



STATUTORY INSTRUMENTS.

S.I. No. 438 of 2017



ELECTION OF MEMBERS FOR APPOINTMENT TO THE OPTICAL
REGISTRATION BOARD BYE-LAW 2017

ELECTION OF MEMBERS FOR APPOINTMENT TO THE OPTICAL
REGISTRATION BOARD BYE-LAW 2017

The Optical Registration Board, in exercise of the powers conferred on it by section 31 of the Health and Social Care Professionals Act 2005, with the approval of the Health and Social Care Professionals Council, hereby makes the following bye-law:

1. (1) This bye-law may be cited as the Election of Members for Appointment to the Optical Registration Board Bye-law 2017.

(2) This bye-law comes into operation on 11 October 2017.

Interpretation

2. (1) In this bye-law—

“Act” means the Health and Social Care Professionals Act 2005 (Number 27 of 2005) (as amended from time to time);

“Agent” means a person appointed as an agent in accordance with paragraph 19(3);

“Ballot Box” means a ballot box provided for under paragraph 16(8) for the reception of outer envelopes returned by voters;

“Candidate” means a registrant who has been formally declared as a candidate by the Returning Officer in accordance with paragraph 10(3) of this bye-law;

“County of practice” means the county listed beside the name of a registrant on the Register;

“Council” means the Health and Social Care Professionals Council established under section 6 of the Act;

“Election” means the election of Candidates for appointment to the Registration Board pursuant to and in accordance with this bye-law;

“Electoral category” means the following categories of membership of registration boards set out in section 28A(1)(a) of the Act:

Category 1 (Section 28A(1)(a)(i))

Category 1A Persons engaged in practice as an optometrist

Category 1B Persons engaged in practice as a dispensing optician

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 13th October, 2017.*

Category 2 (Section 28A(1)(a)(ii))

Category 2 Optometrists who are engaged in the management of services provided by the profession of optometry

Category 3 (Section 28A(1)(a)(iii))

Category 3 Optometrist who is engaged in the State in the education and training of persons with respect to the practice of optometry

“Electoral register” means the register established under paragraph 14(1) of this bye-law;

“first election” means the first Election conducted in accordance with this bye-law;

“Minister” means the Minister for Health;

“Nominee” means a registrant who satisfies the criteria set out in paragraph 8 and who has been nominated as a candidate in accordance with paragraph 9;

“Official mark” means a mark which is visibly or permanently affixed or perforated through the ballot paper;

“Register” means the register established and maintained by the Optical Registration Board under section 36 of the Act, being the register for each of the professions of optometrist, and dispensing optician;

“registrant” means a person whose name is on the Register;

“Registration Board” means the Optical Registration Board established under section 26 of the Act;

“Relative”, for the purpose of this bye-law includes spouse, civil partner, parent, brother, sister, grandparent, uncle or aunt and includes a person related by marriage or civil partnership;

“Returning Officer” means the person appointed under paragraph 4 to be the returning officer for the purposes of this bye-law;

“Transferable Vote” shall have the meaning given in Section 37(2) of the Electoral Act 1992 (as amended); and

“Voter” means a registrant whose name is entered in the Electoral register.

(2) In this bye-law—

(a) reference to a paragraph is to a paragraph of this bye-law, unless it is indicated that some other reference is indicated;

- (b) a reference to a paragraph, subparagraph or clause is a reference to a paragraph, subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended;
- (c) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (d) any reference to a “day” shall mean a calendar day;
- (e) references to the singular include the plural and vice versa; and
- (f) references to the masculine include the feminine and vice versa.

System for election

3. (1) Subject to paragraph 13, the system for the election of registrants for appointment by the Minister to the Registration Board for the purposes of section 28A(1)(a) of the Act shall be that of proportional representation by the single transferable vote.

(2) Each registrant on the Electoral Register shall have a single transferable vote in respect of each Electoral category.

(3) For the avoidance of doubt, in Category 1, registrants shall have one vote only, and optometrists shall cast that vote in respect of any election in Category 1A and dispensing opticians shall cast that vote in respect of Category 1B.

(4) An Election shall be conducted in accordance with this bye-law, section 114 and Part XIX of the Electoral Act 1992 (Number 23 of 1992).

Appointment of Returning Officer

4. (1) The Council shall appoint persons of competence and integrity to act as a Returning Officer and a substitute returning officer, who shall act in the event that the Returning Officer is unable or unavailable to act, for the purpose of each Election.

(2) In this bye-law, any reference to the Returning Officer in relation to any act, matter or function for which a Returning Officer is appointed by or under this bye-law shall, unless the context otherwise requires, be interpreted as including a reference to the substitute returning officer.

(3) The Returning Officer will ensure, insofar as it is possible, that neither he or she, nor any person employed by him or her, has any conflict of interest, and will avoid any perceived conflict of interest, in relation to the running of the Election. Should a conflict of interest arise, in relation to the Returning Officer, he or she will immediately notify the Council and the substitute Returning Officer will take over the running of the Election. In the case of a conflict arising with an employee, the Returning Officer will discontinue that employee's involvement in the Election.

(4) The Council and/or the Registration Board shall provide the Returning Officer with all information which the Returning Officer deems necessary for the purposes of conducting the Election.

(5) The Returning Officer may, if he or she considers it necessary for the performance of his or her duties, and with the consent of Council, appoint such person or persons as he or she considers fit and proper to assist him or her.

(6) The Returning Officer or any person appointed by him or her for any purpose relating to the Election shall not be a Candidate or an agent of a Candidate or a Relative of a Candidate at that Election or associated in furthering the candidature of any Candidate at that Election.

(7) The Returning Officer shall not appoint for any purpose relating to the Election a person who to the knowledge of the Returning Officer—

(a) is or has been a Candidate,

(b) has been associated in furthering the candidature of a Candidate, or

(c) is a Relative of a Candidate at that Election.

(8) The Council shall defray the reasonable expenses of a Returning Officer in conducting an Election.

Powers and functions of Returning Officer

5. (1) The Returning Officer shall be responsible for determining all questions of procedure, form, or manner in which the Election shall take place, including any questions as to the manner in which the system of proportional representation shall be conducted, and shall have the duty to ensure the validity and integrity of the nomination and Election processes. He or she shall have all powers necessary to carry out such functions, responsibility and duty, and without prejudice to the generality thereof, shall have the power to make decisions with regard to the qualification or disqualification of candidates, the calculation of quotas, the making of decisions in respect of valid, invalid or spoiled votes, the conduct of counts, the transfer of votes and all other matters which might arise during the course of the Election.

(2) The Returning Officer shall determine the form and content of all nomination papers, ballot papers, declarations, instructions, advertisements and notices required to be issued in accordance with this bye-law.

(3) The Returning Officer will set the date for establishing the Electoral register, the closing date for receipt of nominations, the date for the opening of the poll and the closing date for receipt of ballot papers and shall have power to adjust or revise such dates, should the Returning Officer deem fit in any particular circumstances.

(4) The Returning Officer shall determine the official mark to be used for the purpose of marking ballot papers.

(5) The Returning Officer shall keep or cause to be kept appropriate records in connection with the Election.

(6) The decision of the Returning Officer on any matters arising in respect of the conduct of the Election or otherwise in connection with any Election is final.

Scrutineers

6. (1) For the purposes of each Election the Council may, at the request of the Registration Board, appoint 2 persons to act as scrutineers and such alternate scrutineers (if any) as the Council deems appropriate whose duty shall be to monitor the process of determining the validity of nominations under paragraph 10 and that the counting of votes is carried out in accordance with this bye-law and in an honest, fair and accurate manner. Any alternate scrutineer shall only act when a scrutineer is unavailable or unable to act for whatever reason.

(2) The Council will ensure, insofar as it is possible, that no scrutineer or alternate scrutineer has any conflict of interest in relation to the running of the Election and is not and has not been a Candidate, or an agent or Relative of a Candidate, or otherwise associated in furthering the candidature of any Candidate at an Election. Any scrutineer or alternate scrutineer shall avoid any conflict of interest and any perceived conflict of interest. Should a conflict of interest arise, the scrutineer will notify the Council immediately and discontinue their involvement in the Election.

Notice of Election

7. (1) Within the period specified in paragraph 7(2), the Returning Officer shall cause to be published on www.coru.ie and in one national daily newspaper published and circulating in the State or otherwise as he or she deems appropriate notice of:

- (a) The holding of an Election;
- (b) The Electoral categories and numbers of vacancies arising in each Electoral category at that Election;
- (c) A request for nomination of candidates;
- (d) The closing date for receipt of nominations; and
- (e) If a poll is to be held, the closing date for receipt of ballot papers.

(2) Subject to paragraph 23, the notice described in paragraph 7(1) shall be given, in the case of the first election, no later than 56 days before the date of Election fixed by the Returning Officer pursuant to paragraph 15; and in respect of all Elections other than the first election, no later than 56 days before the expiration of the term of office of members of the Registration Board appointed under either section 28A(1)(a) or section 28A(4) of the Act (as applicable).

Nominations

8. (1) Any person nominated for Election shall be a registrant.

(2) No registrant may be nominated, and no registrant may be a Candidate for Election, in respect of more than one electoral category.

9. (1) To be nominated for Election, a registrant must submit to the Returning Officer:

- (a) a nomination form containing:
 - (i) his or her full name and registration number;
 - (ii) the signatures and registration numbers of the person (who must also be a registrant) proposing the Nominee and 4 further registrants who also support the nomination of the Nominee; and
 - (iii) the relevant Electoral category in respect of which he or she wishes to stand;
- (b) an appropriate passport size photo of the Nominee for inclusion on the ballot paper (if the Nominee wants to have a photograph included on the ballot paper);
- (c) a signed declaration confirming his or her eligibility to be nominated in the chosen Electoral category; and
- (d) a signed declaration confirming that if he or she is elected:
 - (i) there is no reason, having regard to the provisions of paragraph 5 of Schedule 2 of the Act, for the Minister to remove that person as a member of a Registration Board; and
 - (ii) he or she will serve the interests of the Registration Board and abide by the Code of Conduct for members of the Registration Board.

(2) Nomination papers shall be lodged with the Returning Officer no later than 12 noon on the closing date for receipt of nomination papers.

10. (1) The Returning Officer shall review and rule upon the validity of the nomination papers and the eligibility of nominated persons no later than 2 working days following the closing date for the receipt of the nomination papers.

(2) Without prejudice to the generality of paragraph 5, the Returning Officer, may, for the purpose of determining the validity of a nomination for Election, require a Nominee to give him or her such relevant information relating to his or her nomination as the Returning Officer requires or to provide such other evidence as is required by the Returning Officer. Failure to provide such information or evidence may be regarded by the Returning Officer as grounds for invalidating a nomination.

(3) Where the Returning Officer deems any nominations to be valid and the nominated persons as aforesaid to be eligible to stand for Election, the Returning Officer shall formally declare the nominated persons as Candidates and the decision of the Returning Officer on the validity of a nomination shall be final.

(4) Without prejudice to the foregoing, a misnomer or an inaccurate description of any person named in the nomination papers shall not invalidate the nomination papers if, in the opinion of the Returning Officer, the description of such person is such as to be commonly understood.

(5) A Returning Officer shall rule a nomination invalid where he or she is of the opinion that any of the following apply:-

- (a) the nomination form has been completed incorrectly,
- (b) the Nominee has not been proposed and supported in accordance with the provisions of paragraph 9(1)(a)(ii),
- (c) where the declaration of eligibility required under paragraph 9(1)(c) has not been provided, or
- (d) where any of the other nomination requirements set out at paragraph 9 have not been met.

11. A Nominee may withdraw his or her nomination at any time prior to the declaration of Election of Candidates by the Returning Officer by providing the Returning Officer with written notice of his or her withdrawal signed by the Nominee.

12. The Returning Officer shall as soon as practicable after ruling on the validity of a nomination paper publish in the manner he or she considers appropriate notice of each Candidate validly nominated and the names of the registrants who proposed and supported the nomination.

Election

13. (1) If there are a greater number of Candidates than there are vacancies in Electoral categories ie. 1A, 1B, 2, or 3, a poll shall be held in respect of that Electoral category.

(2) If the number of Candidates is equal to or less than the number of vacancies in an Electoral category, no poll shall be held. The Candidate or Candidates shall be deemed to be elected without a poll and his or her name or names shall be submitted to the Minister for appointment to the Registration Board as a member in respect of the relevant Electoral category.

(3) If no person is nominated in an Electoral category, the provisions of the Act will apply.

Electoral register

14. (1) No later than the date set by the Returning Officer as the closing date for receipt of nominations, the Returning Officer shall establish an Electoral register which shall consist of a list of all registrants on that date and will include the name of the registrant as it appears in the Register, their registration number and the county of practice (if included on the Register). For the avoidance of doubt, the foregoing details in respect of any registrant whose name appears in one or more divisions of the Register shall be included only once in the Electoral register.

(2) The Electoral register shall be made available in printed (or electronic) format for inspection by a Candidate or his or her agent, or by a registrant, at the offices of the Council during normal office hours.

Date of Election

15. (1) Where a poll is to be held, the date of Election is the date fixed by the Returning Officer as the closing date for receipt of ballot papers.

Voting procedure

16. (1) The Returning Officer shall ensure as far as reasonably practicable that the system of issue, return and custody of ballot papers is such as to protect the validity, integrity and confidentiality of the Election process.

(2) When a poll is to be taken, the Returning Officer shall cause to be prepared:

- (a) A ballot paper or ballot papers;
- (b) A declaration of identity as prescribed by the Returning Officer;
- (c) An inner envelope in which the ballot paper is, or ballot papers are, to be placed (hereinafter referred to as the “inner envelope”);
- (d) An outer envelope in which the inner envelope is to be placed with the declaration of identity (hereinafter referred to as the “outer envelope”); and,
- (e) if not provided on the ballot paper or ballot papers, an enclosure setting out voting instructions.

(3) Subject to paragraph 23, the documents listed in paragraph 16(2), plus any additional material authorised by the Returning Officer, shall be sent to each Voter at the address stated in the Register on or after the date set for the opening of the poll but in any case no later than 14 days before the date of the Election.

(4) Each ballot paper shall bear–

- (a) the official mark;

- (b) either the Electoral category to which the ballot paper applies or, if multiple Electoral categories are included on the one ballot paper, a clear indication of the Electoral categories;
 - (c) a list of Candidates alphabetically in the order of their surnames, or if there are 2 or more Candidates bearing the same surname, in alphabetical order of their other names;
 - (d) in respect of each Candidate, beside his or her name as it appears in the Electoral register, his or her registration number and county of practice (if any), as they appear in the Register;
 - (e) in respect of each Candidate, the Electoral category in which the Candidate has been declared;
 - (e) in respect of each Candidate, a copy of the passport photo provided by the Candidate (if any) if the photo is deemed appropriate by the Returning Officer;
 - (f) the latest date and time by which the ballot paper shall be returned to the Returning Officer; and
 - (h) instructions on the voting procedure or a reference to an enclosure setting out such instructions.
- (5) Each voter shall mark a ballot paper or ballot papers so as to indicate his or her first and any subsequent preferences against the name(s) of the person or persons for whom he or she wishes to vote in each Electoral category.
- (6) The voter shall place the marked ballot paper or ballot papers in the inner envelope and securely fasten the inner envelope.
- (7) The voter shall-
- (a) sign, in the presence of a witness, the declaration of identity;
 - (b) have the declaration signed by the witness;
 - (c) place the declaration of identity with the inner envelope inside the outer envelope and securely fasten the outer envelope;
- and
- (d) send the outer envelope to the Returning Officer at the address indicated in the instructions.
- (8) The Returning Officer shall provide a ballot box or ballot boxes for the reception of the outer envelopes returned by Voters.
- (9) Every such ballot box shall be sealed by the Returning Officer at the time fixed for the opening of the poll.

(10) As soon as practicable after receipt, outer envelopes received by the Returning Officer shall be placed, unopened, in the Ballot Box.

(11) Outer envelopes must be received by the Returning Officer by 5pm on the closing date set by him or her for receipt of ballot papers.

(12) The Returning Officer, on the expiration of the closing date for receipt of ballot papers, shall cause the ballot boxes to be closed to prevent the introduction of further outer envelopes.

(13) Any outer envelopes received after 5pm on the date of Election shall be retained unopened by the Returning Officer and shall be endorsed "Late".

Death or Withdrawal of Candidate

17. If a Candidate dies at any time between the Candidate's nomination for Election under this bye-law and the declaration of Election of Candidates by the Returning Officer, or if a Candidate withdraws at any time after the closing date for nominations and the declaration of Election of Candidates by the Returning Officer, the nomination of that Candidate and any votes cast for that Candidate shall be disregarded, but without prejudice to any preferences recorded for any other Candidates.

Counting of Votes

18. For the avoidance of doubt, a Candidate must be registered as a registrant on the date of the Election and the Returning Officer shall, at the commencement of the counting of the votes, confirm that each Candidate remains so registered. Any Candidate who is no longer registered on the date of the Election shall be disqualified and any votes cast in favour of that candidate shall be disregarded, but without prejudice to any preferences recorded for any other Candidates.

19. (1) The Returning Officer shall count the votes for each poll and ascertain and record the number of valid votes to be credited to each candidate in accordance with section 114 and Part XIX of the Electoral Act, 1992.

(2) The Returning Officer shall fix the date and time for counting of votes. The counting of votes in an Election shall take place no later than 5 working days after the date of Election at a location nominated by the Returning Officer and which has been notified to the Candidates.

(3) Each Candidate may appoint one or 2 agents and the name of the person or persons so appointed shall be notified to the Returning Officer in writing by the Candidate no later than 2 days before the date fixed by the Returning Officer for the counting of votes.

(4) Only candidates, their agents, the Returning Officer (and their agents, if any), scrutineers (and any alternates, if any) are entitled to be present at the count except with the permission of the Returning Officer.

20. (1) At the time fixed for the counting of the votes, the Returning Officer shall open the Ballot Box or boxes, remove the outer envelopes, count and

record the number of envelopes so removed, open the outer envelopes and examine the declaration of identity forms.

(2) If the declaration of identity form is deemed by the Returning Officer to be valid, the inner envelope shall be set aside.

(3) If the Returning Officer is not satisfied that the declaration of identity form has been duly signed and the signature duly witnessed, or if a declaration of identity form is not present, the Returning Officer shall endorse on the inner envelope "Vote rejected" without opening such envelope.

(4) The Returning Officer shall show any declaration of identity form which he or she proposes to reject on the grounds that it has not been properly signed and witnessed to the Candidates and agents present and, if an objection is made by any Candidate or agent to his decision, shall add to the endorsement the words "rejection objected to".

(5) The Returning Officer shall keep all rejected declaration of identity forms with the attached inner envelopes separate from other documents.

(6) The Returning Officer shall record in writing the total number of inner envelopes rejected.

(7) The Returning Officer shall open all valid inner envelopes, withdraw the ballot paper or papers, and place all ballot papers in a special receptacle provided by him for ballot papers. When all the ballot papers have been transferred to the special receptacle provided for them, they shall be opened, examined, segregated according to each poll and counted.

(8) Any inner envelope not containing a ballot paper shall be marked "rejected".

(9) Any ballot paper:

(a) on which anything is written or marked by which the Voter could be identified, or

(b) which is unmarked or so marked as to cause uncertainty as to the candidate or preference to be accorded to any Candidate for whom the Voter desires to record a vote, or

(c) on which votes are given in excess of the number to which the Voter is entitled, shall be invalid and not counted.

(10) Any outer envelope which, when opened, contains a declaration of identity and a ballot paper or papers which are not enclosed in an inner envelope, shall be marked "rejected" on the outer envelope. The ballot paper or papers shall be invalid and not counted.

Declaration of those elected

21. (1) The Returning Officer shall at the conclusion of the count declare the results of the Election and give notice in writing to the Minister of the names of those registrants of the Registration Board that have been elected under this bye-law for the purposes of section 28A(1)(a) of the Act.

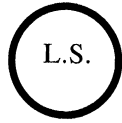
(2) The Returning Officer shall publish by electronic means the results of the Election including details of the number of ballot papers issued, the total poll, the total valid poll and the votes and transfer at each count.

Savers

22. No Election held under this bye-law shall be invalidated by reason of any misdescription or non-compliance with the provisions of this bye-law or by reason of any miscount or of the non-delivery, loss or miscarriage in the course of post of any document required under this bye-law to be despatched by the post, if it appears to the Returning Officer that the Election was conducted substantially in accordance with the provisions of this bye-law, and the result of such misdescription, non-compliance, miscount, non-delivery, loss or miscarriage did not substantially affect the result of the Election.

23. (1) Notwithstanding any contrary provision in this bye-law, the Returning Officer may, in any case in which it appears to him that there is an emergency or special difficulty, make such changes or modifications of any of the procedures set out herein for the conduct of the Election (including but not limited to rescheduling, postponing, or curtailing the applicable times and suspending the application of all or any part of the procedures) as may in his opinion be necessary or desirable to enable such Election to be duly held, subject to compliance with the principles laid down in this bye-law taken as a whole. Without prejudice to the generality of the foregoing, in the event of any error in the conduct of the Election which the Returning Officer regards as fundamental, the Returning Officer shall be entitled, in addition to the foregoing, to recommence the Election (or any part thereof) from the point prior to the point when the error arose and otherwise take such action as may be necessary or desirable to enable the declaration of persons elected.

(2) The Returning Officer shall, insofar as the circumstances permit, publish summary details of any such emergency, error or special difficulty and the changes or modifications to be made to any of the procedures set out herein for the conduct of the Election.



GIVEN under the seal of the Optical Registration Board,
11 October 2017.

PETER MCGRATH,
Chairperson, Optical Registration Board.

and

OWEN BLEE,
Member, Optical Registration Board.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

This bye-law sets out the procedures for the selection of members for appointment to the Optical Registration Board for the purposes of section 28A(1)(a) of the Health and Social Care Professionals Act 2005.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.81



Wt. (B33073). 285. 10/17. Essentra. Gr 30-15.