



Parliament (Representation) Act 2003, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

### **Citation, commencement, extent, application and interpretation**

**1.**—(1) These Regulations may be cited as the European Parliamentary Elections (Amendment) Regulations 2018.

(2) These Regulations come into force on the day after the day on which they are made.

(3) These Regulations extend to England and Wales, Scotland and Gibraltar.

(4) These Regulations have effect in relation to—

(a) seats that are vacant at the time that these Regulations come into force but in respect of which a notice of by-election has not been published by that time; and

(b) seats that become vacant on or after the day on which these Regulations come into force.

(5) In these Regulations, “the Principal Regulations” means the European Parliamentary Elections Regulations 2004<sup>(a)</sup>.

### **Amendment of the Principal Regulations**

**2.**—(1) The Principal Regulations are amended as follows.

(2) In regulation 28(1) (offences in connection with candidature)<sup>(b)</sup>, after “required by” insert “regulation 85A(3) or”.

(3) Before regulation 82 (initial response to vacancies) but within Part 3 (vacancies) insert—

#### **“Interpretation of Part 3 and computation of time**

**81A.**—(1) In this Part of these Regulations—

“candidate” is to be construed in accordance with regulation 31(2);

“notice of substitutes” has the meaning given in regulation 83D(2);

“statement of parties and individual candidates nominated”, in relation to an election or by-election, means the statement published under rule 15 of the European Parliamentary elections rules.

(2) For the purposes of this Part an MEP (“M”)—

(a) was elected to the seat for a registered party at a general election of MEPs if M filled the seat from a registered party’s list at the most recent general election of MEPs and was declared to be elected at that election under Part 4 of the European Parliamentary Elections Rules;

(b) was returned in the seat from a registered party’s list if M was returned in the seat under regulation 83;

(c) stood as an independent candidate when elected if the statement of parties and individual candidates nominated showed no description in respect of M or, if it did use a description in respect of M, used the word “Independent”;

(d) was returned in the seat as a substitute if M was returned as an MEP in the seat under regulation 83E(6) (vacant seat filled from notice of substitutes);

(e) stood on behalf of a registered party when elected at a by-election if the statement of parties and individual candidates nominated showed M as standing on behalf of a registered party;

(f) stood on behalf of two or more registered parties when elected at a by-election if the statement of parties and individual candidates nominated showed a description

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(a) S.I. 2004/293.

(b) Relevant amending instrument is S.I. 2013/2876.

which complies with rule 5(4) of the European Parliamentary elections rules in respect of M;

- (g) was nominated to the seat if M was returned as an MEP in the seat for a registered party by nomination under regulation 83A(5) (vacant seat filled by nomination);
- (h) was jointly nominated to the seat if M was returned as an MEP in the seat on behalf of two or more registered parties by joint nomination under regulation 83B(5) (vacant seat filled by joint nomination).

(3) Regulation 32 (computation of time) applies to this Part as it applies to Part 2.

(4) The period of the next general election of MEPs is that during which the next general election would take place in accordance with the Act annexed to Council Decision 76/787.”

(4) In regulation 82 (initial response to vacancies)—

- (a) in paragraph (1), for “paragraphs (2) and” substitute “paragraph”;
- (b) omit paragraphs (2) and (3);
- (c) for paragraph (4) substitute—

“(4) The notice referred to in paragraph (1) must—

- (a) state that a vacancy exists;
- (b) set out the name of the previous MEP; and
- (c) state that the previous MEP—
  - (i) was elected to the seat for a registered party at a general election of MEPs and set out the name of the registered party;
  - (ii) was returned in the seat from a registered party’s list and set out the name of the registered party;
  - (iii) stood on behalf of a registered party when elected to the seat at a by-election and set out the name of the registered party;
  - (iv) stood on behalf of two or more registered parties when elected to the seat at a by-election and set out the names of the registered parties;
  - (v) was nominated to the seat by a registered party and set out the name of the registered party;
  - (vi) was jointly nominated to the seat by two or more registered parties and set out the names of the registered parties;
  - (vii) stood as an independent candidate when elected to the seat; or
  - (viii) was returned in the seat as a substitute.”;

(d) omit paragraph (6).

(5) In regulation 83 (filling of vacancies from a registered party’s list)—

(a) before paragraph (1) insert—

“(A1) This regulation applies where—

- (a) a returning officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 82(4); and
- (b) the previous MEP—
  - (i) was elected to the seat for a registered party at a general election of MEPs; or
  - (ii) was returned in the seat from a registered party’s list.”;

(b) in paragraph (1), for “a notice under regulation 82(4)” substitute “the notice”;

(c) in paragraph (4), at the end insert “(for cases where the returning officer is unable to fill the seat under this regulation, see regulation 83A (filling vacant seat by nomination))”;

(d) omit paragraph (8).

(6) For regulation 84 substitute—

**“MEP stood for registered party: filling vacant seat by nomination**

**83A.**—(1) This regulation applies where—

- (a) a returning officer is unable to fill a vacancy in the seat of an MEP from a registered party’s list under regulation 83; or
- (b) a returning officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 82(4) and the previous MEP—
  - (i) stood on behalf of a registered party when elected to the seat at a by-election; or
  - (ii) was nominated to the seat by a registered party.

(2) As soon as practicable after the circumstances described in paragraph (1)(a) or (b) occur, the returning officer must ask the nominating officer of the registered party to nominate a person to fill the vacant seat and be returned as an MEP for the registered party.

(3) A nomination made in response to the request in paragraph (2) (“the nomination”) must—

- (a) be in writing;
- (b) be made within 28 days beginning with the date of the returning officer’s request;
- (c) specify a person (“P”) who is not disqualified for the office of MEP to fill the vacant seat; and
- (d) be signed by the nominating officer of the registered party.

(4) The nomination must be accompanied by a declaration that—

- (a) states P’s name and date of birth;
- (b) gives P’s consent to being returned as an MEP in the name of the registered party;
- (c) confirms that P is aware of the provisions of section 10 of the 2002 Act (disqualification as an MEP);
- (d) declares that, to the best of P’s knowledge and belief, P is not disqualified for the office of MEP; and
- (e) is signed and dated by P.

(5) If the nominating officer nominates a person in accordance with this regulation, the returning officer must without delay—

- (a) declare in writing that P is to be returned as an MEP;
- (b) give public notice of the declaration; and
- (c) send a copy of the declaration to the Secretary of State.

(6) Where this regulation applies by virtue of paragraph (1)(a), the declaration under paragraph (5)(a) must state that it was not possible to fill the vacancy under regulation 83 (filling vacancy from a registered party’s list) and that instead the registered party has nominated P as an MEP.

(7) If the returning officer is unable to fill the seat under this regulation, the returning officer must notify the Secretary of State of that fact (and see regulation 84 (by-elections)).

(8) This regulation is subject to regulation 85A (relevant citizens of the Union).

**MEP stood for two or more registered parties: filling vacant seat by nomination**

**83B.**—(1) This regulation applies where—

- (a) a returning officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 82(4); and
- (b) the previous MEP—
  - (i) stood on behalf of two or more registered parties when elected to the seat at a by-election; or

(ii) was jointly nominated to the seat by two or more registered parties.

(2) As soon as practicable after receiving notice of the vacancy, the returning officer must ask the nominating officer of each registered party to jointly nominate a person to fill the vacant seat and be returned as an MEP on behalf of the registered parties.

(3) A joint nomination made in response to the request in paragraph (2) (“the joint nomination”) must—

- (a) be in writing;
- (b) be made within 28 days beginning with the date of the returning officer’s request;
- (c) specify a person (“P”) who is not disqualified for the office of MEP to fill the vacant seat; and
- (d) be signed by the nominating officer of each of the registered parties.

(4) The joint nomination must be accompanied by a declaration that—

- (a) states P’s name and date of birth;
- (b) gives P’s consent to being returned as an MEP in the name of both registered parties;
- (c) confirms that P is aware of the provisions of section 10 of the 2002 Act (disqualification as an MEP);
- (d) declares that, to the best of P’s knowledge and belief, P is not disqualified for the office of MEP; and
- (e) is signed and dated by P.

(5) If the nominating officers nominate a person in accordance with this regulation, the returning officer must without delay—

- (a) declare in writing that P is to be returned as an MEP;
- (b) give public notice of the declaration; and
- (c) send a copy of the declaration to the Secretary of State.

(6) If the returning officer is unable to fill the seat under this regulation, the returning officer must notify the Secretary of State of that fact (and see regulation 84 (by-elections)).

(7) This regulation is subject to regulation 85A (relevant citizens of the Union).

### **Party no longer registered**

**83C.**—(1) This regulation applies where—

- (a) a returning officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 82(4);
- (b) the previous MEP—
  - (i) was elected to the seat for a registered party at a general election of MEPs;
  - (ii) was returned in the seat from a registered party’s list;
  - (iii) stood on behalf of a registered party when elected to the seat at a by-election;
  - (iv) stood on behalf of two or more registered parties when elected to the seat at a by-election;
  - (v) was nominated to the seat by a registered party; or
  - (vi) was jointly nominated to the seat by two or more registered parties; and
- (c) on the day that the returning officer receives the notice of vacancy, the party or, if the MEP stood on behalf of two or more parties when elected to the seat, or was nominated to the seat by two or more parties, at least one of those parties, is no longer a registered party.

(2) Where this regulation applies, the returning officer must notify the Secretary of State of that fact (and see regulation 84 (by-elections)).

### **Independent candidate MEP: notice of substitutes**

**83D.**—(1) An MEP who stood as an independent candidate when elected or who was returned in the seat as a substitute may give a notice of substitutes to the returning officer for the electoral region for which the MEP was elected.

(2) A “notice of substitutes” is a written notice which—

- (a) sets out the names, addresses and dates of birth of not more than six persons who may fill a vacancy in the MEP’s seat;
- (b) where more than one person is named on the notice, lists the persons in the order in which the MEP prefers them to be contacted under regulation 83E;
- (c) is signed by all persons named in the notice, indicating their consent to be contacted in accordance with regulation 83E; and
- (d) is signed and dated by the MEP.

(3) Where an MEP has given more than one notice of substitutes, the latest notice supersedes any earlier notice.

### **Independent MEP: filling vacant seat, notice of substitutes**

**83E.**—(1) This regulation applies where—

- (a) a returning officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 82(4);
- (b) the previous MEP stood as an independent candidate when elected to the seat or was returned in the seat as a substitute; and
- (c) the previous MEP has given the returning officer a notice of substitutes.

(2) As soon as is practicable after receiving the notice of vacancy, the returning officer must take such steps as appear to him or her to be reasonable to contact the person (“P”) whose name appears highest on the notice of substitutes in accordance with paragraph (3).

(3) The returning officer must—

- (a) request that P responds in writing within 14 days beginning with the date of the returning officer’s request indicating whether P is prepared to fill the vacant seat; and
- (b) inform P that, if P wishes to fill the vacant seat, his or her response must comply with paragraph (4).

(4) If P is prepared to fill the vacant seat, P’s response to the request referred to in paragraph (3) must—

- (a) confirm that P is prepared to fill the vacant seat;
- (b) state P’s date of birth;
- (c) confirm that P is aware of the provisions of section 10 of the 2002 Act (disqualification as an MEP);
- (d) be accompanied by a declaration that, to the best of P’s knowledge and belief, P is not disqualified for the office of MEP; and
- (e) be signed and dated by P.

(5) If—

- (a) the returning officer has taken reasonable steps to contact a person named in the notice of substitutes, but has been unable to do so; or
- (b) a person contacted by the returning officer under paragraph (2) fails to respond in accordance with paragraph (4),

the returning officer must repeat the procedure in paragraph (2) in relation to every other person listed on the notice of substitutes in the order in which their names are listed, until the vacant seat is filled or the names listed are exhausted.

(6) If a person prepared to fill the vacant seat responds to the returning officer in accordance with paragraph (4), the returning officer must without delay—

- (a) declare that person to be returned as an MEP; and
- (b) notify the person's name to the Secretary of State.

(7) If the returning officer is unable to fill the vacant seat under this regulation, he or she must notify the Secretary of the State of that fact (and see regulation 84 (by-elections)).

(8) This regulation is subject to regulation 85A (relevant citizens of the Union).

#### **Independent MEP: vacant seat, no notice of substitutes**

**83F.** Where—

- (a) a returning officer receives notice of a vacancy in the seat of an MEP from the Secretary of State under regulation 82(4);
- (b) the previous MEP stood as an independent candidate when elected to the seat or was returned in the seat as a substitute; and
- (c) the previous MEP has not given the returning officer a notice of substitutes,

the returning officer must notify the Secretary of State of that fact (and see regulation 84 (by-elections)).

#### **By-elections to fill vacant seats**

**84.**—(1) A by-election must be held to fill a vacant seat where the Secretary of State has received a notice from a returning officer under—

- (a) regulation 83A(7) (failure to fill vacant seat by party nomination);
- (b) regulation 83B(6) (failure to fill seat by joint nomination by two or more registered parties);
- (c) regulation 83C(2) (party no longer registered);
- (d) regulation 83E(7) (failure to fill vacant seat using notice of substitutes);
- (e) regulation 83F (vacant seat of individual MEP but no notice of substitutes); or
- (f) 85A(8) (nominated citizen of the Union deprived of the right to stand as a candidate through a relevant disqualifying decision in a Member State).

(2) The poll at a by-election under paragraph (1) must take place within six months beginning with the date on which the notification referred to in that paragraph is received by the Secretary of State.”.

(7) In regulation 85 (when a by-election is not needed)—

- (a) in paragraph (1), omit “(within the meaning of regulation 82(6))”; and
- (b) in paragraph (2), for “regulations 82(3) and” substitute “regulation”.

(8) After regulation 85 but within Part 3 insert—

#### **“Relevant citizens of the Union**

**85A.**—(1) This regulation applies where a person (“P”) —

- (a) in respect of a vacant seat, is nominated under regulation 83A (nomination by registered party) or regulation 83B (joint nomination by two or more registered parties), or contacted under regulation 83E (filling vacant seat by notice of substitutes);
- (b) is prepared to fill the vacant seat; and
- (c) is a relevant citizen of the Union.

(2) The declaration required under regulation 83A(4), 83B(4) or the response required under regulation 83E(4) must be accompanied by a declaration under paragraph (3).

- (3) The declaration must be made by P and must state—
- (a) P’s name;
  - (b) P’s date and place of birth;
  - (c) P’s nationality;
  - (d) P’s last address in the Member State of which P is a national and his or her home address in the United Kingdom or Gibraltar;
  - (e) that P is not standing as a candidate for election to the European Parliament in any other Member State;
  - (f) where P’s name has been entered on an electoral roll in a locality or constituency in the Member State of which P is a national, the name of the locality or constituency where, so far as P knows, P’s name was last entered; and
  - (g) that P has not been deprived of the right to stand as a candidate through a relevant disqualifying decision in the Member State of which P is a national.
- (4) Where a returning officer receives a declaration made under paragraph (3)—
- (a) the returning officer must send a copy to the Secretary of State as soon as practicable after the declaration is received; and
  - (b) regulation 83A(5), 83B(5) or, as the case may be, 83E(6) apply as if for “without delay” there were substituted “as soon as practicable after the expiry of the relevant period in regulation 85A”.
- (5) Where the Secretary of State receives, under paragraph (4)(a), a copy of a declaration made under paragraph (3), the Secretary of State must as soon as practicable send a notice to the designated contact point in the Member State of which P is a national.
- (6) A notice under paragraph (5)—
- (a) must notify the Member State of the declaration made by P under paragraph (3);
  - (b) must ask whether P has been deprived of the right to stand as a candidate through a relevant disqualifying decision in that Member State;
  - (c) may request a response by a specified date.
- (7) The Secretary of State must send the returning officer a copy of any response to the notice as soon as practicable after the response is received.
- (8) If, during the relevant period, the returning officer receives information under paragraph (7) that P has been deprived of the right to stand as a candidate through a relevant disqualifying decision in the Member State of which P is a national—
- (a) regulation 83A(5), 83B(5) or, as the case may be, regulation 83E(6) does not apply; and
  - (b) the returning officer must notify the Secretary of State that this is the case (and see regulation 84 (by-elections)).
- (9) In this regulation—
- “electoral roll” and “locality or constituency” have the same meaning as they have in Council Directive 93/109/EC(a), and “designated contact point” means a contact point designated by a Member State in accordance with Article 6(5) of that Directive;
- “relevant period” means the period of six days calculated in accordance with rule 2 of Schedule 1 and beginning with the day that P’s declaration was sent to the Secretary of State under paragraph (4)(a).”.

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(a) O.J. L 329 30.12.1993 page 34; the Directive was amended by Council Directive 2013/1/EU, O.J. L 026 26.01.2013 page 27.

### **Transitional provision: notice under regulation 83(8) of the Principal Regulations**

- 3.—(1) Paragraph (2) applies in relation to a vacancy in the seat of an MEP if—
- (a) the vacancy arose before the date on which these Regulations came into force; and
  - (b) before that date, the Secretary of State received a notice in relation to the vacancy under regulation 83(8) of the Principal Regulations from the returning officer (notice that returning officer is unable to fill a vacant seat from a party's list).
- (2) Regulation 83A of the Principal Regulations (filling vacant seat by nomination) applies to the vacancy as if—
- (a) paragraph (1) were omitted;
  - (b) for paragraph (2) there were substituted—
    - “(2) As soon as practicable after this regulation comes into force, the returning officer must ask the nominating officer of the registered party to nominate a person to fill the vacant seat and be returned as an MEP in the name of the registered party.”; and
  - (c) in paragraph (6), the words “Where this regulation applies by virtue of paragraph (1)(a)” were omitted.

### **Transitional provision: cases where previous MEP elected on behalf of one or more registered parties at a by-election**

- 4.—(1) Paragraph (2) applies in relation to a vacancy in the seat of an MEP if—
- (a) the vacancy arose before the date on which these Regulations came into force;
  - (b) before that date the vacancy was one in respect of which the requirement to send a notice to the returning officer under regulation 82(1) did not apply (as a result of regulation 82(2) of the Principal Regulations); and
  - (c) the previous MEP was elected at a by-election at which he or she stood on behalf of one or more registered parties.
- (2) As soon as practicable after these Regulations come into force, the Secretary of State must send a notice which satisfies the requirements of paragraph 82(4) of the Principal Regulations to the returning officer for the electoral region in which the vacancy exists.
- (3) A notice sent under paragraph (2) is to be treated for the purposes of the Principal Regulations as if it were sent under paragraph 82(1) of the Principal Regulations.

### **Savings provision where a seat is vacated by an independent candidate prior to these Regulations coming into force**

- 5.—(1) Paragraph (2) applies in relation to a vacancy in the seat of an MEP if—
- (a) immediately before these Regulations come into force, the requirement to hold a by-election under regulation 82(3) of the Principal Regulations applies (requirement to hold a by-election where a seat was vacated by an individual candidate); and
  - (b) the previous MEP did not stand on behalf of one or more parties when elected to the seat.
- (2) Regulation 82(3) continues to apply and the by-election is to be held in accordance with the Principal Regulations as if these Regulations had not come into force.

Date

*Name*  
Minister for the Constitution  
Cabinet Office

### **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.

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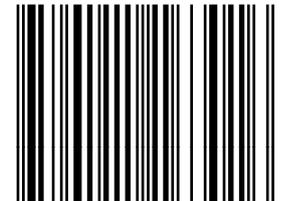
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