

EXPLANATORY MEMORANDUM TO
THE LOCAL ELECTIONS (NORTHERN IRELAND) ORDER 2013

2013 No. [XXXX]

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

2. Purpose of the instrument

2.1 This Order makes provision to support local government reorganisation in Northern Ireland, including by moving the election date to 22 May 2014 and allowing 11 new shadow councils to operate from the election until 2015. The Order also enables combination of the local election and the European Parliamentary Election on 22 May 2014.

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

3.1 None.

4. Legislative Context

Local government reform

4.1 The operation of local government and the setting of local government boundaries are transferred matters and therefore fall within the competence of the Northern Ireland Assembly. However, elections of district councils are an excepted matter, upon which only the UK government can legislate.

4.2 The Local Government (Boundaries) Act (Northern Ireland) 2008 made provision to reduce the number of local councils in Northern Ireland from 26 to 11. Those provisions have been brought into force gradually to facilitate transition to the new local councils (see S.R. 2013/238).

4.3 The Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 made more detailed provision for the reorganisation of local government into the new 11 local government districts, including by providing for the establishment of “Statutory Transition Committees”. Such committees were established in July 2013 by the Local Government (Statutory Transition Committees) Regulations (Northern Ireland) 2013 and are now in operation.

4.4 The Local Government (Boundaries) Order (Northern Ireland) 2012 set out the local government wards constituting each district, which will soon be grouped into district electoral areas for the purpose of elections

to the district councils. That Order is in force for the purpose of preliminary proceedings, but will come into force on the day of the next local election for most purposes, and for the making and levying of rates on 1 April 2015.

- 4.5 To facilitate local government reform, this Order will change the date of the election, make provision for the new councils and the existing councils to operate in parallel for a transitional period, and make necessary consequential provision.

Other changes

- 4.6 Elections to the European Parliament will also be held on 22 May 2014. If the polls at a local election and a European Parliamentary election in Northern Ireland are held on the same day, they must be combined (section 15, Representation of the People Act 1985). The draft European Parliamentary Elections (Northern Ireland) (Amendment) (No. 2) Regulations 2013, which have been laid before Parliament along with this Order, will also make some changes to facilitate the combination of polls.

- 4.7 The local elections rules are also amended to reflect changes already made for parliamentary elections. Section 19 of the Electoral Registration and Administration Act 2013 introduced changes for parliamentary elections across the UK in relation to persons queuing at polling stations at the close of the poll.

5. Territorial Extent and Application

- 5.1 Most of the provisions extend to Northern Ireland only. However, where the instrument amends provisions that extend to the UK, those amendments have UK extent.

6. European Convention on Human Rights

- 6.1 Theresa Villiers, the Secretary of State for the Northern Ireland Office, has made the following statement regarding Human Rights:

“In my view the provisions of the Local Elections (Northern Ireland) Order 2013 are compatible with the Convention rights”.

7. Policy background

Local government reform

- 7.1 The 26 existing local councils in Northern Ireland will be replaced with 11 larger local council areas. The Northern Ireland Executive asked the Government to support a transitional period until 2015, during which councillors elected to the new councils will serve in parallel with the existing councils. The new councils will take decisions about how

the current councils would be integrated to form new councils including on budgets and rates for the following year, while the existing councils will continue to take routine decisions on local services.

7.2 To facilitate this transitional period, the Order brings forward the date of the next scheduled local election in Northern Ireland by one year to 22 May 2014.

7.3 The Order introduces the following changes to deliver a transitional period from the fourth day after the election until 31 March 2015:

- The new councils will come into their full powers on 1 April 2015, but will be able to exercise powers in relation to limited transitional issues. Vacancies in the new councils will be filled if they arise during that transitional period;
- New councillors will remain in office until 2019 (4 years after assuming full powers); and
- Existing councillors will remain in office until 1 April 2015 and continue to exercise powers in relation to the existing councils, but not on transitional issues. Vacancies on existing councils will also continue to be filled until 1 January 2015.

7.4 The Order also introduces the following temporary changes which are required only for the first election of the new councils:

- For local elections the Chief Electoral Officer for Northern Ireland can normally claim an advance of his election expenses before the election from the relevant local councils to allow preparations to be made. The new councils will not be capable of making an advance before the election in 2014. This Order makes provision for the Statutory Transition Committees established by the Northern Ireland Executive to provide the advance of election expenses before the election and for the new councils to pay the balance of expenses after the election.
- Normally local council Chief Executives (clerks of the district councils) are appointed as Deputy Returning Officers for the purposes of elections. The open competition for the Chief Executive positions in the 11 new councils will not be completed sufficiently far in advance of the election for the new Chief Executives to be appointed as Deputy Returning Officers. This Order therefore makes provision for a person appointed by the Statutory Transition Committees, in consultation with the Electoral Commission, to act as Deputy Returning Officer for the purposes of the 2014 elections.
- The Northern Ireland Assembly has agreed new wards for each local government district. The polling station scheme for local

elections needs to reflect the new ward structure. This Order therefore permits the Chief Electoral Officer to prepare a new polling station scheme outside the normal cycle and before the elections in 2014. It will be published in draft as soon as practicable after 1 February 2014. By that date, the Secretary of State will have had an opportunity to lay an order before Parliament grouping the wards into district electoral areas. The Chief Electoral Officer will then be able to consider the content of that draft Order before locating the polling station for one ward in an adjoining ward. This Order also removes the requirement for a 12 week consultation period on the draft scheme to ensure that the new scheme can be produced in time for the elections.

- The Drainage Council for Northern Ireland is appointed for a four year term and the date of appointment is currently as soon as practicable after a local election. Moving the date of the election would have the unintended effect of moving the date of appointment of the Drainage Council from 2015 to 2014. This Order provides that the appointment of the Drainage Council will take place after the new councillors take up their full powers on 1 April 2015.

7.5 Currently, the polling districts and places for parliamentary elections are those established under the law relating to local elections. When the Chief Electoral Officer designs a polling station scheme for local elections, such scheme applies to parliamentary elections. However, this is no longer appropriate as some of the new local government districts and wards will fall between two parliamentary constituencies. This Order makes amendments to allow parliamentary polling districts to instead be designated by the Secretary of State in consultation with the Electoral Commission. The Chief Electoral Officer will still designate polling places for parliamentary elections and will be required to carry out reviews of the polling places in 2014 and every five years thereafter. Such reviews will follow the same process as that followed by registration officers in Great Britain.

Other changes

7.6 This Order provides that persons inside the polling station, or queuing outside the polling station, at the close of the poll (i.e. at 10pm on polling day) can apply for a ballot paper. This change is made to ensure consistency with Parliamentary, Assembly and European Parliamentary elections.

7.7 Finally, the Order makes amendments to allow the local elections to be combined with the European Parliamentary elections in 2014. In summary, the combination provisions:

- ensure different coloured ballot papers and related documents are used for each election;
- combine the process for the issue of postal ballot papers;

- amend procedures in polling stations;
- combine certain election documents and instructions for voters;
- allow for the same ballot boxes to be used, but where they are not used, allow ballot papers which are put in the wrong ballot box to be taken out and placed in the ballot box for the correct election;
- allow for the title of the election to be printed on the top of the ballot paper (in response to a recommendation made by the Electoral Commission); and
- where the same registers or lists have been used for a combined election, provide for the retention of those documents by the Chief Electoral Officer rather than the local council.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on this Order as required by sections 7(1) and (3) of the Political Parties, Elections and Referendums Act 2000 (c.41). In addition, the Chief Electoral Officer for Northern Ireland and his office, the Northern Ireland Executive, the Northern Ireland Local Government Association and Northern Ireland political parties have been consulted.

8.2 All of those who responded to the consultation were satisfied with the Order. The Chief Electoral Officer suggested drafting amendments to maintain consistency with other elections in Northern Ireland, which have been incorporated. After considering comments submitted by the Northern Ireland Local Government Association, the Order makes provision for the involvement of the Electoral Commission in the appointment process for Deputy Returning Officers for local elections in 2014. Drafting suggestions made by the Electoral Commission have also been incorporated, including a technical change regarding the opening of ballot boxes.

9. Guidance

9.1 The Electoral Commission will continue to prepare and issue guidance relating to the conduct of elections.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Northern Ireland Office will keep the Order under review. The Government will work with the Electoral Commission, the Chief Electoral Officer for Northern Ireland and other stakeholders to ensure that any legislative lessons which are learnt in 2014 can be applied for future elections.

13. Contact

13.1 Karen McNeill, Senior Elections Policy Officer, at the Northern Ireland Office Tel: 020 7210 6545 or email: karen.mcneill@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office

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