EXECUTIVE NOTE

DRAFT SSI; THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (AMENDMENT OF SPECIFIED AUTHORITIES) ORDER 2010 (S.S.I. 2010/)

1. The above instrument is proposed to be made in exercise of the powers conferred by sections 3(2)(a) and 18(2)(a) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 ("the 2003 Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. The 2003 Act established the Office of the Commissioner for Public Appointments in Scotland (OCPAS) with the role of creating and regulating the process by which people are appointed to bodies and offices specified in Schedule 2 of that Act.

3. The purpose of the instrument is to address an issue raised by the Commissioner for Public Appointments concerning the regulatory compliance of some Health Board, Special Health Board and Common Services Agency Stakeholder member appointments by Scottish Ministers. Extensive dialogue between DG Health Directorates and OCPAS established that these appointments were first made in early 2001 without the required regulatory oversight and have continued to be made as part of custom and practice.

4. Principally these appointments relate to Local Authority Councillor members; Area Partnership Forum (APF) members, Area Clinical Forum (ACF) members and Community Health Partnership (CHP) members who are appointed by the Scottish Ministers following nomination. The rationale behind these Stakeholder member appointments was established in "Rebuilding our National Health Service – A plan for action, a plan for change", published in May 2001. The key message was the requirement to build partnerships across NHSScotland.

5. As a result of this publication the following was introduced:

- the nomination by the Local Authority of their Leader; Deputy Leader or the senior member with designated responsibility for public health-related issues as a member of the NHS Board in their area.
- the establishment of Area Partnership Forums in each NHS Board and the opportunity for the Forum to select their Chair for nomination to the Board, to represent all NHS staff in the decision-making process.
- the establishment of Area Clinical Forums in each Board and for the nomination of the Chair of the Forum to represent health care professionals working in the Board area.
- the Chair of the new multi-professional committee known as the Local Health Care Co-operative Council (LHCC) Professional Committee to be nominated as a Board member. The LHCC Professional Community no longer exists and was replaced as a result of the introduction of Community Health Partnerships.

6. This oversight resulted from it never being intended that these Stakeholder appointments came under the remit of OCPAS, primarily because procedures for their appointment followed a selection and nomination process by their peers at a local level. The Order rectifies this situation for Health Boards and means that Local Authority Councillor

members; APF members, ACF members and CHP Members do **not** come under the remit of OCPAS. The Order also removes the Stakeholder appointments to Special Health Boards and the Common Services Agency from the remit of OCPAS. Executive members of the Boards are also out with the remit of OCPAS and this is expressly provided for in the Order. These changes supersede consequential changes to the 2003 Act by paragraph 2 of the schedule to the Health Boards (Membership and Elections) (Scotland) Act 2009 which are repealed as a result.

Consultation

7. The changes made to the schedule of the 2003 Act will have no impact, other than providing clarification that these Stakeholder member appointments are not covered by the OCPAS remit. The content of the Order has been discussed with the Commissioner for Public Appointments. The Commissioner is satisfied that the Order will remove from her regulatory remit the categories of board member about which she raised her original concerns. In compliance with her statutory requirements she will be reporting this matter and the steps taken to resolve it to the Standards and Procedures and Public Appointments Committee in January next year. Public consultation was not considered necessary, but the content of the Order was discussed and cleared by NHS Board Chairs.

Financial Effects

8. A regulatory impact assessment is not considered necessary because the change is expected to have no financial impact on Scottish businesses.

Scottish Government Health Directorates
December 2009