included. This is consistent with the disqualification criteria applicable to appointed Health Board members in terms of The Health Boards (Membership and Procedure) (Scotland) Regulations 2001(SSI 2001/302).
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Voting age and minimum age for candidates

18. The majority of respondents favoured 18 as the minimum voting age for Health Board elections, and as the minimum age for candidates to be permitted to stand for election. Section 2 and 5 of the Bill makes provision for a minimum age of 18 respectively.

Restriction on publicity and expenses

19. Consultation respondents favoured affording candidates the opportunity to send a brief election statement to prospective voters, along with the postal ballot and return envelope. Paragraph 2 of schedule 1 to the Bill makes provision for candidates to send a 250 word communication to each elector’s household. Respondents also favoured a low limit on candidates’ election expenses. This would help prevent Health Board elections becoming party political or being hi-jacked by vested interest groups. Paragraph 39 of schedule 1 permits candidates to spend no more than £500 on their campaign. Paragraph 40 of schedule 1 prohibits any third party (or groups of third parties) from spending more than £250 in total to back or disparage candidates at a Health Board election.

ALTERNATIVE APPROACHES

20. An alternative approach to a postal ballot would be to hold an election using traditional polling booths. If this took place as a standalone election, the costs involved would be substantially higher – approximately one third - than a postal ballot. The Financial Memorandum sets out comparative costings in full detail. Importantly, the experience of pilot ‘postal only’ ballots in England and Wales is that a higher turnout is achieved. In the 2000 Stevenage Borough Council local government elections, the use of a postal only ballot resulted in a turnout increase of 6% and 16% within two wards (as against local government elections in 1999).

21. It would be possible to hold elections for Health Boards on the same day as the local government elections. However, with the advent of STV for the local government elections in May 2007, and the fact Scottish Parliament elections are coterminous, electors will be presented with 3 different voting systems on polling day. The Bill’s sponsor believes that it would be unhelpful and unrealistic to add a fourth election system to polling day in May 2007.

22. An alternative way of promoting community involvement would be for Health Boards to engage in local public meetings to directly ascertain opinion. However, this form of community involvement is currently used by Health Boards. As noted in paragraphs 6 to 8, public consultation meetings have, in general, lacked transparency and have been seen by the public as predetermined.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

23. Section 10 requires returning officers and Health Boards (in practice, Health Board Chief Executive Officers) to exercise their functions under the Bill in a manner which encourages equal opportunities. For example, where a candidate or elector has a sensory impairment or
other physical disability the returning officer would be expected to examine what reasonable adjustments could be made to enable that candidate or elector to participate fully under the Bill.

24. The Bill promotes the fundamental human right to participatory government. Article 21 of the Universal Declaration of Human Rights (adopted by the United Nations General Assembly in 1948) states that:

“Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures”.

While the appointment of members to Health Boards is exercised by the Scottish Ministers, a democratically elected devolved administration, the Bill makes provision for an substantial element of direct democratic participation in Health Boards. This decentralisation of power is more inclusive and capable of achieving greater participatory government.

25. The Bill has no particular consequences for the island communities or for sustainable development.

26. The Bill would have an administrative burden upon 14 Scottish local authorities, who would be charged with the conduct of a postal ballot each four year cycle. However, this burden is off-set by section 6 which makes provision for the Health Board to meet the local authority’s expenses and fees in performance of returning officer functions under the Bill.
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