

EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND (ELECTIONS) (AMENDMENT) (NO. 2) ORDER 2015

2015 No. 1939

1. Introduction

- 1.1 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 amends the Representation of the People (Northern Ireland) Regulations 2008 (“the 2008 Regulations”) to allow the entries of electors who were retained on the register for a period of two years following the last canvass in 2013, to remain on the register for one further year. This instrument also makes amendments to the Northern Ireland Assembly (Elections) Order 2001 (“the 2001 Order”) to allow the Returning Officer to correct procedural errors at Assembly elections to ensure consistency with legislation for local, Parliamentary and European Parliamentary elections. Further amendments are made to the 2001 Order following changes to the legislation for Parliamentary elections.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Northern Ireland.

4. Legislative Context

- 4.1 Changes were made to the 2008 Regulations by the Representation of the People (Northern Ireland) (Amendment) Regulations 2013 (S.I. 1846/2013) to permit the Chief Electoral Officer to retain entries on the register for a period of 2 years following the canvass in 2013. Amendments to these provisions are required to extend this for one further year to ensure the electors who have not since confirmed their details remain registered for the Assembly elections in May 2016.
- 4.2 The 2001 Order makes provision for the conduct of elections to the Northern Ireland Assembly. It applies, with modifications as necessary, provisions of, amongst others, the Representation of the People Act 1983 (“the 1983 Act”) and the Representation of the People Act 1985 (“the 1985 Act”).
- 4.3 The Electoral Administration Act 2006 (“the 2006 Act”) amended the 1983 Act to allow Returning Officers to take steps to correct procedural errors at elections so that they are not in breach of official duty. This applied to

Parliamentary elections and equivalent provision was made for local and European elections. Amendments are required to the 2001 Order to apply these provisions of the 1983 Act and 2006 Act to ensure consistency at Assembly elections.

- 4.4 Further minor and technical amendments are also required to the provisions of the 2001 Order that apply the 1983 and 1985 Acts to ensure the legislation works for Assembly elections. Some of these amendments are as a result of changes made to the 1983 Act by the Fixed Term Parliaments Act 2011 and the Electoral Registration and Administration Act 2013.

5. Extent and Territorial Application

- 5.1 These provisions extend to Northern Ireland only.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 The Rt. Hon Theresa Villiers, Secretary of State for Northern Ireland, has made the following statement regarding Human Rights:
- “In my view the provisions of the Northern Ireland (Elections) (Amendment) (No. 2) Order 2015 are compatible with the Convention rights”.

7. Policy background

Registration of electors

- 7.1 In response to recommendations from the Electoral Commission in their 2012 report on the electoral register in Northern Ireland (http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/152626/Continuous-electoral-registration-in-Northern-Ireland.pdf) provision was made for the Chief Electoral Officer to allow the retention of names on the register following the 2013 canvass, to avoid as far as possible the negative effect of a canvass on the number of individuals registered to vote. Northern Ireland introduced individual registration in 2002.
- 7.2 These provisions allowed for some but not all non-respondent entries to be retained. The provisions set out circumstances in which it was likely that entries on the register would be accurate, even if a canvass form had not been returned, and permitted entries to be retained in these situations. All non-respondent entries on the register were checked and validated against data held by Department for Work and Pensions, The Registrar General for Births, Marriages and Deaths and Business Services Organisation records. Only those entries which were verified and where the Chief Electoral Officer had no cause to believe were anything other than valid, were retained and permitted to remain on the register until December 2015
- 7.3 In Great Britain the canvass is annual. Northern Ireland does not have an annual canvass so electors are not required to re-register each year. The Northern Ireland system relies on checking the register against other sources of data to retain its accuracy and only in those cases where a query about the

validity of an entry has been raised would chasing letters be sent to remind individuals to register.

- 7.4 In contrast to Great Britain, Northern Ireland has operated individual electoral registration since 2002. Each of the names on the register has already been verified that they are genuine individuals who exist and are entitled to vote, such as through the checking of National Insurance numbers. Moreover, in Northern Ireland, there has been a lower frequency of engagement than in Great Britain to remind such retained entries to confirm their continued residence. Consequently, the Government believes that this justifies a different approach to that being taken in Great Britain in relation to the (household-registered) entries which are being removed under the Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2015. Stronger checks also exist in Northern Ireland at polling stations and during postal voting to prevent fraudulent activity. In essence, Northern Ireland and Great Britain currently operate very different systems.
- 7.5 The Chief Electoral Officer in a letter to the Secretary of State recommended that those electors on the register who had not since confirmed their registration details should be retained on the register until December 2016. The Electoral Commission also recommended this approach in their report Northern Ireland Electoral Registration Canvass 2013 (http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/166999/Report-on-the-Northern-Ireland-electoral-registration-canvass-2013.pdf). This Order allows these electors to be retained on the register for a further year in advance of the Northern Ireland Assembly elections in May 2016.

Correction of procedural errors

- 7.6 The Law Commission in their review of electoral law (http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp218_electoral_law.pdf) noted that provision to allow the Returning Officer to take steps to correct procedural errors to remedy a breach of official duty was applied to all other elections in Northern Ireland but not Assembly elections. To ensure consistency across all other Northern Ireland elections, this Order will allow the Chief Electoral Officer as Returning Officer to correct procedural errors and remedy any potential breach of official duty at Assembly elections.

Minor amendments

- 7.7 This Order makes various minor amendments relating to Assembly elections. These include ensuring that; where a candidate stands on behalf of two parties, the nominating officers of each party must make the request jointly for any emblem to go on the ballot paper, that proxy provisions work for Assembly elections and that provisions for counting the votes within 4 hours at Parliamentary elections do not apply to Assembly elections.

8. Consultation outcome

- 8.1 The Electoral Commission has been consulted on this draft Order as required by section 7(1) and (2)(e) and (2)(h) of the Political Parties, Elections and Referendums Act 2000 (c. 41). In addition, the Chief Electoral Officer for

Northern Ireland and his office have been consulted. Both the Electoral Commission and the Chief Electoral Officer support these measures.

- 8.2 In addition Department of Justice and the Justice Minister in Northern Ireland have been advised of the incidental impact to the criminal offence of breach of official duty as a result of the changes made to correction of procedural error at Assembly elections.

9. Guidance

- 9.1 There is no guidance accompanying this Order.

10. Impact

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

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Northern Ireland Office will keep the Order under review in consultation with the Electoral Commission, the Chief Electoral Officer for Northern Ireland and other stakeholders.

13. Contact

- 13.1 Katherine Herrick, Senior Elections Policy Officer at the Northern Ireland Office Tel: 020 7210 6483 or email: katherine.herrick@nio.x.gsi.gov.uk can answer any queries regarding the instrument.