Health Board Elections (Scotland) Bill
[AS INTRODUCED]

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Health Board Elections (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for local public elections to Health Boards in Scotland; and for connected purposes.

PART 1
ELECTION OF MEMBERS

1. Elections of persons as members

(1) After paragraph 1 of Schedule 1 to the National Health Service (Scotland) Act 1978 (c.29) there is inserted—

“A Health Board shall consist of—

(a) a chairperson appointed by the Scottish Ministers;

(b) such number of other members so appointed as the Scottish Ministers think fit; and

(c) members elected to the board by virtue of the Health Board Elections (Scotland) Act 2006 (asp 00).

1B The total number of positions reserved for elected members of a Health Board must exceed the total number of appointed members, but (subject to paragraph 1C) by no more than two.

1C The number referred to in paragraph 1B may exceed two if the Scottish Ministers (exercising their powers under this Act to alter the constitution of Health Boards) reduce the number of appointed members of a Health Board before the day of the poll at elections under the Health Board Elections (Scotland) Act 2006 (asp 00).”

(2) In paragraph 2 of Schedule 1 to the 1978 Act before “Health” there is inserted “Special”.

(3) The Scottish Ministers must notify the returning officer of the number of positions reserved for elected members no later than four months before the poll at elections under this Act.

(4) The first poll at elections under this Act shall be held on 1st May 2008.

(5) Subject to subsections (6) and (7) below, subsequent polls at elections under this Act shall be held on the first Thursday in May every four years after the date of the first poll.
(6) Where a casual vacancy occurs in the office of an elected member in consequence of—

(a) the resignation, death or disqualification of an elected member, or

(b) the Scottish Ministers increasing the number of appointed members of a Health Board in exercise of their powers under the 1978 Act,

an election to fill that casual vacancy must be held within three months from the date on which the vacancy is deemed, by the returning officer, to have occurred, and the day of the poll at that election shall be fixed by the returning officer.

(7) Elected members shall cease to hold office on the day of the poll at the next election following that at which they were elected, or on the day their Health Board is dissolved by the Scottish Ministers.

2 Qualification for nomination, election and holding office as an elected member

A person is qualified to be nominated as a candidate for election to, or be elected as member of, a Health Board only where they—

(a) are aged 18 years old or over by the date of the poll,

(b) would be entitled to vote as an elector at the next local government election (were that election being held on the same day as the date of the Health Board election) in an electoral area falling wholly or partly within the Health Board area where they want to stand,

(c) have their only or principal home within the Health Board area,

and an elected member who no longer complies with this section, or becomes disqualified in terms of section 3, shall immediately cease to be an elected member.

3 Disqualification for nomination, election and holding office as an elected member

(1) Subject to subsections (2) and (3) below, a person shall be disqualified from being nominated as a candidate for election as, or from being elected, or from being, an elected member if they—

(a) hold any of the following posts in relation to an election to that same Health Board—

(i) are the chief officer of the Health Board,

(ii) as respects all or most of the duties of their post, are required to report directly or are directly accountable to the chief officer of the Health Board,

(iii) as respects all or most of the duties of their post, are required to report directly or are directly accountable to the Health Board or any committee or sub-committee of the Health Board, or

(iv) hold any paid office or employment or other place of profit in the gift or disposal of the Health Board and give advice to it on a regular basis or speak on its behalf on a regular basis to journalists or broadcasters,

(b) are appointed as a member of the Health Board by the Scottish Ministers,

(c) are a Member of the European, United Kingdom or Scottish Parliaments, or are a local government councillor,
have within the period of five years before nomination, or since his or her election, as the case may be, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence in respect of which they have received a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine,

(c) are a person whose estate has been sequestrated or who has been adjudged bankrupt or has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract,

(f) are incapacitated by physical or mental illness from discharging the functions of a member,

(g) have had their name removed, by a direction under section 29 of the National Health Service (Scotland) Act 1978 (c.29), from any list prepared under Part II of the 1978 Act and have not subsequently had their name included in such a list,

(h) are a person whose name has been included in any list prepared under Part II of the said 1978 Act, and whose name has been withdrawn from the list on their own application,

(i) have had their name removed, by the tribunal under section 46 of the National Health Service Act 1977 (c.49) from any list prepared under Part II of the said 1977 Act and have not subsequently had their name included in such a list,

(j) are a person whose name has been included in any list prepared under Part II of the said 1977 Act, and whose name has been withdrawn from the list on their own application,

(k) are a person who is subject to a disqualification order under the Company Directors Disqualification Act 1986 (c.46), or

(l) are a person who has been removed from the position of trustee of a charity, whether by the court, the Charity Commissioner, or the Office of the Scottish Charity Regulator.

(2) For the purpose of subsection (1) above—

(a) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when—

   (i) the sequestration of their estate is recalled or reduced, or
   (ii) the sequestration is discharged,

(b) the disqualification attaching to a person by reason of their having been adjudged bankrupt shall cease if and when—

   (i) the bankruptcy is annulled, or
   (ii) they are discharged,

(c) the disqualification attaching to a person who has granted a trust deed or entered into an arrangement with their creditors shall cease if and when that person pays their creditors in full or on the expiry of five years from the date of their granting the deed or entering into the arrangement.

(3) For the purposes of subsection (1)(d) above the date of conviction will be deemed to be the date on which the days of appeal expire without any appeal having been lodged, or if an appeal has been made, the date on which the appeal is finally disposed of or treated as having been abandoned.
4 **Resignation and removal of elected members**

(1) An elected member may resign office at any time during the period of appointment by giving notice in writing to the Health Board’s chief officer to this effect.

(2) If an elected member has not attended any meeting of the Health Board, or of any committee of which they are a member, for a period of six consecutive months, the Health Board may forthwith terminate that person’s appointment unless the Health Board are satisfied that—

(a) the absence was due to illness or other reasonable cause, and

(b) the elected member will be able to attend meetings within such period as the Health Board considers reasonable.

5 **Entitlement to vote**

A person is entitled to vote at an election if on the day of the poll they would be entitled to vote as an elector at a local government election in an electoral area falling wholly or partly within the Health Board’s area, and are registered in the register of local government electors at an address within the Health Board’s area.

6 **Returning officer**

(1) The returning officer at an election will be the person who, under section 41 of the Representation of the People Act 1983 (c.2), is the returning officer for the local authority with the largest number of councillors (which failing, the largest electorate) within the Health Board’s area.

(2) Any expenses properly incurred by the returning officer in the performance of his or her functions under this Act (in this section referred to as “returning expenses”) will be paid by the Health Board.

(3) A Health Board may pay to the returning officer such fees as they consider appropriate.

(4) On the request of the returning officer for an advance on account of returning expenses, the Health Board may, if they think fit, make such an advance to him or her of such an amount and subject to such conditions as they may approve.

7 **Manner of voting at elections**

A person entitled to vote as an elector at an election may vote only by post.

8 **Health Board elections**

Schedule 1, which makes provision about elections to Health Boards, the issue and receipt of ballot papers and election expenses, has effect.
PART 2

MISCELLANEOUS AND GENERAL

9 Issue of guidance by the Scottish Ministers

(1) The Scottish Ministers may issue guidance with respect to the conduct of Health Board elections.

(2) Guidance under this section may, in particular be issued with respect to—
   (a) the payment of expenses and fees to returning officers,
   (b) the form of notice of election,
   (c) the form for nomination of candidates,
   (d) the form of ballot papers,
   (e) sending ballot papers to an address other the address a voter is registered at and the keeping of lists of absent voter,
   (f) the issuing of ballot papers,
   (g) the counting of votes,
   (h) the declaration of results, and
   (i) the storage of ballot papers after an election.

10 Equal opportunities

(1) Health Boards and returning officers must exercise the functions conferred on them by this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

(2) In this section, “equal opportunities” and “equal opportunity requirements” have the same meaning as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

11 Interpretation

In this Act, unless the context otherwise requires—

“the 1978 Act” means the National Health Service (Scotland) Act 1978 (c.29),
“Charity Commissioners” means the Charity Commissioners constituted in accordance with section 1 of the Charities Act 1993 (c.10),
“chief officer” means the person holding the post of Chief Executive Officer of the Health Board,
“election” means an election of members of the Health Board held in accordance with the provisions of this Act,
“elected member” means a person elected as a member of a Health Board by virtue of an election under this Act,
“Health Board” means a Health Board constituted under section 2(1)(a) of the 1978 Act,
“health service body” means a person or body specified in section 17A(2) of the 1978 Act,
“local authority” means a council constituted under section 2 of the Local Government (Scotland) Act 1994 (c.39),

“Office of the Scottish Charity Regulator” has the same meaning as given by the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),

“registered” means registered in the register of local government electors, and cognate expressions should be construed accordingly,

“registration officer” has the same meaning as in the Representation of the People Act 1983 (c.2),

“returning officer” means a person specified in section 6 of this Act,

“Special Health Board” means a Special Health Board constituted under 2(1)(b) of the 1978 Act.

12 Minor and consequential amendments

Schedule 2 contains minor amendments and amendments consequential on the provisions of this Act.

13 Orders and ancillary provision

(1) The Scottish Ministers may by order modify schedule 1 of this Act for the purpose of making such further provision for the conduct of Health Board elections.

(2) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

(3) The power of the Scottish Ministers under this section to make an order is exercisable by statutory instrument.

(4) A statutory instrument containing an order made under this section shall not be made unless a draft of the instrument is laid before, and approved by a resolution of, the Scottish Parliament.

14 Short title

This Act may be cited as the Health Board Elections (Scotland) Act 2006.
SCHEDULE 1
(introduced by section 8)

PROCEDURE FOR HEALTH BOARD ELECTIONS

PART 1

ELECTIONS

Notice of election

1 (1) The returning officer must publish notice of the election in such form as he or she thinks fit.

(2) The notice of election must include notice of the number of elected member positions available on the Health Board.

Nomination of candidates

2 (1) Each candidate must be nominated by a separate nomination paper, in such form as the returning officer thinks fit, delivered at the place or places fixed for the purpose by the returning officer.

(2) The nomination paper must state the name and address of the candidate, the surname being placed first.

(3) At an election each candidate may deliver to the returning officer within the time for delivery of nomination papers one postal communication, addressed to each elector containing matter relating to the election only and not exceeding 250 words, which must be sent by the returning officer to each elector’s address with the ballot paper sent in accordance with paragraph 15 below.

(4) Where, in the opinion of the returning officer, the contents of any postal communication referred to in sub-paragraph (3) above are unlawful, he or she may refuse to comply with the provisions of sub-paragraph (3).

Consent to nomination

3 A person must not be validly nominated unless his or her consent to nomination is given in writing on the nomination paper dated between the date of the publication of the notice of election and the last day for the delivery of nomination papers.

Subscription of nomination paper

4 (1) The nomination paper must give the electoral number of each person subscribing it.

(2) The nomination paper must be subscribed by two electors as proposer and seconder, and by eight other electors as assentors, the names of which electors must appear on the electoral register for the health board area where the nominated candidate wants to stand and are registered in the register of local government electors at an address within the Health Board area.

(3) As soon as practicable after each nomination paper has been delivered, the returning officer must examine it and decide whether the candidate has been validly nominated.
Where the returning officer decides that a nomination paper is invalid, he or she must endorse and sign on the paper the fact and the reasons for his or her decision.

The returning officer must send notice of his or her decision that a nomination paper is valid or invalid to each candidate at his or her home address as given in his or her nomination paper.

The returning officer’s decision that a nomination paper is valid or invalid shall be final and must not be questioned in any proceeding whatsoever.

A person must not subscribe more than one nomination paper in respect of the same Health Board election and, if he or she does, his or her signature shall be inoperative on any paper other than the one first delivered, but he or she shall not be prevented from subscribing a nomination paper by reason only of his or her having subscribed that of a candidate who has died or withdrawn before delivery of the first mentioned paper.

A candidate may withdraw his or her candidature by notice of withdrawal in such form as the returning officer thinks fit—

(a) signed by him or her and attested by one witness, and
(b) delivered to the returning officer at the place for delivery of nomination papers.

Any person may inspect and take copies of, or extracts from, nomination papers during ordinary office hours on any day other than—

(a) a Saturday or Sunday,
(b) Christmas Eve, Christmas Day, Good Friday or Easter Monday,
(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c.80), or
(d) a day appointed for public thanksgiving or mourning,

after the latest time for delivery of nomination papers and before the date of the poll.

If at the close of nominations, more candidates remain validly nominated than the number of positions reserved for elected members as notified under section 1(3) of this Act, members shall be elected from among them at a poll under section 1 of this Act.

The first elected position shall be allocated to the candidate with the greatest number of votes and the second and subsequent elected positions shall allocated in the same way.

In allocating the second or subsequent elected positions there shall be disregarded any votes given to a candidate to whom an elected position has already been allocated.

If at the close of nominations, the number of candidates who remain validly nominated is less than the number of positions reserved for elected members, the returning officer shall publish a further notice of election inviting additional nominations for a period not exceeding two weeks.
(5) If at the close of nominations, the number of candidates who remain validly nominated is—

(a) equal to the number of positions reserved for elected members, or

(b) less than the number of positions reserved for elected members following the further notice of election under sub-paragraph (4),

the returning officer must cause public notice to be given that there will be no poll, and that on the day when the poll at the election would have been held, those candidates will be declared elected in accordance with the provisions of paragraph 33.

(6) If at the close of nominations, no candidates are validly nominated a further election shall be held within three months of the day when the poll at the election would have been held.

(7) The public notice to be given under this paragraph must be in such form as the returning officer thinks fit.

**Ballot papers**

(1) The ballot of every voter must consist of a ballot paper and the persons remaining validly nominated for the election after any withdrawals under this Act, and no other persons, shall be entitled to have their names inserted in the ballot paper.

(2) Every ballot paper must be in such form as the returning officer thinks fit, and—

(a) must contain the names and addresses of the candidates as shown in their respective nomination papers and arranged alphabetically in the order of their surnames and, if there are two or more candidates with the same surname, of their other names, and

(b) must have a number printed on the back.

**Absent voters**

(1) Where a person applies to the registration officer for his or her ballot paper to be sent to an address other than the address in respect of which he or she will be registered at an election, the registration officer must grant the application if he or she is satisfied that the applicant is or will be registered in the register of local government electors at an address within the Health Board area.

(2) The registration officer must, in respect of each election, keep a special list (“the absent voters list”) consisting of a list of those whose applications under sub-paragraph (1) above for their ballot papers to be sent to a different address have been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(3) The registration officer must remove a person from the record kept under sub-paragraph (2) above if he or she applies to the registration officer to be removed.

**Closing dates for applications**

An application under paragraph 9 must be disregarded for the purposes of any election if it is received by the registration officer after 5.00 p.m. five weeks before the day of the poll at that election.
Grant or refusal of applications

11 (1) Where the registration officer grants an application under paragraph 9 he or she shall, where practicable, notify the applicant of his or her decision.

(2) Where the registration officer disallows an application under paragraph 9, he or she shall notify the applicant of his or her decision and of the reason for his or her decision, and he or she must date such notification.

(3) Where under paragraph 10 the registration officer disregards an application for the purposes of any particular election, he or she shall, where practicable, notify the applicant of this.

List of absent voters

12 (1) The list kept under paragraph 9 must be in such form as the registration officer thinks fit.

(2) The registration officer must make available for inspection at his or her office a copy of the list kept under paragraph 9 above.

The official mark

13 (1) Every ballot paper must be marked with an official mark.

(2) The official mark must be kept secret, and an interval of not less than five years must intervene between the use of the same official mark at elections.

Prohibition of disclosure of vote

14 No person who has voted at an election will, in any legal proceeding to question the election, be required to state for whom he or she voted.

PART 2

ISSUE AND RECEIPT OF BALLOT PAPERS

Issue of ballot papers

15 The returning officer must as soon as practicable send to each elector—

(a) at the address in respect of which he or she will be registered, or

(b) at the address determined in accordance with paragraph 9,

a ballot paper together with instructions for completing it in such form as the returning officer thinks fit, an envelope for its return and the postal communication referred to in paragraph 2.

Appointment of counting agents

16 (1) Each candidate may, before the commencement of the poll, appoint such number of counting agents as the returning officer considers appropriate to attend at the issue of ballot papers and the counting of the votes.
(2) Notice in writing of the appointment, stating the names and addresses of the persons appointed, shall be given by the candidate to the returning officer not later than 3 weeks before the day of the poll.

Order for issuing ballot papers

17 (1) The returning officer must first issue ballot papers to those electors included as voting by post in the absent voters list for the election and must place a mark in that list and in the register of electors against the number of the elector (which he or she shall also mark with the letter “A”) to denote that—

(a) the elector is an absent voter, and

(b) a ballot paper has been issued to that elector but without showing the particular ballot paper issued.

(2) The returning officer must secondly issue ballot papers to every elector in the register of electors against whose number no mark has been placed and must then place a mark against the number of that elector to denote that a ballot paper has been issued but without showing the particular ballot paper issued.

Notification of requirement of secrecy

18 Every person attending the proceedings in connection with the issue or the receipt of ballot papers must maintain and aid in maintaining the secrecy of the voting and must not—

(a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark, or

(b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number on the back of the ballot paper sent to any person.

Notice of issue of ballot papers

19 (1) The returning officer must give each candidate not less than 48 hours notice in writing of the time and place at which he or she will issue ballot papers and of the number of agents the candidate may appoint under paragraph 16 to attend that issue.

(2) Where any subsequent issue of ballot papers is made, the returning officer must notify each candidate as soon as practicable of the time and place at which he or she will make such subsequent issue and of the number of agents the candidate may appoint under paragraph 16 to attend such issue.

Refusal to issue ballot paper

20 Where a returning officer is satisfied that two or more entries in the absent voters list or in the register relate to the same elector he or she must not issue more than one ballot paper in respect of that elector in respect of any one election.
Envelopes

21 The envelope which the returning officer is required by paragraph 15 above to send to a voter for the return of the ballot paper is referred to as a “covering envelope”.

Delivery of ballot papers

22 (1) For the purposes of delivering ballot papers, the returning officer may use—
   (a) a universal postal service provider, or
   (b) a commercial delivery firm.

(2) Where the services of a universal postal service provider or commercial delivery firm are to be used, envelopes addressed to voters must be counted and delivered by the returning officer with such form of receipt to be endorsed by that provider or firm as may be arranged.

(3) Delivery of all envelopes addressed to voters and all covering envelopes must be pre-paid by the returning officer.

(4) Where more than one elector is registered at an address, the returning officer may deliver ballot papers, covering envelopes, and the postal communication referred to in paragraph 2, to those electors within the same envelope.

Spoilt ballot papers and covering envelopes

23 (1) If a voter has inadvertently dealt with his or her ballot paper in such manner that it cannot be conveniently used as a ballot paper (referred to as “a spoilt ballot paper”) he or she may return (either by hand or by post) to the returning officer the spoilt ballot paper and the covering envelope.

(2) If a voter has inadvertently dealt with his or her covering envelope in such manner that it cannot be conveniently used as a covering envelope (referred to as “a spoilt covering envelope”) he or she may return (either by hand or post) to the returning officer the spoilt covering envelope.

(3) On receipt of the documents referred to in sub-paragraphs (1) or (2) above, the returning officer must issue another ballot paper or covering envelope, as the case may be, except where those documents are received too late for another ballot paper to be returned before the close of the poll.

Lost ballot papers

24 (1) Where an elector has not received his or her ballot paper by the third day before the day of the poll, he or she may apply (whether or not in person) to the returning officer for a replacement ballot paper.

(2) Such an application shall include evidence of the elector’s identity.

(3) Where the application is received by the returning officer before 5.00 p.m. on the day before the day of the poll and the returning officer—
   (a) is satisfied as to the elector’s identity, and
   (b) has no reason to doubt that the elector did not receive the original ballot paper, he or she must issue another ballot paper.
(4) The returning officer must enter in a list kept for the purpose (“the list of lost ballot papers”)—
   (a) the name and number of the elector as stated in the register, and
   (b) the number of the lost ballot paper and of its replacement issued under this paragraph.

(5) Paragraphs 8, 13 and 15 shall apply to the issue of a replacement ballot paper under sub-paragraph (3) above as they apply to any ballot paper.

(6) Where an elector applies in person, the returning officer may hand a replacement ballot paper to him or her instead of delivering it in accordance with paragraphs 15 and 22.

Opening of ballot box

25 (1) The returning officer must provide one or more ballot boxes for the receipt of ballot papers.

   (2) Every ballot box referred to in sub-paragraph (1) above must be marked “ballot papers” and with the Health Board’s name for which the election is held.

   (3) Covering envelopes received by the returning officer until the close of the poll must be placed in the ballot box or boxes.

   (4) The returning officer must make provision for the safe custody of every such ballot box.

   (5) Every such ballot box must be opened at the counting of the votes under paragraph 28.

Opening of covering envelopes

26 (1) When a ballot box has been opened, the returning officer shall count and note the number of covering envelopes, and will then open each covering envelope separately.

   (2) Where a covering envelope does not contain a ballot paper the returning officer must mark the covering envelope “rejected”, attach to it the contents (if any) of the covering envelope and place it in a separate receptacle (referred to as “the receptacle for rejected votes”).

   (3) Where the covering envelope does contain a ballot paper, the returning officer shall place it in a different receptacle from the receptacle for rejected votes.

Attendance at counting of votes

27 (1) The returning officer must make arrangements for counting the votes in the presence of the counting agents as soon as practicable after 4.00 p.m. on the day of the poll and must give to the counting agents notice in writing of the time and place at which he or she will begin to count the votes.

   (2) No person other than—

       (a) the returning officer and his or her staff,

       (b) the candidates and their partners, and

       (c) the counting agents,

   may be present at the counting of the votes, unless permitted by the returning officer to attend.
A person not entitled to attend at the counting of the votes must not be permitted to do so by the returning officer unless he or she is satisfied that the efficient counting of the votes will not be impeded.

The returning officer must give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as he or she can give them consistently with the orderly conduct of the proceedings and the discharge of his or her duties in connection with them.

In particular, where the votes are counted by sorting the ballot papers according to the candidate for whom the vote is given and then counting the number of ballot papers for each candidate, the counting agents shall be entitled to satisfy themselves that the ballot papers are correctly sorted.

The count

(1) The returning officer shall count such of the ballot papers as have been duly returned for his or her Health Board area and record the number counted.

(2) The returning officer must so far as practicable proceed continuously with counting the votes, allowing only time for refreshment.

Re-count

(1) A candidate may, if present when the counting or any re-count of the votes is completed, require the returning officer to have the votes re-counted or again re-counted but the returning officer may refuse to do so if in his or her opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-count of votes until the candidates present at its completion have been given a reasonable opportunity to exercise the right conferred by this paragraph.

Rejected ballot papers

(1) Any ballot paper—
   (a) which does not bear the official mark,
   (b) on which votes are given for more than one candidate,
   (c) on which anything is written or marked by which the voter can be identified except the printed number on the back, or
   (d) which is unmarked or null and void for uncertainty,
shall, subject to sub-paragraph (2) below, be null and void and not counted.

(2) A ballot paper on which the vote is marked—
   (a) elsewhere than in the proper place,
   (b) otherwise than by means of a cross, or
   (c) by more than one mark,
shall not for such reason be deemed to be null and void if an intention that the vote must be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
The returning officer shall endorse the word “rejected” on any ballot paper which under this paragraph is not to be counted, and must add to the endorsement the words “rejection objected to” if any objection is made by a counting agent to his or her decision.

The returning officer must draw up a statement showing the number of ballot papers rejected, under the several heads of—

(a) want of official mark,
(b) voting for more than one candidate,
(c) writing or mark by which voter could be identified,
(d) unmarked or null and void for uncertainty.

Decisions on ballot papers

The decision of the returning officer on any question arising in respect of a ballot paper shall be final.

Equality of votes

Where, after the counting of the votes (including any re-count) is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer must forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Declaration of result

In a contested election, when the result of the poll has been ascertained, the returning officer must forthwith—

(a) declare to be elected those candidates who have been elected in accordance with paragraph 7,
(b) give notice of the names of the candidates elected to the chief officer of the Health Board, and
(c) give public notice of the name of the candidates elected and of the total number of votes given for each candidate (whether elected or not) together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

Where notice of an uncontested election has been given under paragraph 7 the returning officer shall—

(a) not later than 11.00 a.m. on the day of election declare to be elected the validly nominated candidates referred to in the said notice of uncontested election,
(b) give notice of the names of the persons to whom sub-paragraph (2)(a) above applies to the chief officer of the Health Board, and
(c) give public notice of the name of such persons.
Sealing up of ballot papers

On the completion of the counting at a contested election the returning officer must seal up in separate packets the counted and rejected ballot papers.

Delivery of documents

The returning officer must then forward to the chief officer of the Health Board, the following documents—

(a) the packets of ballot papers in his or her possession,
(b) the statement of rejected ballot papers, and
(c) such other documents, including, without prejudice to the foregoing generality, marked registers and marked absent voters lists, as may be necessary to verify the validity of the election,

endorsing on each packet a description of its contents, the date of the election to which they relate and the name of the Health Board area for which the election was held.

Orders for production of documents

(1) An order—

(a) for the inspection or production of any rejected ballot papers in the custody of the chief officer of the Health Board, or
(b) for the inspection of any counted ballot papers in the custody of the chief officer of the Health Board,

may be made by the sheriff principal having jurisdiction in the Health Board area, and, where more than one sheriff principal has jurisdiction in the said area, by any such sheriff principal, on being satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of civil proceedings.

(2) An order under this article may be made subject to such conditions as to—

(a) persons,
(b) time,
(c) place and mode of inspection, and
(d) production or opening,

as the sheriff principal making the order may think expedient; but in making and carrying into effect an order for the inspection of counted ballot papers, care must be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it has been proved that the vote was given and that the vote has been declared by a competent court to be invalid.

(3) An appeal lies to the Court of Session from any order of a sheriff principal under this paragraph.

(4) Any power given under this paragraph to a sheriff principal may be exercised otherwise than in open court.
(5) Where an order is made for the production by the chief officer of the Health Board of any document in his or her possession relating to any specified election—

(a) the production by him or her or his or her agent of the document ordered in such manner as may be directed by that order shall be conclusive evidence that the document relates to the specified election, and

(b) any endorsement on any packet of ballot papers so produced shall be prima facie evidence that the ballot papers are what they are stated to be by the endorsement.

Retention and public inspection of documents

37 (1) The chief officer of the Health Board must retain for six months all ballot papers, statements of rejected ballot papers, marked registers and marked absent voters lists relating to an election forwarded to him or her in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of a sheriff principal, shall cause them to be destroyed.

(2) Those documents, except ballot papers, must be open to public inspection at such time and in such manner as the chief officer of the Health Board may determine.

(3) The chief officer of the Health Board shall, on request, supply copies of or extracts from the documents open to public inspection on payment of such reasonable fees and subject to such conditions as he or she may determine.

Death of candidate

38 If at a contested election proof is given to the returning officer’s satisfaction before the result of the election is declared that one of the persons named or to be named as candidate in the ballot papers has died, then the returning officer must disregard the votes cast for that candidate for the purpose of paragraph 7.

PART 3

ELECTION EXPENSES ETC.

Election expenses

39 No sum must be paid and no expense must be incurred by a candidate at a Health Board election, whether before, during or after an election, on account of or in respect of the conduct or management of the election, in excess of £500.

Third party election expenses

40 (1) No sum must be paid and no expense must be incurred by a third party at a Health Board election, whether before, during or after an election, on account of or in respect of the conduct or management of the election, in excess of £250.

(2) Where more than one third party incurs an expense in terms of sub-paragraph (1) as a backer or disparager of a candidate as part of a concerted plan of action, such expense must not exceed £250 in aggregate.
**Election expenses returns**

41 (1) Within 35 days after the day on which the result of the election is declared every candidate at the election must deliver to the returning officer a true return and declaration in such form as the returning officer thinks fit containing as respects that candidate a statement of all payments made by that candidate together with all the bills or receipts.

(2) The returning officer must then forward the returns to the chief officer of the Health Board.

(3) The provisions of paragraphs 36 and 37 shall apply to elections expenses returns.

**Effect of misdescription**

42 No misnomer or inaccurate description of any person or place named—
(a) in the register of electors, or
(b) in any list, record, nomination paper, ballot paper, notice or other document required for the purposes of this Act,

affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

**PART 4**

**TIMETABLE FOR PROCEEDINGS AT ELECTIONS TO HEALTH BOARDS**

**Timetable for proceedings**

43 The proceedings at Health Board elections shall be conducted in accordance with the following timetable—

<table>
<thead>
<tr>
<th>Proceeding</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Publication of notice of election</td>
<td>Not later than 8 weeks before the day of the poll</td>
</tr>
<tr>
<td>2. Delivery of nomination papers</td>
<td>Not later than 4.00 p.m. on any day after the date of the publication of the notice of election but not later than 5 weeks before the day of the poll</td>
</tr>
<tr>
<td>3. Delivery of notices of withdrawals of candidates</td>
<td>Within the time for the delivery of nomination at the election</td>
</tr>
<tr>
<td>4. Publication of statement of persons nominated</td>
<td>Within 24 hours after the close of the time for the delivery of nomination papers at the election</td>
</tr>
</tbody>
</table>
SCHEDULE 2
(introduced by section 12)
MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

ACTS

National Health Service (Scotland) Act 1978 (c.29)

1 (1) The 1978 Act is amended as follows.

(2) In Schedule 1, in paragraph 11 after the word “provision” insert “without prejudice to the Health Board Elections (Scotland) Act 2006”.

PART 2

SUBORDINATE LEGISLATION

The Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (SSI 2001/302)

2 (1) In Regulation 1(2) before the word “Board” insert “the 2006 Act means the Health Board Elections (Scotland) Act 2006;”.

(2) In Regulation 2—

(a) at the end of paragraph (1) insert “except those elected in accordance with the 2006 Act”,

(b) in paragraph (2) for “the” where it appears before “members” substitute “unelected”,

(c) in paragraph (3) for “a” where it appears before “member” substitute “an unelected”.

(3) After Regulation 4 insert—

“Resignation, removal and disqualification of elected members

4A Regulations 5 and 6 do not apply to members elected under the 2006 Act.”.
Health Board Elections (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for local public elections to Health Boards in Scotland; and for connected purposes.

Introduced by: Bill Butler
On: 31 March 2006
Bill type: Member’s Bill