

HEALTH BOARDS (MEMBERSHIP AND ELECTIONS) (SCOTLAND) BILL: STAGE 3

JUDE PAYNE AND DAVID SLATER*

This briefing summarises the parliamentary scrutiny of the Health Boards (Membership and Elections) (Scotland) Bill prior to the stage 3 proceedings, due on 12 March 2009. The briefing summarises parliamentary consideration of the Bill, and outlines in more detail:

- the Health and Sport Committee's Stage 1 Report recommendations and the Scottish Government's response (Table 2)
- the substantive amendments agreed at Stage 2 (Table 3)
- substantive issues that were raised at Stage 2 but which did not result in the amendment of the Bill, including other non-legislative commitments made by the Scottish Government or indications of further deliberations to be made by the Cabinet Secretary for Health and Wellbeing or other members before Stage 3 (Table 4)

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**David Slater is Assistant Clerk to the Health and Sport Committee*

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INTRODUCTION

The [Health Boards \(Membership and Elections\) \(Scotland\) Bill](#) (the Bill) was introduced in the Scottish Parliament on 25 June 2008. It is accompanied by [Explanatory Notes](#) (2008) and a [Policy Memorandum](#) (2008). The long title of the Bill [as amended at stage 2] states:

“An Act of the Scottish Parliament to make provision about the constitution of Health Boards; to provide for piloting of the election of certain members of Health Boards; to require the Scottish Ministers to report on those pilots; to confer a power to extend those elections to all Health Board areas following publication of that report; and for connected purposes.”

Further information on the Bill as introduced is contained in the SPICe briefing [‘Health Boards \(Membership and Elections\) \(Scotland\) Bill’](#) (Robson, 2008).

This briefing considers the parliamentary scrutiny of the Bill up to stage 3, summarising key recommendations of the lead Committee at stage 1, the response of the Scottish Government to these, debates concerning key amendments at stage 2, and any commitments made for stage 3.

PARLIAMENTARY CONSIDERATION

Stage 1 commenced on 5 November 2008 with the Health and Sport Committee (the Committee) as the lead committee. The Committee published its [Stage 1 Report](#) (Scottish Parliament Health and Sport Committee, 2008a) on 15 December 2008, with the [stage 1 debate](#) (Scottish Parliament, 2009) being held on 15 January 2009. Stage 2 was commenced and completed on 4 February 2009 (Scottish Parliament Health and Sport Committee, 2009). Key dates in the Parliament’s consideration of the Bill are listed in Table 1, below.

Table 1: Summary of Parliamentary consideration

Action	Date
Pre-legislative discussion Health and Sport Committee	18 June 2008
Bill introduced	25 June 2008
Stage 1 consideration Health and Sport Committee	5 November 2008 , 12 November 2008 , 19 November 2008 and 26 November 2008
Finance Committee	16 September 2008 , 28 October 2008 and 4 November 2008
Subordinate Legislation Committee	23 September 2008 , 28 October 2008 , 4 November 2008 , 11 November 2008 and 18 November 2008
Stage 1 Report	15 December 2008
Scottish Government Response to Stage 1 Report	13 January 2009
Stage 1 plenary debate	15 January 2009
Stage 2 consideration Health and Sport Committee	4 February 2009
Stage 3 plenary debate	Scheduled for 12 March 2009

The remainder of the briefing highlights key points in relation to:

- the Health and Sport Committee's Stage 1 report recommendations and the Scottish Government's response through commitments made by the Deputy First Minister and Cabinet Secretary for Health and Wellbeing (the Cabinet Secretary), Nicola Sturgeon MSP, in her [evidence](#) (Scottish Parliament Health Committee, 2008b), her [response](#) (Scottish Government, 2009) to the Committee's Stage 1 Report and during the [Stage 1 debate](#) (Scottish Parliament, 2009) (Table 2)
- the substantive amendments agreed at Stage 2 (Table 3)
- substantive issues that were raised at stage 2 but which did not result in the amendment of the Bill, including other non-legislative commitments made by the Scottish Government or indications of further deliberations to be made by the Minister or other Members before stage 3 (Table 4)

The tables contain links to relevant documents and *Official Reports*, which provide further information on amendments and other issues. All documents related to the Bill as it proceeds through Parliament can be accessed via the Scottish Parliament's Health Boards (Membership and Elections) (Scotland) Bill [web page](#).

For ease of reference, the Tables below use the following abbreviations for ease of reference and in the interests of brevity:

SPHSC = Scottish Parliament Health and Sport Committee

SPSLC = Scottish Parliament Subordinate Legislation Committee

STAGE 1 CONSIDERATION

The Committee issued a call for written evidence on the Bill on 2 July 2008. This resulted in 59 [responses](#) from a range of organisations. The Committee took oral evidence over four sessions, from a number of bodies including NHS Boards, electoral authorities, local authorities, workforce representatives and the voluntary sector.

Whilst there was a mixed view on the principle of holding direct elections to NHS Boards itself, there appeared to be far greater acceptance of the idea of piloting elections first, monitoring those and evaluating them before making a final decision on whether they should be rolled out across Scotland. There was greater discussion about how the elections would operate in practice and the costs associated with those elections. However, as can be seen from Table 2, below, there were a number of issues identified through evidence, which the Committee sought to have addressed by the Scottish Government. Table 2 presents the specific recommendations or notes of concern raised by the Committee in its Stage 1 Report and any Scottish Government response to them.

TABLE 2: STAGE 1 REPORT RECOMMENDATIONS AND SCOTTISH GOVERNMENT RESPONSE

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Public Participation in the health service			
Diversifying public engagement – Para 23-28	The Committee is concerned that efforts to promote diversity among appointees to public bodies appear to be failing. It is hoped that direct elections would have a positive role to play in this respect but the Committee has seen little concrete evidence to suggest this. The Committee therefore believes that elections alone will not be sufficient to bring about the change that is required. The Committee agrees with the Cabinet Secretary that any pilots should be subject to a rigorous evaluation of their impact on the diversity of people sitting on health boards. The Committee believes that it is important that this evaluation should also assess whether direct elections have made equalities issues more integral in the implementation of policies by pilot boards.	In oral evidence to the Committee the Cabinet Secretary said that there would be an equality and diversity element to the evaluation report (SPHSC, 2008b col 1369-1370). The issue was not discussed further in the Scottish Government's response to the Committee's report.	None

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Impact on existing public participation schemes - Para 29-34	The Committee believes that initiatives such as public participation forums are not mutually exclusive with direct elections and have the potential to complement them. However, the Committee accepts the point made by NHS boards that funding direct elections from existing health board allocations could have resource implications for other schemes to improve public participation.	Whilst not addressing the specific point raised, the Cabinet Secretary confirmed that the cost of the pilots would be met through central resources and not by the Boards themselves (Scottish Parliament, 2009, col 14002). In addition, the Cabinet Secretary stated that there would be an amendment at Stage 2 ensuring that the costs associated with the pilots would be addressed within the evaluation (Scottish Government, 2009, p 3).	Amendment 20 (non-government) lodged at Stage 2 (see Table 3, below)
Participation in elections – Para 35-39	The Committee notes the experience of other countries as an indicator of how health board elections might be received by the public in Scotland. However, it notes that these experiences suggest that turnout in such elections would be low relative to other elections and is concerned that this could, if it were repeated in Scotland, undermine the credibility of directly elected representatives.	This concern was not specifically addressed in the Scottish Government's response to the Committee's report. However, the Cabinet Secretary, when discussing the particular situation in New Zealand, told the Committee in evidence that the falling turnout in New Zealand health board elections followed a trend seen in national elections over the same period. She added that the Scottish Government had taken on board the experience of New Zealand in terms of the detail of the Bill (SPHSC, 2008b, col 1355)	None
Accountability and governance			
Accountability of health boards – Para 41-53	Directly elected members would also be accountable to their electorate for the local delivery of policies set by ministers. The Committee considers that there is a danger of disillusionment with the process and with boards if the distinction between local accountability for delivery and national accountability for policy is not fully understood by the public. The Committee recommends that the Scottish Government ensures that there are public information campaigns accompanying pilots of, and any future, direct elections in order to raise awareness of the extent of directly elected members' role and the fact that responsibility for policy remains with ministers.	In the Stage 1 debate, the Cabinet Secretary reiterated that the Bill would not change health boards' lines of accountability to Ministers (Scottish Parliament, 2009, col 14001). The updated financial memorandum sets out the intention to support the pilot elections with public information advice (paragraph 69 of the revised Explanatory Notes). However, the content of that public information campaign has not been specified.	Amendment 37 (non-government) lodged – see Table 3 below.

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Composition of Health Boards			
<p>Executive members – Para 66-72</p>	<p>The Committee agrees that health board employees who regularly advise the board should be prohibited from standing for election to health boards, providing that the Scottish Government clarifies that the prohibition applies only where advice is tendered in a professional capacity and subject to clarification about the application of the term 'regularly'.</p>	<p>In her response to the Committee's report, the Cabinet Secretary stated that she intended to lodge amendments at Stage 2 in order to ensure health boards are authorised to establish lists of restricted posts as is the case with local authorities. In addition, she also discussed the draft elections regulations (sent to the Committee prior to Stage 1 commencing) which instruct boards when drawing up such lists to include those that give regular advice to the Board (Scottish Government, 2009, p 1). However, it should be noted that those regulations do not define "regularly". There was no further response from the Scottish Government concerning this specific matter.</p>	<p>Amendment 1 (Government) lodged at Stage 2 – see Table 3, below</p>
Arrangements for Health Board Elections			
<p>Postal ballot – Para 79-84</p>	<p>The Committee considers that health board elections should be seen to be taken as seriously as other statutory elections. The experience of the Scottish general elections in May 2007 shows that the robustness of any new elections introduced in Scotland will rightly come under serious scrutiny. Whilst the Committee recognises that there would be significant cost and logistical implications, the Committee recommend that the Scottish Government reconsider using personal identifiers for postal votes in health board elections. If the cost and logistical implications are too great to be overcome, the Scottish Government may also have to reconsider holding an all-postal ballot.</p>	<p>The Scottish Government's response contained additional estimates of the costs of using personal identifiers (Scottish Government 2009, p 3) and restated the view expressed in evidence to the Committee (SPHSC, 2008, col 1360-1361) by the Cabinet Secretary that she was not in favour of using personal identifiers, in the pilot elections at least, for several reasons:</p> <ul style="list-style-type: none"> • it would significantly increase the cost of the pilots • it could lengthen the timescale for the pilots, given the work that would have to be done, not just after voting to check identifiers, but at the front end of the process to establish the personal identifiers for every person in the population • recent evidence from the use of identifiers in postal votes for other elections found that some people did not want to divulge their identifier and ended up not voting 	<p>Amendment 33 (non-government) lodged at Stage 2 – see Table 3, below.</p>

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Franchise – Para 85-91	The Committee has serious concerns about the proposal for a private young persons' register and does not find this to be a recognisable part of the usual democratic process, while accepting that publication of the register would raise wider child protection implications. These are complicated issues to resolve and the Committee calls on the Scottish Government to come forward with specific proposals to address those concerns in advance of Stage 2.	In the Stage 1 Debate (Scottish Parliament, 2009, col 14046-14047) the Cabinet Secretary said that she was hopeful that discussions with the electoral registration officers had identified a way forward that would allow them to record details of 16-year-olds and 17-year-olds and attainers in their own way, using solutions that are right for them locally. She also noted that the majority of relevant data for 16-year-olds and 17-year-olds is already on local government registers in the form of attainer materials.	Amendment 34 (non-government) lodged at Stage 2 – see Table 4, below.
Franchise – Para 85-91	The Committee believes that the Scottish Government should reconsider introducing a minimum threshold for candidacy to health board elections.	The Scottish Government's response did not address this specific issue. However, in evidence to the Committee, the Cabinet Secretary said she was not in favour of putting barriers in the way of people wishing to stand, though she did say she would consider it if the Committee wished to pursue the matter (SPHSC, 2008b col 1360).	None
Pilots			
Pilots – Para 92-98	The Committee believes that the pilot process should be a robust test of whether direct elections to health boards result in greater public participation in health board decision-making. The Committee welcomes the Cabinet Secretary's commitment that the evaluation will be independent. The Committee recommends that the Scottish Government publish, in advance of the pilots beginning, the criteria on which success or failure will be judged.	The Scottish Government's response to the Committee contained an assurance that the report would be "completely independent". (Scottish Government, 2009, p 3)	Amendments 35, 36, 40 and 41 (non-government) lodged at Stage 2 – see Tables 3 and 4 below

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Pilots – Para 92-98	In order to make the pilot of direct elections a robust test of the policy, it will be necessary for the Scottish Government to run additional pilots of initiatives to increase public participation alongside those for direct elections. The results of the pilots for direct elections should be compared with the outcome of these additional pilots and developments in boards where no initiative takes place. The Committee calls upon the Cabinet Secretary to come forward, before Stage 3, with a clear proposal and timetable for additional pilots, based upon the evidence the Committee has received.	In her response to the Committee's report, the Cabinet Secretary gave a commitment to bring forward details of non-statutory pilot schemes before Stage 3 (Scottish Government, 2009a, p 3).	The Cabinet Secretary wrote to the Convener of the Health and Sport Committee on 4th March with details of alternative pilots (Scottish Government, 2009b).
Financial Impact			
Funding health board elections – Para 104-111	The estimates of the costs of health board elections outlined in the Financial Memorandum are basic in nature and have already been subject to some change. In particular, the Committee does not believe that there is sufficient certainty about the total costs of health board elections were they to be rolled out nationwide. This is important in view of health boards' assertions that funding direct elections could impact upon other public participation programmes.	Other than as regards personal identifiers, the Scottish Government did not produce any additional information on costs in its response to the Committee's report. As discussed above, whilst not addressing the specific point concerning the impact on board's other public participation programmes, the Cabinet Secretary confirmed that the cost of the pilots would be met through central resources and not by the Boards themselves (Scottish Parliament, 2009, col 14002).	None
Funding health board elections – Para 104-111	There is a separate issue of the costs incurred should personal identifiers for postal votes be implemented. The Committee requests that the Scottish Government provide details of how much extra funding, in total, would be required to implement this system in the pilot elections.	The Scottish Government provided an assessment within its response to the Committee's report and subsequently in revised Explanatory Notes . This assessment stated that the use of personal identifiers would cost an average £1 per registered elector, a total of £775,000 for the pilots based on the figures in the Financial Memorandum, plus additional administrative costs (Scottish Government, 2009, p 3).	Revised costs, including the use of identifiers as introduced by amendment 33 (non-government) lodged at Stage 2 are included in the revised Explanatory Notes .

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Funding health board elections – Para 104-111	The Committee endorses the Finance Committee's recommendation that the evaluation of the pilots should include a full assessment of all the costs of the pilot exercise and a restatement of the expected roll-out costs.	The Cabinet Secretary stated in the Stage 1 debate that there would be an amendment at Stage 2 to ensure that costs associated with the pilots would be addressed within the evaluation (Scottish Government, 2009, p 3).	Amendment 20 (non-government) lodged at Stage 2 - see Table 3, below
Subordinate Legislation			
Power of Scottish Ministers to remove members – Para 113-117	The Committee has difficulty with the power to remove elected board members from office, even in very exceptional circumstances and requires further clarification, prior to Stage 2, on what those circumstances might be and what safeguards would be in place.	During the Stage 1 debate the Cabinet Secretary was questioned about this matter. She noted the power was already in place and stated there had been no example of the power ever being used and that it was unlikely to be used in the future. She added that with directly elected members, any health minister that sought to use the power would have to have the strongest possible reasons for dismissal because the decision would be subject to the closest scrutiny. However, she believed it was right to retain the status quo because all members of health boards should be treated in the same way (Scottish Parliament, 2009, col 14001).	Amendment 30 (non-government) lodged at Stage 2 – see Table 3, below
Roll out – Para 118-124	The Committee recommends that the Bill be amended to make any roll-out order subject to a form of affirmative procedure that would place additional requirements on the Scottish Government (sometimes referred to as “super-affirmative” procedure). In particular, the Committee recommends that a requirement be placed on the Scottish Government to conduct a consultation on roll-out and lay the responses before the Parliament, in addition to the evaluation report. The Committee also recommends that the procedure require the Scottish Government to publish a draft version of the roll-out order at the same time as publishing the consultation. The Committee also recommends that, if a roll-out order is rejected by the Parliament, ministers should be required to lay an order under section 6 of the Bill revoking the pilot order.	In her response to the Committee's report, the Cabinet Secretary gave an undertaking to bring forward an amendment requiring affirmative procedure for roll-out orders that make express textual amendments to enactments. However, she accepted the exceptional nature of the legislation and, on reflection, had decided to instruct officials to ensure the “super affirmative” procedure be adopted as recommended by the Committee (Scottish Government, 2009a, p 2).	Amendment 2 (Government) lodges at Stage 2 – see Table 3, below

Stage 1 Report	Committee Recommendation	Scottish Government's Response	Outcome
Roll out – Para 118-124	The Committee recommends that, at the time of a draft roll-out order being published in the manner described above, the appropriate committee of the Parliament conduct an inquiry into it.	This issue was not directly addressed by the Cabinet Secretary in her response to the Committee's report.	Amendment 21 (non-Government) lodged at Stage 2 – see Table 3 below
Revocation of pilots – Para 125-129	The Committee welcomes the Cabinet Secretary's commitment to consider further the power to revoke pilots without parliamentary procedure. The Committee considers that ministers should not be able to abandon a policy agreed by the Parliament without its approval. The Committee agrees with the SPSLC that this power should be subject to affirmative procedure.	In her response to the Committee's report, the Cabinet Secretary agreed that any move to revoke the pilot order in its entirety should be subject to parliamentary procedure, and undertook to bring forward an amendment to this effect. (Scottish Government, 2009a, p 2).	Amendment 10 (Government) lodged at Stage 2 – see Table 3, below
Revocation of pilots – Para 125-129	The Committee notes that revocation of the pilots would also revoke the statutory basis for local authority members to sit on health boards. It calls on the Scottish Government to clarify its intentions in this respect, should pilots not be rolled out.	In her response to the Committee's report, the Cabinet Secretary said that if revocation took place then the Government would bring forward an amendment at the next available legislative opportunity to re-instate the provision. Until that point, the places of local authority members would be ensured through the existing administrative procedures. Scottish Government, 2009a, p 2).	Amendments 42, 43 and 44 (non-government) lodged at Stage 2 – see Table 4 below
Conclusion			
Conclusion – Para 130-132	Given its title and drafting, the passing of this Bill by the Parliament could be interpreted as support for the principle of direct elections to health boards, rather than simply for the introduction of pilots to test that principle. The Committee believes that this is regrettable, as the purpose of pilots is to gather evidence on whether the policy will work. The Committee asks the Cabinet Secretary to consider whether changing the title of the Bill would be appropriate.	In her response to the Committee's report, the Cabinet Secretary said she had reflected on this and would bring forward an amendment to the long title of the Bill to reflect the fact that pilots have to take place initially (Scottish Government, 2009a, p 3).	Amendments 15 and 16 (Government) lodged at Stage 2 – see Table 3, below

STAGE 2: MAIN AMENDMENTS AGREED TO

Stage 2 (detailed consideration of the Bill) was Stage 2 commenced and was completed on 4 February 2009 (Scottish Parliament Health and Sport Committee, 2009) and was followed by the [Bill \[as amended at Stage 2\]](#). Table 3 provides an overview of the main amendments agreed to at Stage 2, with a focus on any amendments in response to concerns raised during Stage 1 consideration of the Bill, and the effect of these amendments.

TABLE 3: SUMMARY OF MAIN AMENDMENTS AGREED TO AT STAGE 2

Issue and reference	Amendment and effect
Section 1: Constitution of Health Boards	
Health board chairman (SPHSC, 2009, col 1498-1504)	Ross Finnie MSP proposed amendment 29 , which sought to ensure that a health board chairman could not be an employee of that health board. It was part of a wider group of amendments (see Table 4, below) concerning the status of the chairman. The Cabinet Secretary stated that amendment 29 reflected current practice, and she could not see why that should not be set out in legislation, and said she supported it. The amendment passed unopposed.
Disqualification from being an elected member – political office (SPHSC, 2009, col 1504-1507 and 1514)	Bill Butler MSP proposed amendments 22 23 24 and 19 , which would prevent those who hold certain political offices from standing as candidates. The offices were Members of the European Parliament, House of Commons, House of Lords, the Scottish Parliament and local authority councillors. Mr Butler considered this would help to counter the concern that the elections could lead to party politics affecting the work of boards. The Cabinet Secretary said she was happy to support these amendments and they passed unopposed.
Disqualification from being an elected member – restricted posts (SPHSC, 2009, col 1505-1506 , 1509 and 1513)	The Cabinet Secretary lodged amendments 1 and 9 , in response to the Committee’s recommendation on preventing health board employees who regularly advise the board on a professional basis from standing for election. Amendment 1 sought to clarify that regulations may specify that an elected member must vacate office on becoming the holder of a restricted post that is set out in a list maintained by each health board. Amendment 9 sought to clarify that regulations may disqualify the holders of such restricted posts from standing for election. The amendments passed unopposed.
Power of Ministers to remove an elected member (SPHSC, 2009, col 1507-1509)	Jackie Baillie MSP lodged amendment 30 following the concerns raised in the Committee’s report about the provision in the Bill that would allow the Scottish Ministers to lay regulations giving them the power to remove elected members in certain circumstances. Amendment 30 sought to remove the provision that would allow these regulations to be made. Ms Baillie considered that the ministerial power specified in the Bill was unnecessary and unprecedented. The Cabinet Secretary said that the power was included in the Bill to ensure Boards’ accountability to ministers, however she could see both sides of the argument and therefore did not intend to resist the amendment, which passed unopposed.

Issue and reference	Amendment and effect
Section 2: Health Board elections	
Parliamentary procedure – election regulations (SPHSC, 2009, col 1509-1510)	The Cabinet Secretary lodged amendment 2 in response to the SPSLC’s recommendation, that election regulations should be subject to affirmative procedure (Subordinate Legislation Committee, 2009, para 35). Amendment 2 would ensure draft election regulations would have to be approved by the Parliament before they came into force. The amendment passed unopposed.
Personal identifiers in all-postal ballots (SPHSC, 2009, col 1510-1513)	Jackie Baillie MSP lodged amendment 33 following the Committee’s recommendation that the Scottish Government reconsider its decision not to require personal identifiers for postal ballots in health board elections. Amendment 33 states that if election regulations provide for votes in a health board election to be cast solely by post, the regulations must also provide for a system of personal identifiers to be used. Ms Baillie stated that, in her view, personal identifiers would be needed to ensure the credibility of health board elections and cited evidence given to the Committee by election officials. The Cabinet Secretary opposed the amendment and told the Committee that her view was that the use of personal identifiers during the pilot elections would involve a disproportionate cost and an unnecessary delay in the implementation of the policy. After debate, the amendment was passed by division.
Section 5: Report on pilot scheme	
Evaluation of pilots (SPHSC, 2009, col 1515-1518)	Dr Richard Simpson MSP lodged amendments 36 and 41 as part of a wider group of amendments (see Table 4 below) following the Committee’s welcome for the assurance that the evaluation would be conducted by an independent person and its recommendation that the criteria for success or failure should be set at the start of the pilot process. Amendments 36 and 41 specify that the person carrying out the evaluation shall be independent, and in particular may not be an employee of the Scottish Government, a health board participating in the pilot or a member of such a health board. Dr Simpson said that it was important for the evaluation’s credibility that it was seen to be independent of the Scottish Government and those participating in the pilots. The Cabinet Secretary said she had no difficulty in supporting these amendments and they passed unopposed.
Duration of pilot scheme (SPHSC, 2009, col 1516)	The Cabinet Secretary lodged amendment 11 to ensure that pilots operate for at least two years before the evaluation report can be published and laid before the Parliament. The amendment passed unopposed.
Pilot order – parliamentary procedure (SPHSC, 2009, col 1518)	The Cabinet Secretary lodged amendment 10 to address two issues raised in the SPHSC’s Stage 1 report. The SPSLC drew the SPHSC’s attention to the power given ministers in the Bill to amend the text of the Bill through the pilot order and recommended that an order using this power should be subject to affirmative procedure. The SPHSC also endorsed the SPSLC’s recommendation that any attempt by Ministers to revoke the pilot order should be subject to affirmative procedure. Amendment 10 specifies that affirmative procedure is used in both these circumstances. They amendment passed unopposed.

Issue and reference	Amendment and effect
Content of evaluation report - accountability (SPHSC, 2009, col 1519-1521)	Dr Richard Simpson MSP lodged amendment 37 to ensure that the impact of health board elections on local accountability of health boards would be taken into account in the evaluation report. This arose out of the Committee's discussion of election's likely impact on the accountability of health boards in its Stage 1 report. The amendment passed unopposed.
Content of evaluation report – costs (SPHSC, 2009, col 1519-1521)	Michael Matheson MSP lodged amendment 20 to ensure that the evaluation report on election pilots would include the cost of holding the pilot elections and an estimate of the cost of running nationwide health board elections. The amendment arose out of a recommendation by the Finance Committee's, subsequently endorsed by the SPHSC. The Cabinet Secretary told the Committee that she supported the amendment and it passed unopposed.
Section 6: Termination of pilot scheme	
Roll-out of health board elections - parliamentary procedure (SPHSC, 2009, col 1521-1522)	The SPHSC recommended that any roll-out order should be subject to affirmative procedure with additional conditions attached – commonly referred to as “super-affirmative” procedure. Michael Matheson MSP lodged amendment 21 , which makes roll-out subject to affirmative procedure and requires the Scottish Government to consult on, and give the Parliament and its Committees an opportunity to comment on, the proposed roll-out order before it is formally laid. The Cabinet Secretary also lodged amendments 12 , 13 and 14 , which would revoke the pilot order (and therefore ends the pilots) if the Parliament votes not to approve a draft roll-out order. All the amendments passed unopposed.
Long Title	
Long title (SPHSC, 2009, col 1523-1524)	The Committee in its Stage 1 report recommended that the long title of the Bill should be changed to reflect the fact that the Bill would only introduce election pilots in the first instance. The Cabinet Secretary lodged amendments 15 and 16 , which amend the long title to include a reference to pilots. The amendments passed unopposed.

STAGE 2: KEY AREAS OF DEBATE – AMENDMENTS NOT AGREED TO

As can be seen from Table 3, above, amendments that were agreed to at Stage 2 included both Scottish Government and non-government amendments. In addition, there were a number of non-government amendments that were not agreed to. Some of these may have been lodged as ‘probing’ amendments designed to elicit more information or action from the Scottish Government. Members may seek permission from the Committee to withdraw amendments that they have lodged – for example if they have received the information they wanted or have been given a commitment by the Government to consider the matter further in some way. The following table outlines the amendments that were lodged and were either withdrawn, not moved or disagreed to on division.

TABLE 4: SUMMARY OF KEY AMENDMENTS LODGED BUT WERE WITHDRAWN OR NOT AGREED TO

Issue and reference	Amendment and effect	Commitments
Section 1: Constitution of Health Boards		
Role of health board Chairmen (SPHSC, 2009, col 1498-1504)	Ross Finnie MSP lodged amendments 25 , 26 , 27 , 28 , 31 and 32 to distinguish the Chairman of a health board from other members appointed by Scottish Ministers. The amendments would have removed the Chairman from the category of “appointed members” (although he or she would still be a ministerial appointee) and ensured that he or she was counted alongside the elected and councillor members when determining the make-up of boards. Mr Finnie said that including the Chairman with other appointed members of the board would cause confusion about their role, which was properly to scrutinise the executive members of the board. The Cabinet Secretary said the amendments would mean that ministerial appointees could form a majority on boards and this ran counter to the Bill’s aims. After debate, amendments 25 and 27 were disagreed to on division and amendments 26, 28, 31 and 32 were not moved.	None
Make up of health boards (SPHSC, 2009, col 1499-1503)	Bill Butler MSP lodged amendment 17 , which would have required health boards to have a simple majority of directly elected members. After debate, the amendment was disagreed to on division.	None
Section 2: Health Board elections		
Age of voting (SPHSC col 1513-1515)	Ross Finnie MSP lodged amendment 34 , which would have changed the minimum age to be eligible to vote in a health board election from 16 to 18 . Mr Finnie said this was a probing amendment arising out of the Committee’s concerns about the proposal for a private register of young attainers. The Cabinet Secretary said that an alternative to a young person’s register had not yet been found, but discussions were ongoing and she would seek to find a solution before Stage 3. Dr Richard Simpson MSP considered that any approach would have to be uniform across health board areas. Mr Finnie said that he would withdraw the amendment at this Stage, but may lodge a similar amendment at Stage 3 depending on the proposals brought forward by the Cabinet Secretary.	The Scottish Government will revisit the issue of a young person’s register ahead of Stage 3.

Issue and reference	Amendment and effect	Commitments
Section 4: Pilot scheme		
<p>Content of evaluation report – publication of specification (SPHSC, 2009, col 1515-1517, 1521)</p>	<p>Dr Richard Simpson MSP lodged amendments 35 and 40 following the Committee’s recommendation that the criteria for success or failure of the pilots be published at the time of the pilot order being made. Amendment 35 would have required the person carrying out the evaluation to be appointed before such an order is made. Amendment 40 would require the specification for the evaluation to be published within two months of the pilot order being made. Dr Simpson considered that this would ensure the evaluator would be involved early enough in the process to shape how it would be carried out and that the public could consider the process of evaluation from an early stage. The Cabinet Secretary said she was sympathetic to the first aim, but thought the timetable could mean a long gap between the person being appointed and the first election. She committed to coming back with a revised amendment at Stage 3. She opposed amendment 40 as she thought it would constrain the person conducting the evaluation. After debate, Dr Simpson withdrew amendment 35, and amendment 40 was disagreed to on division.</p>	<p>The Scottish Government will bring forward an amendment at Stage 3 specifying when the person conducting the evaluation will be appointed.</p>
Section 5: Report on pilot scheme		
<p>Content of evaluation report – alternative pilots (SPHSC, 2009, col 1518-1521)</p>	<p>Dr Richard Simpson MSP lodged amendments 38 and 39 following the Committee’s recommendation that the Scottish Government pilot alternative approaches of improving patient involvement with health boards alongside direct elections as a test of the policy. The amendments would have required the evaluation report to include a comparison of the effects on different health boards of holding health board elections, appointing boards made up of a majority of local councillors and providing additional funding for public participation in line with the costs of health board elections. The Cabinet Secretary said that, as drafted, the amendment would not have obliged Ministers to carry out those alternative pilots, but simply a comparison to take place if those alternative pilots had been used. The Cabinet Secretary went on to say that she did not wish to specify what form alternative pilots would take at this stage, though said she would bring forward proposals ahead of the Stage 3 debate. Dr Simpson did not move the amendments.</p>	<p>The Scottish Government will bring forward proposals for alternative pilots ahead of Stage 3 (see Table 1 above).</p>

Issue and reference	Amendment and effect	Commitments
Section 6: Termination of pilot scheme		
<p>Termination of pilot scheme – local authority councillors (SPHSC, 2009, col 1522-1523)</p>	<p>Ross Finnie MSP lodged amendments 42, 43 and 44 in response to the questions raised by the Committee at Stage 1 about local councillors' positions on health boards should the pilot order be revoked. The amendments would have ensured that, if the pilot order was revoked, there would be statutory authority for a minimum of one councillor from each local authority within each health board area to sit on the board. The Cabinet Secretary supported the principle behind the amendments, but considered there were drafting deficiencies as they stood. Mr Finnie withdrew amendment 42 and did not move 43 and 44 following the Cabinet Secretary's commitment to support new amendments at Stage 3.</p>	<p>The Scottish Government will support amendments at Stage 3 to ensure the position of local authority members on health boards would not be lost if a pilot order was revoked.</p>

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