

---

## EXPLANATORY NOTE

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

These Regulations amend the European Parliamentary Elections Regulations 2004 (S.I. 2004/293) (“the Principal Regulations”) to alter the provision for filling a vacancy arising mid-term in the seat of a member of the European Parliament in an electoral region in England, Wales, Scotland and Gibraltar.

Under the current provision, if a vacancy cannot be filled from a registered party’s list, a by-election is held to fill the vacancy. Instead of a by-election being held, regulation 2 makes provision for registered parties to nominate a replacement or, where the previous MEP stood as an independent candidate, it allows the seat to be filled by way of a substitute named on a notice given previously by the candidate. It is only after these options are exhausted that a by-election is held.

New regulation 81A is an interpretation provision and, in particular, describes the basis on which an MEP will be taken to have been elected for a registered party, been returned in the seat from a registered party’s list, stood as an independent candidate, returned in the seat as a substitute, or stood for two or more registered parties when elected at a by-election. It also describes the basis on which an MEP will be taken to have been nominated to the seat or returned in the seat as a substitute.

Regulation 82 of the Principal Regulations (initial response to vacancies) is amended by regulation 2(3) to remove the provisions relating to independent candidates and to modify the notice that the Secretary of State must send to the returning officer for the affected electoral region upon a vacancy arising in that region.

Regulation 83 (filling of vacancies from a registered party’s list) is amended by regulation 2(4) to make clear that it applies in cases where there is a vacant seat and the previous MEP was elected for a registered party at a general election or was returned in the seat from a registered party’s list under regulation 83. The requirement on the returning officer to notify the Secretary of State if he or she cannot fill a vacancy under this regulation has been removed.

New regulation 83A makes provision for a vacant seat, in the event it cannot be filled by reference to a registered party’s list under regulation 83, where the previous MEP stood on behalf of a registered party when elected to the seat at a by-election or where the MEP was nominated to the seat, to be filled by nomination. This nomination is to be made by the nominating officer of the relevant registered party.

Where the previous MEP stood on behalf of two or more registered parties when elected, new regulation 83B makes provision similar to that in regulation 83A for a person to be nominated jointly by the nominating officers of the registered parties.

New regulation 83C requires a returning officer to notify the Secretary of State if the registered party for whom the previous MEP was elected at a general election or, where the previous MEP stood in the name of two or more registered parties when elected, at least one of those parties, is no longer a registered party. The returning officer must also notify the Secretary of State in cases where the MEP was returned in the seat from a party’s list or was nominated, or jointly nominated, to the seat by a party or parties.

New regulation 83D makes provision for an MEP who stood as an independent candidate when elected or who was returned in the seat as a substitute to give a “notice of substitutes” to the returning officer in the MEP’s electoral region. This notice contains the names of up to six persons who may fill the vacancy, should the MEP’s seat become vacant.

Where an MEP who stood as an independent candidate vacates their seat, new regulation 83E provides for the persons named in the notice of substitutes to be contacted by the returning officer for the relevant electoral region.

If an MEP who stood as an independent candidate when elected did not give the returning officer a notice of substitutes and subsequently vacates their seat, new regulation 83F provides that the returning officer must notify the Secretary of State of that fact.

Where a seat cannot be filled under new regulation 83A, 83B (via nomination) or 83E (as a substitute), or there is no notice of substitutes, a by-election is to be held under regulation 84 (as substituted by regulation 2). A by-election is also to be held if the registered party for whom the previous MEP was elected at a general election or who returned the MEP in the seat from its list is no longer a registered party and where the previous MEP stood in the name of two or more registered parties when elected and at least one of those parties is no longer a registered party.

New regulation 85A makes provision for those nominated persons, or substitutes, who are relevant citizens of the Union (as defined in regulation 2 of the Principal 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. Regulation 2(2) amends regulation 28(1) of the Principal Regulations to provide that making a false statement in connection with this declaration is a criminal offence.

Regulation 3 makes transitional provision in relation to vacated seats where the Secretary of State has received a notice under regulation 83(8) of the Principal Regulations (returning officer has been unable to fill the vacant seat from a party's list and has notified the Secretary of State as such) but a notice of a by-election has not yet been published. Regulation 4 makes transitional provision in respect of previous individual candidate MEPs who stood on behalf of one or more parties at a by-election.

Regulation 5 provides that where, immediately before these Regulations come into force, a requirement to hold a by-election applies under regulation 82(3) of the Principal Regulations applies in relation to a seat vacated by an independent MEP, the by-election is to be held under the Principal Regulations as if these regulations had not come into force.

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