

*Draft Regulations laid before Parliament under section 13(2) of the European Parliamentary Elections Act 2002 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**REPRESENTATION OF THE PEOPLE, NORTHERN IRELAND**

**The European Parliamentary Elections (Northern Ireland)  
(Amendment) Regulations 2010**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 5 of the European Parliamentary Elections Act 2002(a) and section 26(2) of the Political Parties and Elections Act 2009(b) and being a Minister designated(c) for the purposes of section 2(2) of the European Communities Act 1972(d) in relation to the rights of citizens of the Union to stand as candidates at a European Parliamentary election, in exercise of the powers conferred by that section.

The Secretary of State has consulted the Electoral Commission pursuant to section 7(1) and (2)(a) of the Political Parties, Elections and Referendums Act 2000(e).

In accordance with section 13(2) of the European Parliamentary Elections Act 2002 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972(f) a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

**Citation, commencement, extent and interpretation**

**1.**—(1) These Regulations may be cited as the European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2010.

(2) These Regulations shall come into force on the day after the day on which they are made.

(3) These Regulations have effect in relation to vacancies arising on or after the day on which they come into force.

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- (a) 2002 c. 24 (“the 2002 Act”). The 2002 Act was amended by section 1 of the European Parliament (Representation) Act 2003 (c. 7) and section 26 of the Political Parties and Elections Act 2009 (c. 12). Other amendments made by both of those Acts are not relevant to Northern Ireland.
- (b) 2009 c. 12.
- (c) The Secretary of State is designated by virtue of S.I. 1993/2661.
- (d) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (e) 2000 c. 41; section 7(2)(a) was amended by section 15 of, and paragraph 8 of Schedule 3 to, the European Parliamentary Elections Act 2002 (c. 24).
- (f) Paragraph 2(2) of Schedule 2 was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(4) These Regulations extend to Northern Ireland only.

(5) In these Regulations “the 2004 Regulations” means the European Parliamentary Elections (Northern Ireland) Regulations 2004(a).

### **Amendments to the 2004 Regulations**

2. For regulation 76 of the 2004 Regulations (by-elections) substitute the following—

#### **“Interpretation of Part 3**

**76.**—(1) In this Part of these Regulations, unless the context otherwise requires—

“Chief Electoral Officer” means the Chief Electoral Officer for Northern Ireland;

“previous MEP” in relation to a vacancy, means the person who was the MEP immediately before the vacancy arose;

“nominating officer” in relation to a registered party, means the person registered as its nominating officer under the 2000 Act in the Northern Ireland register (within the meaning of that Act);

“registered party” means a party registered under that Act in that register; and

“statement of candidates nominated” means the statement of candidates nominated published under rule 13 of the European Parliamentary elections rules(b).

(2) For the purposes of this Part an MEP (“P”)—

(a) stood as an independent when elected if the statement of candidates nominated for the purposes of the last election for P’s seat showed no description or the description “independent” in respect of P;

(b) stood in the name of a registered party when elected if that statement showed a description of the type mentioned in rule 5(2) of the European Parliamentary elections rules in respect of P;

(c) stood in the name of two or more registered parties when elected if that statement showed a description of the type mentioned in rule 5(4) of the European Parliamentary elections rules in respect of P.

(3) If P is an MEP by virtue of being returned to fill a vacant seat in accordance with this Part, a reference in paragraph (2) to the description in respect of P is a reference to the description in respect of the last MEP returned to fill that seat at an election.

(4) A reference in this Part to a person being disqualified for the office of MEP is a reference to a person being disqualified within the meaning of section 10 of the 2002 Act(c).

#### **Computation of time for purposes of Part 3**

**76A.** Regulation 33 applies in computing any period of time for the purposes of this Part of these Regulations as it applies for the purposes of Part 2 of these Regulations.

#### **Initial response to vacancy**

**76B.**—(1) As soon as practicable after the Secretary of State has—

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(a) S.I. 2004/1267 was amended by S.I. 2004/1374, S.I. 2004/1771, S.I. 2005/2114 and S.I. 2009/813.  
(b) The European Parliamentary elections rules are contained in Schedule 1 to the European Parliamentary Elections (Northern Ireland) Regulations 2004 (S.I. 2004/1267). A new Schedule 1 was substituted by S.I. 2009/813.  
(c) 2002 c. 24. Section 10 has been amended by section 21(1) of the European Parliament (Representation) Act 2003 (c. 7); sections 145 and 146 of, and paragraph 32 of Schedule 17 and Part 5 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4); section 18(6) of, and paragraph 41 of Schedule 1 to, the Electoral Administration Act 2006 (c. 22); and regulation 2 of S.I. 2004/1374 (made under the European Communities Act 1972 (c. 68)).

- (a) received information of a vacancy in the seat of an MEP in the Northern Ireland electoral region from the President of the European Parliament under the Act annexed to Council Decision 76/787(a), or
- (b) informed the European Parliament under that Act that such a vacancy exists,

the Secretary of State must send a notice in accordance with paragraph (2) to the Chief Electoral Officer.

(2) The notice must state the name of the previous MEP and that a vacancy exists.

(3) On receipt of the notice, the Chief Electoral Officer must determine, by reference to the statement of candidates nominated for the purposes of the last election to the seat, whether the previous MEP stood—

- (a) in the name of a registered party when elected,
- (b) in the name of two or more registered parties when elected, or
- (c) as an independent when elected.

(4) Paragraph (1) does not apply where the event referred to in sub-paragraph (a) or (b) of that paragraph occurred less than six months before the Thursday of the period of the next general election of MEPs.

(5) That period is the one during which the next general election would take place in accordance with Article 10(2) of the Act annexed to Council Decision 76/787.

**MEP stood for registered party: filling vacant seat**

**76C.**—(1) This regulation applies if—

- (a) the Chief Electoral Officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 76B(1), and
- (b) the Chief Electoral Officer determines the previous MEP stood in the name of a registered party when elected.

(2) As soon as practicable after receiving the notice of the vacancy, the Chief Electoral Officer must ask the nominating officer of that registered party to nominate in writing, within 28 days from the date of the Chief Electoral Officer’s request, a person (“P”) to fill the vacant seat and be returned as an MEP in the name of the registered party.

(3) The nomination must be made and signed by the nominating officer of the registered party and must specify a person who is not disqualified for the office of MEP to fill the vacant seat.

(4) The nomination must be accompanied by a declaration that is signed and dated by P and that—

- (a) states P’s date of birth;
- (b) gives P’s consent to being returned as an MEP in the name of the registered party;
- (c) confirms that P is aware of the provisions of section 10 of the 2002 Act; and
- (d) declares that, to the best of P’s knowledge and belief, P is not disqualified for the office of MEP.

(5) If the nominating officer responds to the Chief Electoral Officer’s request in accordance with paragraphs (2) to (4) the Chief Electoral Officer must, without delay—

- (a) declare P to be returned to fill the vacant seat; and
- (b) notify P’s name to the Secretary of State.

(6) If the nominating officer does not respond to the Chief Electoral Officer’s request in accordance with paragraphs (2) to (4) the Chief Electoral Officer must notify the Secretary of State that this is the case and regulation 76H (by-elections) applies.

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(a) O.J.L 278, 08.10.1976, p. 5 (cmd. 6623).

(7) This regulation is subject to regulations 76E (party or parties no longer registered) and 76I (relevant citizens of the Union).

**MEP stood for two or more registered parties: filling vacant seat**

**76D.**—(1) This regulation applies if—

- (a) the Chief Electoral Officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 76B(1), and
- (b) the Chief Electoral Officer determines the previous MEP stood in the name of two or more registered parties when elected.

(2) As soon as practicable after receiving the notice of the vacancy the Chief Electoral Officer must ask the nominating officers of each of those registered parties jointly to nominate in writing, within 28 days from the date of the Chief Electoral Officer’s request, a person (“P”) to fill the vacant seat and be returned as an MEP in the names of both or all of the registered parties.

(3) The joint nomination must be made and signed by the nominating officers of both or all of the registered parties and must specify a person who is not disqualified for the office of MEP to fill the vacant seat.

(4) The joint nomination must be accompanied by a declaration that is signed and dated by P and that—

- (a) states P’s date of birth;
- (b) gives P’s consent to being returned as an MEP in the names of the registered parties;
- (c) confirms that P is aware of the provisions of section 10 of the 2002 Act; and
- (d) declares that, to the best of P’s knowledge and belief, P is not disqualified for the office of MEP.

(5) If the nominating officers respond to the Chief Electoral Officer’s request in accordance with paragraphs (2) to (4) the Chief Electoral Officer must, without delay—

- (a) declare P to be returned to fill the vacant seat; and
- (b) notify P’s name to the Secretary of State.

(6) If the nominating officers do not respond to the Chief Electoral Officer’s request in accordance with paragraphs (2) to (4), the Chief Electoral Officer must notify the Secretary of State that this is the case and regulation 76H (by-elections) applies.

(7) This regulation is subject to regulations 76E (party or parties no longer registered) and 76I (relevant citizens of the Union).

**Party or parties no longer registered**

**76E.**—(1) This regulation applies if—

- (a) the Chief Electoral Officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 76B(1),
- (b) the Chief Electoral Officer determines the previous MEP stood in the name of a registered party or two or more registered parties when elected, and
- (c) on the day on which the Chief Electoral Officer receives the notice of the vacancy, the party or (as the case may be) one of the parties is no longer a registered party.

(2) The Chief Electoral Officer must notify the Secretary of State that this is the case and regulation 76H (by-elections) applies.

### **Independent MEP: notice of substitutes**

**76F.**—(1) An MEP who stood as an independent when elected may give to the Chief Electoral Officer a notice in accordance with paragraph (2) (in these Regulations referred to as a “notice of substitutes”).

(2) That notice must—

- (a) be dated;
- (b) be signed by the MEP;
- (c) set out the names, addresses and dates of birth of not more than six persons for the purposes of filling any vacancy in the MEP’s seat and indicate, where more than one person is so named, an order of preference; and
- (d) be signed by those persons, indicating their consent to be contacted in accordance with regulation 76G.

(3) Where an independent MEP has given the Chief Electoral Officer more than one notice of substitutes, the latest notice supersedes any earlier one.

### **Independent MEP: filling vacant seat**

**76G.**—(1) The following provisions apply if—

- (a) the Chief Electoral Officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 76B(1),
- (b) the Chief Electoral Officer determines the previous MEP stood as an independent when elected, and
- (c) the previous MEP has given the Chief Electoral Officer a notice of substitutes.

(2) As soon as practicable after receiving the notice of the vacancy, the Chief Electoral Officer must take such steps as appear to the Chief Electoral Officer to be reasonable to contact the person who is named as the first choice in the notice of substitutes with the request mentioned in paragraph (3).

(3) That request is for the person to respond in writing in accordance with paragraph (4) within 14 days from the date of the Chief Electoral Officer’s request indicating whether the person is prepared to fill the vacant seat.

(4) If the person is prepared to fill the vacant seat, the response must—

- (a) state the person’s date of birth;
- (b) confirm that the person is aware of the provisions of section 10 of the 2002 Act;
- (c) declare that to the best of the person’s knowledge and belief, the person is not disqualified for the office of MEP; and
- (d) be signed and dated by the person.

(5) Paragraph (6) applies if—

- (a) the Chief Electoral Officer has taken reasonable steps to contact a person named in the notice of substitutes but has been unable to do so,
- (b) a person named in the notice of substitutes fails to respond to the Chief Electoral Officer’s request in accordance with paragraphs (3) and (4), or
- (c) a person named in the notice of substitutes responds to the Chief Electoral Officer’s request to indicate that the person is not prepared to fill the vacant seat.

(6) If this paragraph applies—

- (a) the person is not returned to fill the vacant seat, and
- (b) the Chief Electoral Officer must repeat the procedure in paragraph (2) in respect of each subsequent person (if any) who is named in the notice of substitutes until the vacant seat is filled or the names in the notice are exhausted.

(7) If a person responds to the Chief Electoral Officer's request in accordance with paragraphs (3) and (4) indicating that the person is prepared to fill the vacant seat the Chief Electoral Officer must, without delay—

- (a) declare that person to be returned to fill the vacant seat; and
- (b) notify the person's name to the Secretary of State.

(8) If the Chief Electoral Officer is unable to fill the vacant seat under this regulation, the Chief Electoral Officer must notify the Secretary of State that this is the case and regulation 76H (by-elections) applies.

(9) If—

- (a) the Chief Electoral Officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 76B(1),
- (b) the Chief Electoral Officer determines the previous MEP stood as an independent when elected, and
- (c) the previous MEP has not given the Chief Electoral Officer a notice of substitutes, the Chief Electoral Officer must notify the Secretary of State that this is the case and regulation 76H (by-elections) applies.

(10) This regulation is subject to regulation 76I (relevant citizens of the Union).

### **By-elections**

**76H.**—(1) Subject to paragraph (3), where the Secretary of State has received a notice from the Chief Electoral Officer under regulation 76C(6), 76D(6), 76E(2), 76G(8) or (9), or 76I(4) a by-election must be held to fill that vacancy.

(2) The period within which the poll at any by-election which is required to be held under paragraph (1) must take place is six months from the date on which the Secretary of State receives the notice referred to in that paragraph.

(3) Where the latest date for the poll for a by-election would fall on or after the Thursday of the period of the next general election of MEPs (within the meaning of regulation 76B(5)) a by-election shall not be held.

### **Relevant citizens of the Union**

**76I.**—(1) This regulation applies where the person nominated in accordance with regulations 76C(2) or 76D(2) or the person contacted in accordance with regulation 76G(2) (as the case may be, "P") is a relevant citizen of the Union.

(2) Rule 7 of the European Parliamentary elections rules<sup>(a)</sup> applies to the return of P to fill the vacant seat subject to the modifications set out in paragraph (3).

(3) Rule 7 is modified as follows—

- (a) for paragraph (1) substitute—

“(1) P may not be returned as an MEP to fill the vacant seat—

- (a) in the name of a registered party or parties unless the declaration required under regulation 76C(4) or regulation 76D(4) also includes a declaration under paragraph (2) below and a certificate under paragraph (3); or
- (b) as a substitute for the previous MEP unless the response provided under regulation 76G(4) also includes a declaration under paragraph (2) below and a certificate under paragraph (3).”;

- (b) in paragraph (2) for the reference to “the candidate” substitute “P”;

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(a) The European Parliamentary elections rules are contained in Schedule 1 to the European Parliamentary Elections (Northern Ireland) Regulations 2004 (S.I. 2004/1267). A new Schedule 1 was substituted by S.I. 2009/813.

(c) for paragraph (2)(c) substitute—

“(c) that he is not currently standing as a candidate for election to the European Parliament in any other member State;”;

(d) in paragraph (3) for the reference to “the candidate” substitute “P”; and

(e) for paragraph (4) substitute—

“(4) At the same time as declaring a person to be returned to fill the vacant seat and notifying his or her name to the Secretary of State in accordance with regulations 76C(5), 76D(5) and 76G(7), the Chief Electoral Officer must also send to the Secretary of State a copy of the declaration made under paragraph (2).”.

(4) Where rule 7, as modified by paragraph (3), is not complied with the Chief Electoral Officer must notify the Secretary of State that this is the case and regulation 76H (by-elections) applies.”.

Northern Ireland Office

Minister of State

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the provision made in the European Parliamentary Elections (Northern Ireland) Regulations 2004 (“2004 Regulations”) for filling a vacancy arising mid-term in the seat of a member of the European Parliament for the Northern Ireland electoral region. A by-election will no longer always be held when a seat becomes vacant and how the vacancy is filled will depend on whether the previous member of the European Parliament (MEP) stood as an independent, in the name of a registered party, or in the name of two or more registered parties at the time she or he was elected.

Regulation 2 of these Regulations substitutes new regulations 76 to 76I in the 2004 Regulations.

New regulation 76A is an interpretative provision and, in particular, describes the basis on which a MEP will be taken to have stood as an independent or in the name of a party or parties when she or he was elected.

New regulation 76B describes the steps that must be taken when a vacancy arises in the seat of an MEP. In particular the Secretary of State must notify the Chief Electoral Officer of the vacancy and the Chief Electoral Officer must then determine whether the MEP whose seat is vacant stood as an independent or in the name of a party or parties when she or he was elected.

Where the previous MEP stood in the name of a registered party when she or he was elected, new regulation 76C makes provision for her or his replacement to be nominated by the nominating officer of that party. Where the previous MEP stood in the name of two or more registered parties when she or he was elected, new regulation 76D makes provision for her or his replacement to be nominated jointly by the nominating officers of both or all of those parties. Where a nomination is not made in accordance with the requirements set out in those regulations provision is made for a by-election to be held. By virtue of new regulation 76E, a by-election will also be necessary where the party or parties in whose name the previous MEP stood is or are no longer registered in the Northern Ireland register.

Under new regulation 76F, an MEP who stood as an independent when she or he was elected may provide the Chief Electoral Officer for Northern Ireland with a notice naming up to six “substitutes” ranked in order of preference. These are the people who will be asked to replace the MEP should the MEP’s seat become vacant. Again provision is made for a by-election if none of

the substitutes named are able to be returned as an MEP. Similarly a by-election will be necessary where no list of substitutes is provided.

New regulation 76H sets out the circumstances in which a by-election will be held as described above. However no by-election will be held if the latest day for the poll would fall on or after the day on which the next general election of MEPs would be held.

New regulation 76I makes provision for those nominated persons or substitutes who are relevant citizens of the Union (defined in regulation 2 of the 2004 Regulations to mean citizens of other European Union member States other than the Republic of Ireland). When nominated as candidates at a European Parliamentary election such citizens are required to provide a declaration and certificate in line with rule 7 of the European Parliamentary elections rules. This regulation makes provision for the application of that rule with modifications as appropriate to nominees and substitutes.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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