

ELECTORAL FRAUD (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Electoral Fraud (Northern Ireland) Act 2002 which received Royal Assent on 1 May 2002. They have been provided by the Northern Ireland Office to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The purpose of the Act is to provide the Chief Electoral Officer for Northern Ireland with additional functions to address the problem of electoral fraud there. The Act gives effect to many of the proposals in the White Paper, *Combating Electoral Fraud in Northern Ireland (Cm. 5080)*, which was published in March 2001. The Act makes changes to the law in Northern Ireland only.
4. The identification of voters at the polling station in Northern Ireland is already more controlled than elsewhere in the UK. Every voter must present one of a number of specified identity documents at the polling station before he is given a ballot paper. This safeguard was introduced by the Elections (Northern Ireland) Act 1985 to prevent personation. The White Paper (paragraph 38) reported concern at the ease with which identity documents could be falsified. Amongst the specified documents which may currently be presented, only the passport and the Northern Ireland driving licence contain any photographic identity of the holder (although the new photographic Senior SmartPass issued under the Northern Ireland Concessionary Fares scheme for use from 1 May 2002 will shortly be added to the list of specified documents). The remaining non-photographic identity documents are regarded as providing insufficient proof of identity.
5. Once a voter has identified himself, the presiding officer must issue a ballot paper. If a candidate, or his election or polling agent believes that the voter is not who he claims to be, he may require the presiding officer to ask the two statutory questions – “are you *x*?” and “have you already voted in this election (other than as a proxy)?” If the voter answers to the satisfaction of the presiding officer the ballot paper must be presented.
6. Since the commencement of the Elections (Northern Ireland) Act 1985, and before the coming into force of the Representation of the People Act 2000 in February 2001, the law required that a presiding officer in Northern Ireland should not grant a blind voter’s application to voter with the assistance of another person unless the voter had produced a specified document to identify himself. Amendments made by section 13 of the Representation of the People Act 2000 widened the scope of the law in question to cover other physical disability and an inability to read. These amendments came into

force in Northern Ireland, but without the provision for specified documents. Section 5 re-introduces that provision and restores the position in Northern Ireland to what it previously was.

THE ACT

7. In particular the Act requires a canvass form and an application for voter registration to be signed by, and to include the date of birth and national insurance number (or a statement that he does not have a national insurance number) of, each of the persons to whom the form or application relates.
8. The photographic electoral-ID card provided for by the Act is added to the list of specified documents. It is proposed to replace all non-photographic ID on the list of specified documents before the scheduled Northern Ireland Assembly Election on 1 May 2003 (though the Act makes no provision to this effect). Thereafter the electoral-ID card, the passport, the driving licence and the Senior SmartPass will be the only ID acceptable at the polling station. No one will be disenfranchised until they have had every reasonable opportunity to acquire photographic ID.
9. The Act also enables the presiding officer to ask a voter (who is not a proxy) an additional statutory question – “what is your date of birth?” at the polling station. He can then check the answer given against the date of birth on the specified document and the information provided by the elector at the time of registration. This will facilitate identification of the voter.

COMMENTARY ON SECTIONS

Section 1: Registration: provision of signature, date of birth and other information

10. This section enables the Chief Electoral Officer for Northern Ireland to collect additional identifying information from registered electors. This additional personal data will not appear on the electoral register (apart from the date of birth of those who will become 18 in the coming year, as at present), but the information will be used in the electoral office and at polling stations for the purposes of making checks against the name of an elector when they apply for a postal vote or to vote by proxy, or attend at the polling station to obtain a ballot paper. The Chief Electoral Officer for Northern Ireland may dispense with the requirement for an elector to supply a signature in certain circumstances.
11. *Subsection (2)* amends section 10 of the Representation of the People Act 1983. It inserts two new subsections, (4A) and (4B), into section 10 which deals with the annual canvass of electors. In the case of the registration of parliamentary electors in Northern Ireland, subsection (4A) requires that an elector provides his signature, date of birth and national insurance number (or makes a statement that he does not have one). It also requires an elector to make a statement that he has been resident in Northern Ireland for the requisite three-month period before 15 October in the year in question and to state any other address in the UK in respect of which he is, or has applied to be, registered. Section 10 (4B) permits the Chief Electoral Officer for Northern Ireland to dispense with the requirement of signing for persons who cannot produce a consistent and distinctive signature due to incapacity or illiteracy. The reference to producing a consistent and distinctive signature is such because the signature is being obtained not just to authenticate the elector’s agreement to the inclusion of his details in the canvass form, but also as a unique identifying characteristic of himself. The power which the Secretary of State has to make regulations (having regard to the definition of “prescribed” in section 202(1) of the 1983 Act) to prescribe requirements is extended to give effect to these additional requirements.
12. Where this section amends the Representation of the People Act 1983 which (as respects Northern Ireland) applies only to the registration of parliamentary electors, the amendments carry through to the registration of local electors in Northern Ireland.

This is because Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989 (as amended by Schedule 3 to the Representation of the People Act 2000) applied the relevant provisions in the 1983 Act for the purposes of the registration of local electors.

13. *Subsection (3)(a)* inserts new subsections (1A) and (1B) into section 10A of the Representation of the People Act 1983. Section 10A concerns registration officers' duties in registering electors. The subsections (1A) and (1B) to be inserted add to the requirements relating to the authentication of applications for registration and identification of electors for electoral purposes. As with the provisions for returning the annual canvass form, the first of the inserted subsections (section 10A (1A)) requires a signature, date of birth, national insurance number (or a statement that the elector does not have one), confirmation of residency in Northern Ireland for the requisite three-month period before the date of application and details of any other address in the UK in respect of which the applicant is, or has applied to be registered. The second insertion (section 10A (1B)) permits the Chief Electoral Officer to dispense with the requirement for a signature in cases of incapacity or illiteracy. The power which the Secretary of State has to make regulations (having regard to the definition of "prescribed" in section 202(1) of the 1983 Act) to prescribe requirements is extended to give effect to these additional requirements.
14. *Subsection (3)(c)* inserts a new subsection (5A) into section 10A. It adds to the provisions contained in that section regarding the circumstances in which a person's entitlement to remain on the electoral register terminates, and in which the registration officer must or may remove names from the register. Section 10A(5A) provides that the entitlement of a person to remain on the electoral register terminates if their annual canvass form does not include the additional information required by section 10 (4A) (unless the Chief Electoral Officer has decided it is not reasonably practicable for them to provide a signature). That entitlement also terminates if the Chief Electoral Officer (as registration officer) determines that he is not satisfied with the information relating to that person which was included in the form of canvass. This might occur where, for example, the form reveals that the person claims to be registered in respect of several addresses.
15. *Subsection (4)* amends section 13A of the Representation of the People Act 1983. Section 13A deals with amendments of the electoral register when individuals apply in between canvasses (for example, when they move house to a new constituency). The newly inserted subsections (2A) and (2B) follow the pattern of the amendments inserted into sections 10 and 10A. Section 13A(2A) provides that an application for inclusion in the electoral register for Northern Ireland must include an elector's signature, date of birth, national insurance number (or a statement that the elector does not have one), confirmation of residency in Northern Ireland for the requisite three-month period before the date of application and details of any other address in the UK in respect of which the applicant is, or has applied to be registered. Section 13(2B) enables the Chief Electoral Officer to dispense with the requirement of a signature in cases of incapacity and illiteracy. The power which the Secretary of State already has in subsection (1) (a) to make regulations to prescribe requirements is extended to give effect to these additional requirements.

Section 2: Dates of birth and ballot papers

16. This section amends the parliamentary elections rules in Schedule 1 to the Representation of the People Act 1983. These rules apply (with amendments which extend only to Northern Ireland made by the Elections (Northern Ireland) Act 1985 to rules 37 and 40, in particular regarding the requirement that voters should produce specified documents) for the purposes of parliamentary elections in Northern Ireland. Rule 35 relates to the power to put questions to voters attending the polling station. Rule 37 states the circumstances in which a presiding officer or clerk is entitled to refuse to deliver a ballot paper to a voter. Rule 40 states the circumstances in which a voter can mark a tendered ballot paper.

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17. The amendments made by the Bill empower a presiding officer or clerk at a polling station to ask a third statutory question as to a voter's date of birth. If the voter answers to the satisfaction of the presiding officer, the ballot paper must be presented.
18. *Subsection (2)* amends rule 35. The new rule 35(1A) enables a presiding officer to put the additional question "What is your date of birth?" to any person applying for a ballot paper at the time of their application. The amendment made by subsection (2)(b) expands the reference to "mentioned above" into "mentioned in paragraph (1) above".
19. *Subsection (3)* amends rule 37. This rule currently requires a presiding officer or clerk to hand over a ballot paper to a voter who produces a specified document unless the document raises a reasonable doubt as to his identity. The amendment to rule 37(1B) adds to the circumstances in which a reasonable doubt may arise. The doubt may be prompted, under the provisions of rule 37(1B), by the information contained in the specified document itself or the apparent age of the voter compared with the date of birth supplied to the Chief Electoral Officer.
20. *Subsection (3)(b)* amends paragraph (1C) of rule 37 to take account of the point that refusal may now arise from doubts about age as well as doubts arising from the specified document. *Subsection (3)(c)* amends rule 37(1D) for the same reason.
21. *Subsection (4)* amends rule 40, which relates to the circumstances in which a person is entitled to mark a tendered ballot paper. A person may be allowed to mark a tendered ballot paper in certain circumstances, such as where he discovers, on applying for his ballot paper, that someone else has already voted in his stead. The amendments to rule 40(1B) add to the circumstances in which a tendered ballot can be marked to those when a presiding officer is not satisfied by the elector's answer to the question as to his date of birth.

Section 3: Absent votes and declarations of identity

22. This section amends provisions of the Representation of the People Act 1985 which have effect only in Northern Ireland and which relate to voting by post or by proxy (called "absent voting") at parliamentary elections there. The amendments have the effect that applications to vote by post or proxy must be signed and state an applicant's date of birth and national insurance number (or state that he does not have one) and that the signature, date of birth and national insurance number on the application must correspond with the information provided to the Chief Electoral Officer on registration. The Chief Electoral Officer may refuse to grant an absent vote application if he is not satisfied that the signature, date of birth and national insurance number on the application correspond with those held on his records.
23. *Subsection (2)* amends section 6(1) of the Representation of the People Act 1985 which specifies requirements where an elector applies for an absent vote at elections for an indefinite period. An application can only be granted if the Chief Electoral Officer is satisfied, amongst other matters, that the signature, date of birth and national insurance number (or statement that the applicant does not have a number) on the application corresponds with the information supplied by the elector with his registration application.
24. *Subsection (3)* makes a similar amendment to section 7(1) of the Representation of the People Act 1985 which specifies the requirements where an elector applies for an absent vote at a particular parliamentary election. The new section 7(1)(ba) has the effect that an application for an absent vote at a particular parliamentary election can only be granted if, amongst other matters, the signature, date of birth and national insurance number (or statement that the applicant does not have a number) on the application corresponds with the information supplied by the elector with his registration application. The amendments made by subsection (3) give the Chief Electoral Officer the right to refuse an absent vote application in the same way as the amendments made by subsection (2). The 1985 Act applies only at parliamentary

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elections and is not applied by Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989. Provision for absent voting at local elections is made by Part I of Schedule 2 to the Local Elections (Northern Ireland) Order 1985 (S.I. 1985/454), as substituted by Schedule 2 to the Local Elections (Northern Ireland) (Amendment) Order 1987 (S.I. 1987/168). An amendment Order subject to the affirmative resolution procedure will make changes similar to those in section 3(2) and (3) of the 2002 Act.

25. *Subsection (4)(c)* amends rule 45 of the parliamentary elections rules in Schedule 1 to the Representation of the People Act 1983. New paragraphs (2)(b) and (2)(A) of rule 45, which apply only in the case of an elector (as distinct from a proxy), provide that a postal ballot paper shall not be deemed to be duly returned unless the accompanying declaration of identity has been signed and states his date of birth and the signature and date of birth correspond with those supplied on electoral registration.

Section 4: Electoral identity card

26. This section amends the Representation of the People Act 1983. *Subsection (2)* inserts a new section 13C in the Representation of the People Act 1983. It enables a person to apply to be issued with an electoral identity card (in accordance with any requirements prescribed by regulations). The Chief Electoral Officer has the function under section 13C(3) of determining such an application (in accordance with any regulations) and, if he is satisfied that the information given by an applicant is correct, he is required to issue an electoral identity card free of charge. There is a regulation-making power under section 13C(2) to provide for the types of person who may apply and for the application form.
27. **Section 13C(4)** states that the electoral identity card must show the following information: the elector's full name and date of birth, his photograph, the card's expiry date; and it may include such other information and be in such form as the Chief Electoral Officer shall determine (in accordance with any regulations).
28. **Section 13C(5)** provides that an electoral identity card becomes current on the date of its issue and ceases to be so 10 years later.
29. *Subsection (3)* of section 4 amends rule 37(1E) of the parliamentary elections rules in Schedule 1 to the Representation of the People Act 1983 as inserted by section 1 of the Elections (Northern Ireland) Act 1985. It adds the electoral identity card to the list of specified documents which voters may use for the purposes of identification at polling stations in Northern Ireland.

Section 5: Disabled voters

30. This section modifies, in relation to voters with disabilities, certain rules about voting procedure in Northern Ireland. It amends rule 39 of the parliamentary elections rules in Schedule 1 to the Representation of the People Act 1983, which was amended by the Elections (Northern Ireland) Act 1985 and later substituted by section 13(3) of the Representation of the People Act 2000.
31. *Subsection (3)* inserts rule 39(2A). A voter with disabilities who attends at a polling station with a companion to assist him, may satisfy the requirements regarding production of a specified document by producing any of the specified documents referred to in rule 37(1A) to (1G), albeit that the documents may be produced by, and the ballot paper may be delivered to, the hand of the companion rather than the voter himself. The modification made is to treat references in rule 37(1A) to (1G) to "delivering a ballot paper" as if they were references to "granting a voter's application".

Section 6: Regulations as to information about national insurance numbers

32. This section amends paragraph 1 of Schedule 2 to the Representation of the People Act 1983 which confers powers on the Secretary of State to make regulations. *Subsection (2)* inserts new sub-paragraphs (4A) and (4B).
33. The new sub-paragraph (4A) enables provision to be made for the disclosure by the authority responsible for national insurance numbers to the Chief Electoral Officer following a request by him of the national insurance number recorded in respect of a specified individual, or of the fact that the specified individual is not recorded as having a national insurance number. It also enables the authority responsible for national insurance numbers to disclose to the Chief Electoral Officer, in the case of a specified individual recorded as having a national insurance number, any name and former name, date of birth, sex and address as recorded by the relevant authority in respect of the individual in question.
34. The new sub-paragraph (4B) enables regulations to be made authorising the relevant authority to charge fees to the Chief Electoral Officer for Northern Ireland to cover the expenses of the relevant authority in complying with such requests.

Section 7: Offences

35. *Subsection (1)* inserts section 13D in the Representation of the People Act 1983 which makes it an offence to provide false information pursuant to any requirement imposed by the amendments made by section 1 of the 2002 Act on an application for registration as an elector in Northern Ireland.
36. **Section 13D(1)** makes it an offence for a person to provide: a false signature, or a false date of birth, or a false national insurance number (or false statement that he or she does not have a number), or a false statement that he or she has been resident in Northern Ireland for the whole of the three-month period prior to the application, on application for registration as an elector in Northern Ireland. Section 13D(1) also makes it an offence for a person to fail to provide any address in the UK in respect of which he or she is, or has applied to be, registered.
37. **Section 13D(2)** makes it an offence to provide false information to the Chief Electoral Officer for Northern Ireland for the purpose of obtaining his dispensation for the requirement for an application to be signed where it is not reasonably practicable for a person to sign in a consistent and distinctive way because of any incapacity of his or because he is unable to read.
38. **Section 13D(6)** provides that a person found guilty of the above offences is liable on summary conviction to imprisonment for a term not exceeding six months; or a fine not exceeding level 5 on the standard scale; or both.
39. *Subsection (2)* of section 7 amends Part I of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989 to ensure that the provisions about offences in new section 13D apply also to the registration of local electors in Northern Ireland. (The changes made to the Representation of the People Act 1983 by clause 1 will automatically apply to local elections there on the basis of amendments made to the Elected Authorities (Northern Ireland) Act 1989 by Schedule 3 to the Representation of the People Act 2000.)

COMMENCEMENT

40. **Sections 5** and **8** came into force on Royal Assent on 1 May 2002. The Electoral Fraud (Northern Ireland) Act 2002 (Commencement) Order 2002 brings into force all of the remaining provisions of the 2002 Act. Section 6 of the Act shall come into force on 1 July 2002, sections 1 and 7 shall come into force on 1 September 2002 and sections 2,3 and 4 shall come into force on 1 December 2002. The coming into force of the

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amendments made by section 3 of the Act shall not apply in respect of an election where the last day for the publication of the notice of election is before 1 December 2002.

Date	Parliamentary Stage	Hansard Reference
10 July 2001	Commons Second Reading	Columns 688 - 743
16 October 2001	Commons Committee First and Second Sittings	Columns 1 - 80
18 October 2001	Commons Committee Third and Fourth Sittings	Columns 81 - 144
31 October 2001	Commons Report and Third Reading	Columns 907 - 975
8 January 2002	Lords Second Reading	Columns 445 – 468
4 February 2002	Lords Committee	Columns 479 – 494
25 February 2002	Lords Report	Columns 1254 – 1265
4 March 2002	Lords Third Reading	Columns 11 - 16
15 April 2002	Commons Consideration of Lords Amendments	Columns 380 - 413