

EUROPEAN UNION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules to the Act

Schedule 2: Election of additional MEP

130. This Schedule sets out in more detail how the additional MEP provided for by the Transitional Protocol on MEPs will be elected. It also provides that, in the event that the relevant provisions of this Schedule do not result in the successful identification of a candidate to be returned as the additional UK MEP, there will be a by-election for the additional seat.
131. *Paragraph 2* provides that the returning officer for the West Midlands electoral region (to which the additional MEP has been allocated in accordance with the recommendation of the Electoral Commission published on 26 October 2010) must first identify which registered party would have won the additional seat in accordance with the results of the European Parliamentary elections held on 4 June 2009 ('the 2009 elections'), as if the seat had already been allocated to the West Midlands at that time. As there were no individual candidates in the West Midlands region at the 2009 elections, this Schedule only provides for allocation to a registered party.
132. *Paragraph 3(1)* provides that the returning officer must then identify from the registered party's list of candidates at the 2009 elections, the candidate whose name appears highest on that list. In doing so the returning officer is to disregard those people who have already been returned as MEPs or who have died. For example, if the registered party had proposed six candidates in an electoral region and the first three candidates on that party's list had been returned as MEPs, the returning officer would identify the fourth candidate on that party's list as being the next person to be returned as an MEP. That person is referred to as the 'first choice'.
133. *Paragraph 3(2)* makes provision for the process by which the returning officer is to contact the 'first choice' to ask them whether he or she will provide written confirmation of their willingness and ability to be returned as the MEP. The returning officer should also ask the 'first choice' to deliver a certificate signed by or on behalf of the nominating officer of the registered party, confirming that he or she may be returned.
134. *Paragraph 4* makes provision for the process that is to take place if the returning officer is unable to contact the 'first choice' candidate, or that person confirms their unwillingness or inability to stand, or if they do not provide the certificate required. It shall be at the discretion of the regional returning officer to determine the length of such a 'reasonable period'. *Paragraph 4(2)* provides that the returning officer should identify the next name on the registered party's list of candidates, disregarding any candidate who has died. In the example above, the next candidate may be the fifth candidate on that party's list, since the first three people have already been returned as MEPs and the fourth candidate was unavailable or could not be contacted within a reasonable period. This candidate is referred to as the 'subsequent choice', and the returning officer shall under *paragraph 4(3)* seek confirmation that he or she is willing and able to be returned

*These notes refer to the European Union Act 2011
(c.12) which received Royal Assent on 19 July 2011*

as an MEP. In doing so the returning officer shall follow the same procedure as provided for in relation to the 'first choice'.

135. *Paragraph 5* provides that, if the 'subsequent choice' cannot be contacted within a reasonable period, or does not provide the certificate required, or is unable or unwilling to be returned as an MEP, the returning officer is to identify the next name on the list, and keep repeating the procedure until either the seat is filled or there are no more names on the registered party's list of candidates.
136. *Paragraph 6* provides for what is to happen where, after a 'subsequent choice' has been invited to fulfil the obligations in *paragraph 3(2)*, a person who was previously asked to do so ('the prior choice') then provides the requisite certificate. The statement and certificate of the 'prior choice' candidate will have no effect unless and until the 'subsequent choice' fails to return the certificate within the period of time deemed reasonable by the regional returning officer, or has indicated that they are unwilling or unable to stand. The justification for this is that 'the prior choice' will have previously been given a sufficient opportunity by the returning officer to provide the required documentation within a reasonable time period.
137. *Paragraph 7* makes provision for the process that must take place where a candidate has, on being asked by the returning officer, delivered the statement and the certificate referred to in *paragraph 3(2)*. The returning officer must declare in writing that person to be returned as an MEP, must prepare a statement containing some relevant information concerning the election, and must give a public notice of this declaration and statement and send copies of them to the Secretary of State.
138. *Paragraphs 8 and 9* provide that if the procedures set out in *paragraphs 3 to 7* fail to fill the additional seat, a by-election is to be held to fill the seat. In this case the returning officer must confirm to the Secretary of State that the seat cannot be filled in accordance with the procedure set out in *paragraphs 3 to 7*. *Paragraph 8(4)* provides that the by-election is to take place on a day specified by order of the Secretary of State and *paragraph 8(5)* provides that the by-election is to be conducted in accordance with regulations made under the 2002 Act (the [European Parliamentary Regulations 2004, SI 2004/293](#)). *Paragraph 9* specifies that the order is to be made by statutory instrument which is to be laid before Parliament after being made.