

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN PARLIAMENTARY ELECTIONS (NORTHERN**  
**IRELAND) (AMENDMENT) REGULATIONS 2010**

**2010 No.**

**1.** This explanatory memorandum has been prepared by the Northern Ireland Office (NIO) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 These Regulations amend the way in which vacant European Parliamentary seats in Northern Ireland arising during term are filled. Currently, vacant seats can only be filled by by-election. These Regulations provide for vacant seats to be filled through a system of party nomination or substitution with by-elections held only if these processes fail.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative context**

4.1 Section 5 of the European Parliamentary Elections Act 2002 (“2002 Act”) provides for regulations to be made in respect of filling vacant European Parliamentary seats. Until July 2009, the 2002 Act only permitted such regulations to provide for by-elections to fill vacant Northern Ireland seats (and see paragraph 7 below). However, section 26 of the Political Parties and Elections Act 2009 (“2009 Act”) amended section 5 of the 2002 Act to permit the regulations to provide for vacant Northern Ireland seats to be filled by party nomination(s) or substitution.

4.2 These Regulations amend the European Parliamentary Elections (Northern Ireland) Regulations 2004 to provide for vacant seats to be filled by party nomination(s) or substitution in the first instance and for by-elections to take place only when these processes fail. The Northern Ireland Assembly (Elections) (Amendment) Order 2009 introduced a similar method for filling vacancies in the Northern Ireland Assembly.

**5. Territorial Extent and Application**

5.1 This instrument extends to Northern Ireland only.

## **6. European Convention on Human Rights**

- 6.1 The Minister of State for Northern Ireland, Paul Goggins, has made the following statement regarding Human Rights:

‘In my view the provisions of the European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2010 are compatible with the Convention rights.’

## **7. Policy background**

- 7.1 Elections to the European Parliament in Northern Ireland are held using the single transferable vote form of proportional representation (PR-STV). In Great Britain the closed party list voting system is used. Until recently, the 2002 Act only provided for vacant seats arising during term to be filled using party lists or by by-election. As party lists are not used in Northern Ireland, this resulted in regulations only providing for vacancies to be filled by by-election. However, by-elections are generally undesirable in PR-STV elections because they have the potential to distort the careful party balance that would have been achieved at the time of an election.
- 7.2 In 2008, the NIO conducted a consultation exercise on electoral issues which included proposals to amend the law relating to both filling vacant Northern Ireland seats in the European Parliament and vacant seats in the Northern Ireland Assembly (which also uses the PR-STV voting system). There was widespread support for introducing a procedure for both legislatures where the nominating officer of the political party in whose name the vacating member stood at the time he or she was elected could nominate a replacement member. If the vacating member was an independent, there was support for regulations to provide for the member to be able to provide a list of substitutes to replace him or her in the event that that he or she vacated office during term.
- 7.3 Changes to the method of filling vacancies in the Northern Ireland Assembly were implemented in early 2009. However, primary legislation was required to amend the 2002 Act to allow regulations to be made to provide for similar changes to the process of filling European Parliamentary seats. Provision was subsequently included in the 2009 Act to provide for this and the Act received Royal Assent in July 2009. These Regulations make similar provision to that which is currently used for filling Northern Ireland Assembly vacancies, with additional provision made for members who stood in the name of two or more parties. This provision means that if a vacating MEP stood in the name of two or more registered parties when elected, a joint nomination must be provided by the parties’ nominating officers in order for a nominated person to be duly returned.

## **8. Consultation outcome**

8.1 In July 2008, the NIO published a consultation paper entitled *Improving the Administration of Elections to the Northern Ireland Assembly* which discussed, amongst other things, filling vacant seats in both the European Parliament and Northern Ireland Assembly. The consultation lasted 12 weeks and responses were received from various political parties, individuals and organisations. The vast majority of respondents were in favour of the changes outlined above. Both the consultation and the Government response can be found on the NIO website: <http://www.nio.gov.uk/index/public-consultation.htm>.

8.2 The Electoral Commission and Chief Electoral Officer for Northern Ireland were consulted on the draft regulations and were content.

## **9. Guidance**

9.1 These Regulations are not accompanied by any guidance.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The procedure set out by these Regulations will be kept under review and amended as appropriate.

## **13. Contact**

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**Northern Ireland Office**

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