HEALTH BOARDS (MEMBERSHIP AND ELECTIONS) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Health Board (Membership and Elections) (Scotland) Bill introduced in the Scottish Parliament on 25 June 2008. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 13–EN.

BACKGROUND AND BILL OVERVIEW

2. The Scottish Government is committed to improving public engagement and involvement with Health Boards. The Government recognises that people want to be involved in their local health services and that they want to be involved in the key decisions about the future development of the NHS in Scotland.

3. In December last year (2007) the Government published the “Better Health, Better Care” Action Plan which set out the Government’s vision of a mutual NHS in Scotland in which ownership and accountability are shared with the public and the staff. The Government is now beginning the process of implementing this Plan together with proposals to improve public engagement and involvement. The Government has already announced the implementation of independent scrutiny and how this will be embedded in the processes by which the NHS in Scotland develops proposals for future major service changes. In addition, the Government will soon be launching a consultation on the contents of a Patients’ Rights Bill. The Government will, furthermore, develop a participation standard to ensure that patient focus and public involvement become the core drivers of decision making and will require Health Boards to produce annual ownership reports setting out information on how to access local services, how to raise issues and concerns and on how to become engaged and involved in the design and delivery of local health services.

4. The Bill will, within this framework, introduce, by way of pilots, elections to Health Boards with the aim of improving public and community engagement and involvement. The Bill will give practical effect to the mutual/co-ownership concept of the NHS in Scotland by giving the public (the co-owners) the opportunity to vote onto their local Health Board their own representatives. The Bill will also allow the public voice to be heard and listened to at the heart of the decision making processes of Health Boards.
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5. This Memorandum sets out the details of the consultation process and sets out, in more detail, the policy which underpins the significant areas of the Bill. The effects of the Bill on equal opportunities, human rights, island communities, local government and sustainable development are summarised in paragraphs 33 to 38 of this Memorandum.

CONSULTATION


7. The consultation was launched on 8 January 2008 at the Pearce Institute in Glasgow. The launch was attended by the media and the Cabinet Secretary for Health and Wellbeing took the opportunity to discuss the contents of the consultation with the representatives of some key stakeholder groups including the Scottish Health Council, Fair For All, Help the Aged and the Scottish Consumer Council.

8. The consultation document was split into two separate, but not mutually exclusive, sections. Section 1 asked questions about strengthening existing policies to ensure that the needs of local communities are heard more effectively within the current framework of appointed Health Boards. Section 2 asked for views on introducing new legislation to require elections to be held that would place locally elected members on Health Boards.

9. Copies of the consultation were sent out to a wide range of interested groups and it was also made available through the Scottish Government’s website and was offered in a number of formats. By the time the consultation closed on 1 April 2008, almost 2000 copies of the consultation had been distributed. Officials were also invited to a number of meetings across the country to discuss the contents of the consultation and help facilitate discussions before those concerned submitted their written responses. These meetings involved Regional Tenants Associations, Health Boards, Public Partnership Forums and Citizens Panels. A total of 142 responses were received from a broad range of organisations including Health Boards, local authorities, voluntary bodies, professional and trade union bodies and individuals.


11. Consultation responses acknowledged the need to improve the way in which Health Boards engaged and involved their local communities in the planning and decision making process around delivering health services. All acknowledged the progress that had been made over recent years but it was also acknowledged that further steps had to be taken. Individual respondents especially felt that the views of communities were not given sufficient weight when the Health Board considered options. They also felt that many consultations did not fully reflect the range of options that might be available, instead they reflected a narrower Health Board view. 13 of the 14 area Health Boards responded. All acknowledged the need to continue to improve their engagement with communities but were universally of the opinion that elections to Health Boards were not the way to achieve this. Opinion on elections was split between “for” and “against” among local authorities, a split that was reflected in all other types of respondent. In general, individuals or groups who were not currently directly involved with planning and
delivery of health services tended to be for elections while those who were currently involved tended to be against the proposals.

12. The introduction of a legal requirement to include local councillors on Health Boards was not specifically consulted on but the Government considers this to be a logical reaction to the consistent message received from consultees that Health Boards’ engagement with communities needed to continue to be improved.

POLICY OBJECTIVES OF THE BILL

13. The Bill will set out the key principles relating to the introduction of elections, by way of pilots, to Health Boards. Further detailed arrangements for the implementation and conduct of elections, in the first place to Health Boards in the pilot areas, will be set out in subordinate legislation.

Membership and Accountability

- Elected members, together with councillors nominated by local authorities and appointed by Ministers, will form the majority of the members on each Health Board; the elected members will be remunerated at the same rate as current non-executive Health Board members.
- The appointment of the chairman of each Health Board will continue, as at present, to be a Ministerial appointment following the standard public appointment process.
- Health Boards will – as at present – be accountable to Ministers and will be required to comply with regulations and with Ministerial directions.

Elections, Franchise and Method of Voting

- The elections will be held on a fixed 4-year cycle.
- Each Health Board will be a single ward for the purposes of elections.
- The electoral system will be single transferable vote (STV).
- The franchise will be extended to include 16 and 17 year olds.
- The Bill will provide that pilots must precede full roll-out of elections. The number, location and length of pilots and the date of commencement will be included in subordinate legislation.
- The pilots must be evaluated, and a report on the evaluation laid before Parliament, before decisions are taken on full roll-out. If the decision is taken to support full roll-out this will not require further primary legislation.

Membership of Health Boards

14. The Bill sets out the broad types of members which will make up the membership structure of a Health Board. This membership structure consists of two types of members; those appointed by Ministers and those elected in a Health Board election.
The members appointed by Ministers will consist of:

(a) those appointed following the current open and transparent public appointment process – this will include the chairman of each Health Board;

(b) a number of senior employees of the Health Board (Chief Officer, Chief Finance Officer, Director of Public Health, Medical Director and Nurse Director and a representative of the Area Partnership Forum);

(c) a representative of the Area Clinical Forum;

(d) a University member where a Health Board area encompasses a teaching hospital; and

(e) a local authority councillor nominated by each local authority within the area of Health Board.

This unique structure of elected and appointed members on a Health Board continues and gives practical effect to the partnership/mutual approach to the NHS in Scotland and retains the valuable and crucial links with local authorities through their continued membership of the Health Board. Within this structure it is reasonable and sensible to view the nominated councillors and elected members, added together, as forming a majority of elected representatives on each Health Board. The Government believes that the proposed membership structure retains sensible and practical continuity with current Health Board membership and that the adding of elected members will clearly strengthen and not detract from Health Boards.

Local councillors already play an important role on Health Boards but it is not a requirement that local authorities are represented on Health Boards. The Government considers the link between local authorities and Health Boards to be vital and as such it should be formalised in statute. This will protect the valuable mix of skills and experience that is brought together around the table as well as allowing consistent calculation of a majority of elected members.

Accountability

The consultation highlighted some concerns that, by altering the membership structure of Health Boards, there would arise issues around Health Boards following national policy and the danger of losing the “national” from the National Health Service.

The Government acknowledges these concerns and we have responded by continuing the appointment of the Health Board chairman by the Scottish Ministers (after the normal competitive public appointments process), and by retaining the current Ministerial powers relevant to retaining control over Health Boards. These include, crucially, the power to give directions to Health Boards on specific or general matters; and the power to terminate a Health Board member’s membership where that seems to be justified in the interests of the Service (this last power in relation to appointed members is currently set out in regulations; we will amend these to ensure that they cover councillor and elected members also). Although this power has not to our knowledge been used, its continued existence – in relation to councillor and elected as well as appointed Health Board members – will help ensure a coherent, consistent approach to healthcare policy across Scotland which people will expect us to safeguard. Finally the pilots
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will enable these issues to be evaluated and for further consideration to be given on whether any further action is needed.

Elections

20. The Government’s overall approach to the conduct of the elections themselves is founded on four broad principles:

- the elections will be held at fixed 4 year intervals, with no limit on the number of terms that an elected member can serve on the Board (if re-elected).
- each Health Board area will be a single ward – the Government believes that a single ward may encourage a broad range of candidates to come forward for election from across the whole of the Board’s area; will reduce the possibility of uncontested elections in smaller wards and will reduce the detrimental impact of unrepresentative single issue candidates from particular geographic areas from dominating the election. However the Bill retains a degree of flexibility such that if it is decided that there should be wards this can be taken forward for pilots and/or full roll-out.
- the voting method will be STV – the use of the STV system will give the electorate the fullest freedom of choice and ability to express preferences between candidates seeking election. It will help ensure that all significant opinions are proportionally represented on a Health Board and it will help ensure that single issue candidates do not predominate.
- the extension of the franchise to include 16 and 17 year olds. This will open up opportunities for this age group to become involved in a substantive way in helping to make decisions about local health services.

21. The consultation on the Bill highlighted concerns about the cost of elections and therefore, within these broad principles, the approach will be to rigorously pursue efficient and cost effective methods of implementation commensurate with holding free and fair elections. The Government believes that introducing elections to Health Boards is a positive and significant investment in improving public engagement and involvement. Elections will, we believe, begin to address the deeply held concerns expressed during the consultation that public engagement and involvement with Health Boards needs to be improved.

22. Within these broadly accepted principles the responses to the consultation also revealed a wide range of views on how the elections themselves should be managed and conducted. The Government wishes to be responsive to this wide range of views and wants to allow the Parliament further opportunity to consider these detailed issues. The Bill, therefore, allows for this opportunity by making provision for the details of elections to be included in subsequent subordinate legislation. The subordinate legislation is intended to encompass, amongst other things, issues such as the timing of Health Board elections, conduct of elections, eligibility of prospective candidates and election expenses.
Pilots

23. The results of the consultation highlighted, as did many of the views expressed in the debate in Parliament on 21 February this year (2008) (Column 6256 of the Official Report of the Scottish Parliament http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0221-02.htm#), that a clear majority of those who are in favour of elections consider that we should pilot elections first before deciding on whether or not to implement a full roll-out across Scotland.

24. We have responded positively to this widely held view and the Bill sets out that the introduction of elections to Health Boards will only proceed by way of pilots. The Government also considers that it is essential that there will be a full and thorough evaluation of the pilots and the principal criteria to be used in this evaluation are set out in the Bill. The Government also considers that it is important for Parliament to be involved in the decision, taking into account the results of the evaluation, as to whether or not to roll-out elections to all Health Boards in Scotland.

Special Health Boards

25. Special Health Boards are Boards with special functions operating across Scotland as a whole. The provisions in this Bill will not extend to Special Health Boards. The Bill provides for locally elected representatives on local area Health Boards. Because Special Health Boards have a national remit it would not be appropriate to hold elections to these Boards.

Remuneration of Health Board committees and sub-committees

26. Paragraph 1 of the schedule to the Bill amends paragraph 4 of Schedule 1 to the 1978 Act to extend Ministers’ existing the power to pay Health Board members so that payments may be made to members of committees and sub-committees of Health Boards (so long as the committee or sub-committee is specified in regulations as one that may be paid).

27. Committees and sub-committees already take on a lot of important work for Health Boards and with the structure of Boards being radically altered by the Bill, some Boards may wish to increase the role of committees. Currently, committee members can be reimbursed for any expenses they incur in undertaking work for a Health Board (as can Board members). But only Board members may be remunerated for their work. The Government believes it is fair to allow for committee members to be similarly remunerated in appropriate cases.

28. Extending this power at this time also provides an opportunity to correct an existing anomaly relating to one of the committees of a Special Health Board. NHS Quality Improvement Scotland (NHS QIS) is a Special Health Board which is under a legal duty to have a committee known as the Scottish Health Council (SHC). The intention when the SHC was established was that the Chair and the six members of the SHC should be paid at the same rate as non-executive members of Health Boards. In line with this intention, NHS QIS set up the necessary arrangements and payments have been made since. However, the legislation establishing NHS QIS applies the provisions in Schedule 1 to the 1978 Act. Extending the
power to pay remuneration to committee members means that the application of Schedule 1 to NHS QIS will include power to remunerate members of the SHC.

ALTERNATIVE OPTIONS

29. In introducing proposals for elections to Health Boards, the Government wants to improve upon the current public engagement and involvement mechanisms. The roles played by Public Partnership Forums, the Scottish Health Council and others will continue but the introduction of elections will introduce, for the first time, a strong local voice to the decision making processes of Health Boards.

30. The Government is committed to improving public engagement and involvement with Health Boards and will be issuing guidance shortly to set out proposals as to how this will be achieved. However, the Government also believes that, on its own, this would not be sufficient to meet the widespread concerns expressed throughout the consultation period about the adequacy of current public engagement and involvement. The Government believes that elections to Health Boards will provide a robust and adequate answer to these concerns and we do not consider that this could be achieved by merely changing the way members of a Health Board are appointed, or the type of members that are appointed. We recognise the importance of local authority councillor members on Health Boards and the way that these appointments reflect and reinforce the joint planning and delivery of services. We consider that the current arrangement of one member per local authority is sufficient to ensure partnership working and service delivery.

31. The consultation clearly indicated that if we were to proceed with elections then we should do so initially by way of pilots. We also recognise the clearly expressed view from the consultation that before we move to decide on full roll-out, there should be a full and independent evaluation of the pilots. As part of the consultation a debate was held in Parliament on 21 February and there was broad support for proceeding by way of pilots and we would wish to build upon this Parliamentary consensus. We have reflected this in the Bill.

32. The Government’s view is that the most effective electoral system for electing Health Board members is the tried and tested system of the single transferable vote. This system is now in use in local government elections in Scotland. The Government has considered this method of voting against other methods and feel that this system offers advantages and safeguards when electing members to sit on their local Health Board. For example, there would be a greater spread of candidates standing; as every vote will count, there is likely to be a higher turnout; the ability for the electorate to express preferences amongst candidates is likely to prove popular; and, adopting the entire Health Board area as a single ward as opposed to smaller wards will prevent single issue candidates from predominating.

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

Equal Opportunities

33. The Bill’s provisions are not discriminatory on the basis of age, gender, race, disability, mental status or sexual orientation. The Bill’s provisions for the franchise will extend the
franchise for the first time in Scotland to include 16 and 17 year olds. This will open up opportunities for this age group to become involved in a substantive way in helping to make decisions about the planning and delivery of local health services. The policy of remunerating elected members (at the same rate as current Health Board members) is designed to ensure that there is equity between Health Board members and to ensure that no candidate is discouraged from standing because of financial issues.

34. The Government will ensure that, through the implementation of the pilots, the effects on equal opportunities are fully evaluated and taken into account before a decision is made on whether or not there should be full roll-out of elections to all Health Boards across Scotland.

Human Rights

35. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights. The Government does not consider the Bill to contain anything which raises substantive issues in this area.

Island Communities

36. The Government’s intention is that the provisions of the Bill will apply equally to all communities in Scotland. Nevertheless the Government is well aware of the particular issues for island communities when introducing a new set of elections. In preparing the detailed regulations for Health Board elections the Government will ensure that due account is taken of issues around voting procedures for remote communities. The overarching aim is that elections will increase the level of local engagement and involvement in Health Boards and it is essential that the detailed processes reflect the particular challenges of ensuring maximum engagement with island communities and all other more remote communities.

Local Government

37. COSLA and all local authorities have been consulted as part of the consultation on the Bill. Local authorities are already represented on Health Boards by one councillor from each local authority covered by a Health Board. The Bill does not propose any changes to this, but will provide for a statutory basis for the position. Local authorities also play a significant and important role in the implementation and development of Community Health Partnerships and Public Partnership Forums and we would expect this to continue and to develop in the future. The Bill does not propose any changes to these arrangements. Health Boards and local authorities already work closely and successfully together at the community and service planning level as well as co-operating on the joint delivery and management of specific services. The Bill does not propose any changes to these management and working systems and processes.

Sustainable Development

38. The Bill will have no impact on sustainable development.
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