

**THE HEALTH PROFESSIONS COUNCIL  
(ELECTION SCHEME) RULES 2004**

The Health Professions Council, in exercise of its powers under Paragraph 2 of Schedule 1 to the Health Professions Order 2001<sup>(a)</sup>, and of all other powers enabling it in that behalf and after consulting in accordance with article 41(3) of that Order, hereby makes the following Rules—

**Citation and commencement**

1. These rules may be cited as the Health Professions Council (Election Scheme) Rules 2004 and shall come into force on [date].

**Interpretation**

2. (1) In these Rules—

“electronic address” means any number or address used for the purpose of receiving electronic communications which are sent electronically;

“health professional” means a person whose has been admitted to the register established and maintained under Article 5 of the Order other than a person whose registration is suspended;

“home country” means England, Scotland, Wales or Northern Ireland;

“home country representation requirement” means the requirement in Paragraph 2(2)(c) of Schedule 1 to the Order that the registrant members and alternate members shall include at least one person from each home country who lives or works wholly or mainly in the country concerned;

“the Order” means the Health Professions Order 2001; and

“percentage differential vote” means the difference, expressed as a percentage, between the percentage of votes cast for a candidate and the percentage of votes which that candidate would have received if each candidate from the same part of the register received an equal share of the votes cast at an election.

(2) A document is published for the purposes of these rules if a copy is—

- (a) sent to any body appearing to the Council to be representative of health professionals and to the editor of such newspaper, magazine or journal as the Council may direct;
- (b) made available for inspection at the offices of the Council; and
- (c) sent to any person on request.

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<sup>(a)</sup> S.I. 2002/254.

(3) Any requirement in these rules for a document to be received by the Returning Officer by a fixed date means that the document shall be valid only if delivered to or received by post at the offices of the Council (or, in the case of ballot papers, such other address as the Returning Officer may determine in accordance with rule 8(2)) not later than 5 p.m. on that day.

### **Returning Officer**

3. (1) Not less than six months before any registrant member or alternate member is due to be appointed the Council shall appoint a person (who may be the Registrar but may not be a member of the Council) to be the Returning Officer and may also appoint a Deputy Returning Officer who shall be entitled to carry out the functions of the Returning Officer at such times as he is absent or unable to act.

(2) The Returning Officer shall cease to hold office when the election for which he is appointed (including any further election held under rule 12) has been completed, but if the Returning Officer resigns, dies or becomes unable to act before that election has concluded the Council may appoint another person in his place.

(3) The Returning Officer may appoint such persons as he considers appropriate to assist in the conduct of the election.

### **Nominations**

4. (1) Not less than five months before the date on which any registrant members or alternate members are due to be appointed the Returning Officer shall fix and publish the date of the nomination day.

(2) Not less than twenty-one days before the nomination day the Returning Officer shall send to all health professionals who are registered in that part of the register from which a registrant member or alternate member is to be elected a notice specifying the date of the nomination day and the address to which nominations are to be returned accompanied by a nomination form.

(3) The requirement to send a health professional a notice under rule 4(2) shall be treated as satisfied if it is sent to him electronically to an electronic address notified to the Council by that health professional for that purpose.

(4) A candidate for election as a registrant member or alternate member shall be nominated by six health professionals who are registered in the same part of the register as the candidate.

(5) A candidate may only be nominated as a registrant member or an alternate member (but not both) to represent that part of the register in which he is registered and, if a person is registered in more than one part of the register, may only be nominated or elected to represent one part of the register at any one time.

(6) A nomination shall be valid only if made on a nomination form and received by the nomination day and signed by the person or persons nominating the candidate.

(7) Nominations may be comprised in more than one nomination form but every nomination form shall include a statement which identifies and is signed by the candidate confirming that the candidate—

- (a) is willing to stand for election;
- (b) is wholly or mainly engaged in the practice, teaching or management of the profession in respect of which he is registered and seeking election or in research in those fields;
- (c) lives or works wholly or mainly in a home country (and the statement shall identify that country); and
- (d) is not subject to any allegation, investigation or proceedings by the Council or any other body responsible for regulating or licensing a health or social care profession concerning his fitness to practise.

(8) A health professional may nominate not more than six candidates and where a health professional purports to do so, his signature shall be valid only on the first six nomination forms in the order in which they are received by the Returning Officer or, where two or more forms are received by the Returning Officer at the same time, in the order in which the Returning Officer in fact sees them.

**Information about nominated candidates**

5. (1) The Returning Officer shall invite each candidate for nomination to supply by the nomination date—

- (a) particulars of his qualifications and career;
- (b) an election statement of such length and in such form as the Council may determine; and
- (c) such other information as the Council may determine including, in particular, a photograph of the candidate of a specified type or size.

(2) Subject to rule 5(5) the election statement and any other information determined by the Council shall at the Council's expense be published and sent with the ballot papers issued to all health professionals eligible to vote for the candidate.

(3) The requirement to send any statement or information to a health professional under rule 5(2) shall be treated as satisfied if—

- (a) the statement or information is sent to him electronically by the Returning Officer to an electronic address notified to the Council by that health professional for that purpose; or
- (b) a notice is sent to him electronically by the Returning Officer to an electronic address notified to the Council by that health professional for that purpose informing him of:

- (i) the availability of that statement or information on a website;
- (ii) the address of that website; and
- (iii) the place on that website where the statement or information may be accessed, and how it may be accessed.

and the information is available continuously on that website throughout the period beginning with the date on which it was published and ending with the date on which voting takes place.

(4) Where any statement or information is available on a website for a part but not all of the period mentioned in Rule 5(3)(b) and the failure to make that statement or information available throughout that period is wholly attributable to circumstances which it would not have been reasonable to have expected the Council to prevent or avoid, the failure shall not invalidate the election of any person.

(5) The Returning Officer shall not be required by this rule to publish an election statement of a length greater than that specified by the Council or to publish anything which in the Returning Officer's opinion is or may be libellous, scandalous or untrue on matters of fact.

(6) Every candidate who supplies such an election statement or information or material shall be deemed to have agreed

- (a) that the decision of the Returning Officer not to issue the whole or any part of it shall be final; and
- (b) to indemnify the Returning Officer and the Council against any liability to any third party which arises by reason of issuing that election statement, information or material.

### **Withdrawal of nomination**

6. A candidate may withdraw his candidature by notice in writing signed by the candidate and received by the Returning Officer by the nomination day and in that event the nomination of that candidate shall be disregarded for the purposes of the election.

### **Elections**

7. (1) If after the time allowed for the nomination of candidates has expired, in respect of any vacancy for a registrant member or alternate member to represent any part of the register—

- (a) no more candidates have been nominated than there are vacancies to be filled, the Returning Officer shall declare the candidates so nominated to have been elected;
- (b) more candidates have been nominated than there are vacancies to be filled, the Returning Officer shall cause a poll to be held.

- (2) When a poll is to be held the Returning Officer shall fix a polling day and shall publish—
  - (a) the date which shall not be less than twenty-one days later than the date of publication;
  - (b) the names, addresses and home countries of all candidates; and
  - (c) subject to paragraph (4) the names and addresses of the persons nominating each candidate.
- (3) A poll may be conducted by means of a postal ballot or an electronic ballot.
- (4) If more than six nominations are received in relation to any one candidate, the Returning Officer shall invite the candidate to state which six nominations should be published in connection with the candidature. If the Returning Officer cannot obtain such a statement from the candidate within four days, the Returning Officer shall publish in connection with the candidature the six nominations earliest received, or where several nominations are on one form, the first six mentioned on that form.

### **Electronic ballots**

- (1) A ballot is an electronic ballot if it is conducted—
  - (a) in accordance with the provisions of this rule as to electronic voting; and
  - (b) in so far as it is not conducted in accordance with those provisions, as if it were a postal ballot conducted in accordance with rule 9.
- (2) The Returning Officer shall not be required to send a ballot paper or the other information required by rule 9(4) to any health professional if—
  - (a) that health professional has agreed with the Council that notices of electronic ballots and a voting facility may be accessed by him on a website; and
  - (b) a notice is sent to him electronically by the Returning Officer to an electronic address notified to the Council by that health professional for that purpose informing him of:
    - (i) the availability of that information and voting facility on a website;
    - (ii) the address of that website; and
    - (iii) the place on that website where the information and facility may be accessed, and how they may be accessed.
- (3) The voting of a health professional in an electronic ballot is electronic if—
  - (a) he has access on a website to the notice of the electronic ballot, any information which would accompany a postal ballot and a facility for registering his vote;

- (b) he registers his vote by that facility; and
- (c) and the notice, information and facility continues to be available on that website throughout the period beginning with the date on which it was published and ending with the date on which voting takes place.

(4) Where notice, information or facility is available on a website for a part but not all of the period mentioned in Rule 8(3)(c) and the failure to make that notice, information or facility available throughout that period is wholly attributable to circumstances which it would not have been reasonable to have expected the Council to prevent or avoid, the failure shall not invalidate an electronic ballot.

### **Postal Ballots**

9. (1) Where a postal ballot is to be held the Returning Officer shall arrange for the preparation of ballot papers, lists of candidates and their nominators and the envelopes for them.

(2) The envelopes shall be addressed to the Returning Officer at the offices of the Council or, where the returning Officer has appointed any other person or organisation to conduct the poll, to such other address as the Returning Officer may determine.

(3) Ballot papers and the lists of candidates and nominators shall be in such form as the Returning Officer may determine and, in particular, where there are vacancies for a registrant member and alternate member to represent the same part of the register, the returning Officer may provide for the polls for those vacancies to be conducted using the same ballot paper.

(4) Subject to rule 8(2) the Returning Officer shall at least eight days before the polling day send to the registered address of each health professional entitled to vote in the poll one or more ballot papers, a list of candidates and nominators and an envelope along with any statements issued in accordance with rule 5.

(5) On a poll to elect a registrant member or alternate member to represent a part of the register a health professional shall only be entitled to vote for as many candidates as there are vacancies to be filled.

(6) A health professional shall only be entitled to vote in respect of one part of the register and for candidates from that part of the register in which he is registered but shall be entitled to vote in an election even if he lives or works outside of the United Kingdom

(7) The voter shall record his vote on the ballot paper in accordance with the instructions on the ballot paper.

(8) The voter must record his vote by putting a mark (X) against the name in the ballot paper of no more candidates than there are vacancies to be filled.

(9) The voter shall enclose the ballot paper in the envelope and seal the envelope without making on it any distinguishing mark and return the envelope and its contents to the address given on the envelope so that it is received there by polling day.

(10) The Returning Officer may replace a ballot paper or an envelope which is inadvertently spoiled or destroyed if an application is made to the Returning Officer in writing which includes an undertaking by the applicant that he has not marked and will not mark more than one ballot paper nor vote electronically in the same election.

**Declaration of Election**

10. (1) Immediately after the polling day the Returning Officer shall cause—

- (a) the electronic votes validly cast for each candidate to be counted;
- (b) the ballot papers to be withdrawn from the envelopes and for the postal votes validly cast for each candidate to be counted; and
- (c) the total votes validly cast for each candidate to be calculated.

(2) A vote shall be deemed to have been validly cast if, but only if, it has been cast in accordance with these rules.

(3) If in any poll the same number of votes is cast for each of two or more candidates, the Returning Officer shall, where necessary to decide the result of the election, determine by lot which of the candidates shall be deemed to have obtained the highest or the next highest number of votes for the purposes of these rules.

(4) When the Returning Officer declares the result of an election, he shall certify in writing—

- (a) the name of each person elected and that person’s home country,
- (b) if a poll has been held, the names and home countries of all other candidates, the total number of votes cast and the numbers of votes cast respectively for the persons elected and for every other candidate,
- (c) whether the persons elected as registrant members and alternate members, when taken together with any continuing registrant members and alternate members, meet the home country representation requirement and if not, which home country would not be represented.

and shall present the certificate to the Council at their next meeting.

**Appointment of members**

11. (1) The Council, upon receipt of the Returning Officer’s certificate shall—

- (a) where the Returning Officer certifies that the home country representation requirement is met, appoint the persons elected as registrant members and alternate members of the Council; and

- (b) where the Returning Officer certifies that the home country representation requirement is not met (but not otherwise) proceed in accordance with paragraphs (2) to (4).
- (2) The Council shall identify from the Returning Officer's certificate which home country would not be represented ("the unrepresented home country")
- (3) The Council shall appoint, from among all of the candidates from the unrepresented home country, the person who received the highest percentage differential vote in place of the alternate member or registrant member elected to represent the same part of the register unless doing so would remove a person who would be the only alternate member or registrant member from another home country.
- (4) In that event the Council shall appoint, in place of an alternate member or registrant elected to represent the same part of the register the candidate from the unrepresented home country with the next highest percentage differential vote whose appointment would not remove a person who would be the only alternate member or registrant member from another home country.
- (5) A person appointed in accordance with paragraphs (3) and (4) shall be treated for all purposes as if he was elected and appointed as an alternate member in accordance with rule 11(1)(a).
- (6) The Council shall ensure that at least one registrant member and one alternate member is appointed from each part of the register and that the number of members from each part is equal.

**Death, resignation, etc.**

12. (1) If—

- (a) a candidate dies after the nomination day but before the election for the vacancy for which he has been nominated has taken place;
- (b) a candidate who has been elected dies or resigns before taking up office; or
- (c) after an election has taken place a vacancy remains unfilled due to an insufficiency of nominations, the withdrawal of candidates, a declaration under rule 16 that a person's election is invalid or for any other reason;

the Returning Officer shall soon as practicable, cause a further election to be held in respect of the vacancy for which the deceased or resigning candidate was nominated or which remains unfilled.

(2) For the purpose of paragraph (1) the Returning Officer shall—

- (a) fix and publish another nomination day;
- (b) if necessary, fix and publish another polling day; and

- (c) proceed with the further election;

in accordance with these rules and with such modifications as the circumstances may require.

(3) The death or resignation of a candidate shall not affect the validity of the nomination of another candidate for the same vacancy and any such nomination in respect of the first election shall, subject to the rule 16(4), be deemed to be a valid nomination for a further election for the same vacancy held under this rule.

### **Expenditure by Candidates**

13. (1) The expenditure incurred by or on behalf of a candidate in the conduct or management of any election shall not exceed £500.

(2) For the purposes of these rules "expenditure" means any relevant expenditure made or incurred between the date on which the Returning Officer issued the notice required by rule 4(1) and polling day and includes—

- (a) the cost of preparing pamphlets or circulars;
- (b) the cost of advertisements in newspapers or elsewhere;
- (c) the cost of meetings convened for the purpose of the election (including a share in the costs of such meetings arranged by or for candidates jointly); and
- (d) postal and telephone charges incurred in connection with the election;

but excludes the reasonable travelling and subsistence expenses of the candidate and the candidate's family, the reasonable travelling and subsistence expenses of other persons which are not defrayed by or on behalf of the candidate and any costs incurred by the Council under rule 5.

### **Return of expenses**

14. (1) Not later than fourteen days after the appointment of members in accordance with rule 11 every person appointed as a registrant member or alternate member shall provide to the Returning Officer, in such form as he may determine, a true and complete return of all expenditure incurred by or on behalf of the candidate in the conduct or management of the election.

(2) The Returning Officer shall publish all statements of expenditure received under this rule in such manner as the Council may determine.

### **Validity of Election**

15. (1) The certificate of the Returning Officer under rule 10 shall be conclusive evidence of the facts stated in the certificate unless in respect of the election of any person a written notice of protest signed by not less than twenty-five health professionals registered in that part of the register to which the election relates is received by the Returning Officer within twenty eight days of that certificate being presented to the Council.

- (2) A protest may be made on one or more of the following grounds—
- (a) that the election of that person was not in accordance with the requirements of these rules;
  - (b) that the election of that person was furthered by conduct which, if the election was regulated by the Representation of the People Act 1983, would be a corrupt practice by way of bribery, treating or undue influence under sections 113, 114 and 115 of that Act; or
  - (c) that the person elected contravened the spending limit specified in rule 13 or failed to make a return of election expenses in accordance with rule 14.
- (3) If any candidate who is appointed in accordance with rule 11 fails to submit a return of election expenses in accordance with rule 14, or if a return submitted under that rule indicates that expenditure has been incurred in excess of that authorised under rule 13, the Returning Officer shall make a report on the matter to the Council.

### **Protests or Reports**

16. (1) Any protest or report under rule 15 shall be considered by the Council at its next meeting.
- (2) The Council shall afford the person concerned an opportunity of making a reply in writing to the protest or the report, and may if it thinks fit hear oral statements from representatives of the persons signing the protest, from the Returning Officer and from the person concerned.
- (3) If the Council is satisfied—
- (a) that the expenditure incurred by on behalf of the person concerned in the conduct or management of the election exceeded the limit specified in rule 13;
  - (b) that the person concerned has failed to furnish a true and complete return of election expenses as required by rule 14;
  - (c) that the election of the person concerned was furthered by conduct of the kind described in rule 15(2)(b); or
  - (d) that the election of the person concerned was in some other respect not in accordance with the requirements of these rules;

then (unless, in case (d), it appears to the Council that the election was conducted substantially in accordance with the requirements of these rules and that any non-compliance with those requirements did not affect the result) the Council may declare that person's election invalid, and in that event the resulting vacancy shall be filled by a further election as provided by rule 12.

(4) If the Council declare the election of any person invalid it shall consider whether in the circumstances of the case it should also declare that person to be disqualified from being nominated as a candidate in any further election held in accordance with paragraph (3) and, if it declares the person concerned to be so disqualified, any nomination of that person shall be rejected as invalid by the Returning Officer.

(5) Any declaration made by the Council shall be published and shall be binding upon all persons.

**Commencement of office**

17. (1) Subject to paragraph (2), a person who is appointed as a registrant member or alternate member shall take office as a member of the Council immediately after the expiration of the term of office of the members previously elected to represent the same part of the register as the new member.

(2) Any person who is the subject of any protest or report made under rule 16 shall not take office until such protest or report has been considered and disposed of by the Council.

**Filling of vacancies**

18. (1) The Council may appoint a person to fill any vacancy which arises as a result of a person ceasing to be a registrant member or alternate member but, shall not be required to make such an appointment if the unexpired term of the person who has ceased to be a member is less than twelve months.

(2) Where the Council makes an appointment in accordance with paragraph (1) the person appointed shall be a health professional who is—

- (a) registered in the same part of the register; and
- (b) lives or works wholly or mainly in the same home country;

as the member he is to replace.

(3) The Council may fill any vacancy among the registrant members or alternate members by causing a by-election to be held and in that event these rules shall apply to any such by-election but subject to such necessary modifications as the Council may determine.

7 May 2004