# 2002 No. 2835

# NORTHERN IRELAND

# The Local Elections (Northern Ireland) (Amendment) Order 2002

*Made - - - - - 20th November 2002*

*Coming into force in accordance with article 2*

At the Court at Buckingham Palace, the 20th day of November 2002

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Electoral Commission has been consulted in accordance with section 7(3) of the Political Parties, Elections and Referendums Act 2000(**a**) about this Order;

And whereas a draft of this Order has been approved by resolution of each House of Parliament;

Now, therefore, Her Majesty, in exercise of the powers conferred by section 84(1) and (3) of the Northern Ireland Act 1998(**b**), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Local Elections (Northern Ireland) (Amendment) Order 2002.

(2) In this Order—

"the 1985 Order" means the Local Elections (Northern Ireland) Order 1985(**c**); and

"the local elections rules" means the rules in Schedule 5 to the Electoral Law Act (Northern Ireland) 1962(**d**).

**Commencement**

**2.**—(1) Subject to paragraph (3) below, this article and articles 1, 3(2), 5(1), (5) and (6), 6, 11(1) and (4) and 13 of this Order shall come into force on the day after the day on which the Order is made.

(2) Subject to paragraph (3) below, the remaining provisions of this Order shall come into force on 1st December 2002.

(3) The coming into force of articles 3(2), 8, 9, 11(2) and (3), 12, 13 and 14 of, and the Schedule to, this Order shall not apply in respect of an election where the last day for the publication of the notice of election is before the day on which the provision in question comes into force.

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(**a**) 2000 c. 41.
(**b**) 1998 c. 47.
(**c**) S.I. 1985/454.
(**d**) 1962 c. 14 (N.I.); Schedule 5 was substituted by Schedule 1 to the 1985 Order.

**Revocations**

**3.**—(1) Article 8 of the Local Elections (Northern Ireland) (Amendment) Order 1990(**a**) (amendment to provision which is replaced by the provisions in the Schedule to this Order) is hereby revoked.

(2) Articles 5 and 6 of the Local Elections (Northern Ireland) (Amendment) Order 1991(**b**) (amendments entitling a person to an absent vote for an indefinite period on grounds of change of qualifying addresses) are hereby revoked.

**Questions about date of birth**

**4.**—(1) Rule 32 (questions to be put to voters) of the local elections rules is amended as follows.

(2) After paragraph (1) there is inserted—

"(1A) In the case of a person applying as an elector, the presiding officer may put the following additional question—

"What is your date of birth?".".

(3) In paragraph (2), after "mentioned" there is inserted "in paragraph (1)".

**Amendments to voting procedure**

**5.**—(1) Rule 34 (voting procedure) of the local elections rules is amended as follows.

(2) In paragraph (3) for "the document" to the end there is substituted—

"(a) the document; or

(b) the apparent age of the voter as compared with his age according to the date supplied as the date of his birth pursuant to section 10(4A(b), 10A(1A)(b) or 13A(2A)(b) of the Representation of the People Act 1983(**c**) (as applied by Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989(**d**)),

raises a reasonable doubt as to whether the voter is the elector or proxy he represents himself to be.".

(3) In paragraph (4) for the words from "Where" to "decides," there is substituted "Where in such a case it is a presiding officer who so decides,".

(4) For paragraph (5) there is substituted—

"(5) Where in such a case it is a clerk who so decides, he shall refer the matter and produce the document to the presiding officer, who shall proceed as if it had been to him that the voter had presented himself and produced the document in the first place.".

(5) In paragraph (6)(f)(**e**), for the words after "under" there is substitued ", or having effect as if made, under section 79 of the Merchant Shipping Act 1995(**f**)".

(6) In paragraph (6)(g)(**g**), after the words "issued by" there is inserted "the Department for Social Development,".

(7) After paragraph (6)(g) there is inserted—

"(h) a Senior SmartPass issued under the Northern Ireland Concessionary Fares Scheme for use from 1st May 2002;".

(8) After paragraph (6)(h) there is inserted—

"(i) a current electoral identity card issued under section 13C of the Representation of the People Act 1983(**h**)".

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(**a**) S.I. 1990/595.
(**b**) S.I. 1991/1715.
(**c**) 1983 c. 2; sections 10, 10A and 13A were substituted by Schedule 1 to the Representation of the People Act 2000 (c. 2) and amended by section 1 of the Electoral Fraud (Northern Ireland) Act 2002 (c. 13).
(**d**) 1989 c. 3; Schedule 1 was amended by paragraph 3 of Schedule 3 to the Representation of the People Act 2000.
(**e**) Paragraph (6)(f) was inserted by paragraph 41(b) of Schedule 1 to S.I. 1987/168.
(**f**) 1995 c. 21.
(**g**) Paragraph (6)(g) was inserted by Article 4(2) of S.I. 1991/1715.
(**h**) Section 13C was inserted by section 4(2) of the Electoral Fraud (Northern Ireland) Act 2002.

**Voting by persons with disabilities**

**6.**—(1) Rule 36 (voting by persons with disabilities)(**a**) of the local election rules is amended as follows.

(2) In paragraph (2), for "If" there is substituted "Subject to paragraph (2A), if".

(3) After paragraph (2) there is inserted—

"(2A) Paragraphs (2) to (7) of rule 34 shall apply in the case of a voter who applies under paragraph (1) as they apply in the case of a voter who applies under rule 34(1), but reading references to delivering a ballot paper as references to granting a voter's application.".

**Tendered ballot papers**

**7.** In rule 37(3) (tendered ballot paper) of the local elections rules after "where" there is inserted—

"(a) under paragraph (3) of rule 32 a ballot paper is not delivered to a person following his unsatisfactory answer to the question in paragraph (1A) of that rule(**b**); or

(b)".

**Validity of declaration of identity**

**8.**—(1) Rule 45 (premliminary proceedings and conduct of the count) of the local elections rules is amended as follows.

(2) In paragraph (2), the words from "it is returned" to the end are to be sub-paragraph (a) of that paragraph, and after "authenticated" there is inserted ", and

(b) in the case of an elector, that declaration of identity states the date of birth of the elector and the returning officer is satisfied that the date corresponds with the date supplied as the date of the elector's birth pursuant to section 10(4A)(b), 10A(1A)(b) or section 13A(2A)(b) of the Representation of the People Act 1983 (as applied by Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989).".

(3) After paragraph (2) there is inserted—

"(2A) In the case of an elector, unless section 10(4B), 10A(1B) or 13A(2B) of the Representation of the People Act 1983 (as applied by Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989) applies, the declaration of identity referred to in paragraph (2) shall be taken not to be duly signed unless the returning officer is satisfied that the signature on the declaration corresponds with the signature supplied as the elector's signature pursuant to section 10(4A)(a), 10A(1A)(a) or 13A(2A)(a) of the Representation of the People Act 1983 (as so applied)".

**Form of declaration of identity**

**9.** In the front of form 5 (form of declaration of identity) in the Appendix to the local elections rules, after "sent" insert "*Except where the voter is a proxy:* My date of birth is. . .".

**Interpretation of the 1985 Order**

**10.** At the end of article 2(2) (interpretation) of the 1985 Order insert:

""the 1983 Act" means the Representation of the People Act 1983;

"the 1989 Act" means the Elected Authorities (Northern Ireland) Act 1989".

**Absent votes for an indefinite period at local election**

**11.**—(1) Paragraph 1 of Part I of Schedule 2 to the 1985 Order(**c**) is amended as follows.

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(**a**) Rule 36 was substituted by article 18 of the Local Elections (Northern Ireland) (Amendment) Order 2001 (S.I. 2001/417).

(**b**) Paragraph (1A) was inserted by article 4(2) of this Order.

(**c**) Part 1 of Schedule 2 was substituted by Schedule 2 to the Local Elections (Northern Ireland) (Amendment) Order 1987. (S.I. 1987/168).

(2) For the word "and" after sub-paragraph (1)(b) there is substituted—

"(ba) the application states the applicant's date of birth and the Chief Electoral Officer is satisfied that the date stated corresponds with the date supplied as the date of the applicant's birth pursuant to section 10(4A)(b), 10A(1A)(b) or 13A(2A)(b) of the 1983 Act (as applied by Schedule 1 to the 1989 Act);

(bb) the application is signed and (unless section 10(4B), 10A(1B) or 13A(2B) of the 1983 Act, as applied by Schedule 1 to the 1989 Act, applies) the Chief Electoral Officer is satisfied that the signature on the application corresponds with the signature supplied as the applicant's signature pursuant to section 10(4A)(a), 10A(1A)(a) or 13A(2A)(a) of the 1983 Act (as so applied);

(bc) the application either states the applicant's national insurance number or states that he does not have one and the Chief Electoral Officer is satisfied as mentioned in sub-paragraph (1A), and".

(3) After sub-paragraph (1) there is inserted—

"(1A) For the purposes of sub-paragraph (1)(bc), the Chief Electoral Officer must be satisfied—

(a) if the application states a national insurance number, that the requirements of sub-paragraph (1B) are met, or

(b) if the application states that the applicant does not have a national insurance number, that no such number was supplied as his national insurance number pursuant to section 10(4A)(c)(i), 10A(1A)(c)(i) or 13A(2A)(c)(i) of the 1983 Act (as applied by Schedule 1 to the 1989 Act).

(1B) The requirements of this sub-paragraph are met if—

(a) the number stated as mentioned in sub-paragraph (1A)(a) is the same as the one supplied as the applicant's national insurance number pursuant to section 10(4A)(c)(i), 10A(1A)(c)(i) or 13A(2A)(c)(i) of the 1983 Act (as applied by Schedule 1 to the 1989 Act), or

(b) no national insurance number was supplied under any of those provisions, but the Chief Electoral Officer is not aware of any reason to doubt the authenticity of the application.".

(4) Omit sub-paragraph (2)(aa)(**a**).

**Absent votes for a particular local election**

**12.**—(1) Paragraph 2 of Part I of Schedule 2 to the 1985 Order is amended as follows.

(2) For the word "and" after sub-paragraph (1)(b) there is substituted—

"(ba) the application states the applicant's date of birth and the Chief Electoral Officer is satisfied that the date stated corresponds with the date supplied as the date of the applicant's birth pursuant to section 10(4A)(b), 10A(1A)(b) or 13A(2A)(b) of the 1983 Act (as applied by Schedule 1 to the 1989 Act);

(bb) the application is signed and (unless section 10(4B), 10A(1B) or 13A(2B) of the 1983 Act, as applied by Schedule 1 to the 1989 Act, applies) the Chief Electoral Officer is satisfied that the signature on the application corresponds with the signature supplied as the applicant's signature pursuant to section 10(4A)(a), 10A(1A)(a) or 13A(2A)(a) of the 1983 Act (as so applied).

(bc) the application either states the applicant's national insurance number or states that he does not have one and the Chief Electoral Officer is satisfied as mentioned in sub-paragraph (1A), and".

(3) After sub-paragraph (1) there is inserted—

"(1A) Sub-paragraphs (1A) and (1B) of paragrah 1 shall apply for the purposes of sub-paragraph (1)(bc) of this paragraph as they apply for the purposes of sub-paragraph (1)(bc) of that paragraph.".

**Applicants no longer resident at qualifying address**

**13.** Paragraph 5A of Part I of Schedule 2 to the 1985 Order(**b**) is omitted.

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(**a**) Paragraph 1(2)(aa) was inserted by article 5 of S.I. 1991/1715.
(**b**) Paragraph 5A was inserted by article 6 of S.I. 1991/1715.

**Procedure of receipt of postal ballot papers**

**14.**—(1) For paragraphs 13 to 17 of Part III of Schedule 2 to the 1985 Order(**a**) there is substituted the paragraphs set out in the Schedule to this Order.

(2) In paragraph 19(1) of Part III of that Schedule for "16 or 17" there is substituted "and 17C".

*A. K. Galloway*
Clerk of the Privy Council

(**a**) Paragraph 15(3) was amended by article 8 of S.I. 1990/595.

## SCHEDULE

Article 14(1)

### PARAGRAPHS SUBSTITUTED FOR PARAGRAPHS 13 TO 17 OF PART III OF SCHEDULE 2 TO THE 1985 ORDER

For paragraphs 13 to 17 of Part III of Schedule 2 to the 1985 Order, there is substituted—

*"Receipt of Postal Ballot Papers*

**Notice of opening of postal ballot paper envelopes**

**13.**—(1) The returning officer shall give to each candidate not less than 48 hours' notice in writing of each occasion on which a postal voters' ballot box and the envelopes contained in it is to be opened.

(2) Such a notice shall specify—

(a) the time and place at which such an opening is to take place, and

(b) the number of agents a candidate may appoint under paragraph 3(2) to attend each opening.

**Postal ballot boxes and receptacles**

**14.**—(1) The returning officer shall provide a separate ballot box for the reception of—

(a) the covering envelopes when returned by the postal voters ("postal voters' ballot box"), and

(b) postal ballot papers ("postal ballot box").

(2) Each such ballot box shall be marked "postal voters' ballot box" or "postal ballot box", as the case may be, and with the name of the district electoral area for which the election is held.

(3) The postal ballot box shall be shown to the agents present on the occasion of opening the first postal voters' ballot box as being empty.

(4) The returning officer shall then lock the ballot box and apply his seal in such manner as to prevent its being opened without breaking the seal; any of the agents present who wish to add their seals may then do likewise.

(5) The returning officer shall provide the following receptacles—

(a) the receptacle for rejected votes;

(b) the receptacle for declarations of identity; and

(c) the receptacle for ballot paper envelopes.

(6) The returning officer shall take proper precautions for the safe custody of every ballot box and receptacle referred to in this paragraph.

**Receipt of covering envelope**

**15.** The returning officer shall, immediately on receipt (whether by hand or by post) of a covering envelope before the close of the poll, place it unopened in a postal voters' ballot box.

**Opening of postal voters' ballot box**

**16.**—(1) Each postal voters' ballot box shall be opened by the returning officer in the presence of the agents.

(2) So long as the returning officer ensures that there is at least one sealed postal voters' ballot box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters' ballot boxes may previously be opened by him.

(3) The last postal ballot voters' ballot box and the postal ballot box shall be opened at the proceedings under rule 45 of the elections rules.

**Opening of covering envelopes**

**17.**—(1) When a postal voters' ballot box is opened, the returning officer shall count and record the number of covering envelopes, and shall then open each covering envelope separately.

(2) The procedure in paragraph 17A applies where a covering envelope contains both—

(a) a declaration of identity; and

(b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper.

(3) Where the covering envelope does not contain the declaration of identity separately, the returning officer shall open the ballot paper envelope to ascertain whether the declaration is inside.

(4) Where a covering envelope does not contain both—

(a) a declaration of identity (whether separately or not), and

(b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper,

the returning officer shall mark the covering envelope "rejected", attach its contents (if any) and place it in the receptacle for rejected votes.

**Procedure in relation to declarations of identity**

**17A.**—(1) A declaration of identity is a valid declaration of identity for the purposes of this Part if—

(a) it is duly signed by the voter and authenticated by a witness who has signed the declaration and given his name and address, and

(b) in the case of an elector, the requirements of rule 45(2)(b) and (2A) of the elections rules(**a**) are satisifed.

(2) The returning officer must satisfy himself that the declaration of identity is a valid declaration of identity.

(3) Where the returning officer is not so satisfied, he shall mark the declaration "rejected", attach it to the ballot paper envelope, or if there is no such envelope, the ballot paper and, subject to paragraph (4), place it in the receptacle for rejected votes.

(4) Before placing the declaration in the receptacle, for rejected votes, the returning officer shall show it to the agents and, if any of them object to his decision, he shall add the words "rejection objected to".

(5) The returning officer shall then examine the number on the declaration of identity against the number on the ballot paper envelope and, where they are the same, he shall place the declaration and the ballot paper envelope respectively in the receptacle for declarations of identity and the receptacle for ballot paper envelopes.

(6) Where—

(a) the number on a valid declaration of identity is not the same as the number on the ballot paper envelope, or

(b) that envelope has no number on it,

the returning officer shall open the envelope.

(7) Paragraph 8 applies here—

(a) there is a valid declaration of identity but no ballot paper envelope, or

(b) the ballot paper envelope has been opened under paragraph 17(3) or sub-paragraph (6).

(8) In the circumstances described in sub-paragraph (7), the returning officer shall place—

(a) in the postal ballot box any ballot paper the number on which is the same as the number on the valid declaration of identity;

(b) in the receptacle for rejected votes any other ballot paper, with the valid declaration of identity attached and marked "rejected";

(c) in the receptacle for rejected votes any valid declaration of identity marked "rejected" where there is no ballot paper;

(d) in the receptacle for declarations of identity, any valid declaration not disposed of under paragraph (b) or (c).

**Opening of ballot paper envelopes**

**17B**—(1) The returning officer shall open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

(2) He shall place—

(a) in the postal box, any ballot paper the number on which is the same as the number on the ballot paper envelope;

(b) in the receptacle for rejected votes, any other ballot paper which shall be marked "rejected" and to which shall be attached the ballot paper envelope; and

(c) in the receptacle for rejected votes any ballot paper envelope which shall be marked "rejected" because it does not contain a ballot paper.

**Sealing of receptacles**

**17C.** As soon as possible after the completion of the procedure under paragraph 17B, the returning officer shall make up into separate packets the contents of—

(a) the receptacle of rejected votes, and

(b) the receptacle of declarations of identity,

and shall seal up the packets.".

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(**a**) Paragraph (2)(b) and (2A) of rule 45 were inserted by article 8 of this Order.

## EXPLANATORY NOTE

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

This Order makes amendments to the provisions relating to local elections in Northern Ireland corresponding to the amendments made in respect of parliamentary elections by the Electoral Fraud (Northern Ireland) Act 2002 ("the 2002 Act").

Articles 4 and 5 amend the local elections rules in Schedule 5 to the Electoral Law Act (Northern Ireland) 1962, as substituted by Schedule 1 to the Local Elections (Northern Ireland) Order 1985 ("the 1985 Order"), to allow the staff at polling stations to ask the date of birth of an elector and to check against the date provided on registration (as a result of amendments made by section 1 of the 2002 Act). Where an unsatisfactory answer results in a refusal to deliver a ballot paper, the voter can mark a tendered ballot paper by virtue of the amendments made by article 7.

Article 5(8) adds the electoral identity card, for which section 4 of the 2002 Act provides, to the list of specified documents which may be presented at a polling station in order to receive a ballot paper. Article 5(7) adds the travel card specified in the amendment made by that provision to that list and paragraphs (5) and (6) of article 5 make amendments to the description of documents in the list. As a result of the amendments made by articles 8 and 9, the returning officer will check declarations of identity which are made by those postal voters who are electors to see whether their signatures and dates of birth are the same as those provided on registration. The amendments made by article 14(1) of, and the Schedule to, this Order also reflect these changes, as well as bringing the provisions about the procedure on the receipt of postal ballot papers at local elections into line with that at parliamentary elections.

As a result of amendments made by articles 11 and 12, applications for an absent vote will need to give the applicants' signature, date of birth and national insurance number (subject to limited exceptions). The Chief Electoral Officer needs to be satisfied that these are the same as the one provided on registration if he is to grant the application for an absent vote.

Article 11(4) and 13 remove the entitlement to an absent vote on a change in a person's qualifying address. This entitlement is no longer needed following changes made by the Representation of the People Act 2000 (c. 2) by which the entitlement to be registered as an elector does not depend on residence on a particular day each year. Article 3(2) revokes the provisions providing this entitlement.

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