EXPLANATORY MEMORANDUM TO

THE ELECTORAL LAW ACT (NORTHERN IRELAND) 1962 (AMENDMENT) ORDER 2010

2010 No. [Draft]

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 This Order amends the way in which vacancies in district council seats in Northern Ireland arising during term are filled. It provides for vacancies to be filled by a replacement nominated by the nominating officer(s) of the party or parties in whose name the vacating member stood when elected. It also provides for members who stood as independents when elected to be replaced using a list of substitutes provided by the member prior to the vacancy arising. The Order also amends the local elections rules to enable candidates at a local election to stand in the name of two or more registered parties (as is the case already at Parliamentary elections).

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

3.1 None.

4. Legislative context

4.1 The Electoral Law Act (Northern Ireland) 1962 ("1962 Act") makes provision for local government elections in Northern Ireland. Section 11 of that Act currently provides for council vacancies arising as a result of the death, resignation or disqualification of a member (referred to in the Act as "casual vacancies") to be filled by "co-option". This requires all the councillors present at the co-option meeting to agree to the proposed replacement. Where no agreement is reached, a by-election is held.

4.2 This Order amends the 1962 Act to amend the process for filling such casual vacancies. In future casual vacancies will be filled by a process of nomination or substitution similar to that now used to fill vacant seats in the Northern Ireland Assembly following changes made by the Northern Ireland Assembly (Elections) (Amendment) Order 2009[1].

4.3 This Order also amends the local elections rules which are contained in Schedule 5 to the 1962 Act, so as to allow candidates at a local election

[1] S.I. 2009/256

to stand in the name of two or more registered parties. This follows changes made to the Political Parties, Elections and Referendums Act 2000 by the Electoral Administration Act 2006, whereby two or more registered parties may now register joint descriptions for use by candidates standing in the names of those parties jointly.

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 Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010 are compatible with the Convention rights.'

7. Policy background

7.1 Local elections in Northern Ireland are held using the single transferable vote form of proportional representation (PR-STV). By-elections to fill vacant seats are undesirable in a PR-STV voting system because they have the potential to distort the careful party balance that would have existed at the time of the election. The 1962 Act therefore provides for casual vacancies to be filled instead by a person who is "co-opted" by all those council members present at the co-option meeting. If the meeting fails to agree on a co-opted member a by-election must be held.

7.2 There are concerns that the current requirement for unanimity sets too high a threshold and allows for individual members to object and force by-elections despite the vast majority of council members agreeing to a co-option. As the number of district councils in Northern Ireland is due to be reduced from 26 to 11, with individual councils consisting of between 40 and 60 members, this may make it even more difficult to secure unanimity to a co-option.

7.3 In October 2009, the NIO launched a consultation entitled *Filling Casual Vacancies on District Councils*, which set out a number of options for reforming the current system of filling vacancies. There was overwhelming support for the early introduction of a system which would allow for vacating councillors who stood in the name of a political party when elected to be replaced by nomination of the nominating officer of that party. If the member was elected as an independent, there was support for that member to be replaced from a list of substitutes submitted by that member to the Chief Electoral Officer at any time prior to the vacancy arising. The Order therefore amends section 11 of the 1962 Act to implement these changes.

7.4 The Order also amends the local elections rules which govern the conduct of local elections in Northern Ireland. The amendments will enable candidates to stand in the name of two or more registered parties at an election and use a description that has been registered jointly by those parties. A casual vacancy arising in the seat of such a councillor will be filled by joint nomination of the nominating officers of both or all of the parties.

7.5 The Order also makes transitional and consequential provision. In particular, transitional provision will enable the Chief Electoral Officer, in respect of any vacancies arising before the next local general election in 2011, to make further enquiries to determine whether the vacating member stood as an independent or on behalf of a party or parties when elected if the statement of persons nominated (prepared for the last election for the seat in question) is no longer available.

8. Consultation outcome

8.1 As noted in 7.3 above, the consultation entitled *Filling Casual Vacancies on District Councils* was launched in October 2009. Twenty responses were received from various organisations, political parties and district councils. All respondents were in favour of a system of replacement by party nomination or substitution. A large number also advocated legislation being brought forward at an early stage because it would assist Members of the Northern Ireland Assembly (MLAs) and MPs who were also councillors to give up their council seats in the knowledge that the seat would not transfer to another party through a by-election. Both the consultation and the Government response can be found on the NIO website at: www.nio.gov.uk/index/public-consultation.htm.

8.2 The Chief Electoral Officer was also consulted during the preparation of the draft Order.

8.3 As well as the consultation referred to in 8.1 above, the Electoral Commission was also consulted prior to this Order being laid in accordance with the requirement to do so under section 7(3) of the Political Parties, Elections and Referendums Act 2000.

9. Guidance

9.1 This Order is 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 this Order will be kept under review and amended as appropriate.

13. Contact

Lee Hegarty, Head of Elections Unit at the Northern Ireland Office Tel: 020 7210 6569 or email: lee.hegarty@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office
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