

EXPLANATORY MEMORANDUM TO
THE EUROPEAN PARLIAMENTARY ELECTIONS (NORTHERN
IRELAND) (AMENDMENT) REGULATIONS 2013

2013 No. 2893

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations amend the European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2004/1267 (the “2004 Regulations”) in preparation for European Parliamentary elections in 2014. They make changes which have already been made in respect of parliamentary and local elections in Northern Ireland. They also implement EU Directive 2013/1/EU, concerning the right of non-national EU citizens to stand as candidates in elections to the European Parliament, and make other changes to the administration and conduct of these elections.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The 2004 Regulations govern the conduct of European Parliamentary elections in Northern Ireland.
 - 4.2 The 2004 Regulations are amended to reflect changes already made for parliamentary and local elections. Section 19 of the Electoral Registration and Administration Act 2013 (c.6) introduced changes for parliamentary elections across the UK in relation to persons queuing at polling stations at the close of the poll. S.I. 2010/278 and S.I. 2010/2977 introduced changes in respect of absent voting at parliamentary and local elections.
 - 4.3 The Regulations transpose, for Northern Ireland, Council Directive 2013/1/EU which amends Council Directive 93/109/EC. An Explanatory Memorandum on the Draft Directive was submitted on 30 August 2012. In its Eleventh Report of 2012-2013, the Commons European Scrutiny Committee reported the Draft Directive to the House given its political significance and cleared it from scrutiny. The Chairman of the Lords European Union Committee wrote to the Minister for Political and Constitutional Reform on 15 October 2012 welcoming the Draft Directive and clearing it from scrutiny. The

Directive will be transposed for Great Britain by a separate instrument, the European Parliamentary Elections (Amendment) Regulations 2013, which also makes relevant amendments to the European Parliamentary Elections Act 2002.

- 4.4 The Secretary of State relies in part on powers in section 2(2) of the European Communities Act 1972 (c.68) to make these Regulations. She is designated to do so by S.I. 2013/1445, which came into force on 12 July 2013, replacing S.I. 2008/3117.

5. Territorial Extent and Application

- 5.1 This instrument extends to Northern Ireland only.

6. European Convention on Human Rights

- 6.1 Mike Penning, the Minister of State for the Northern Ireland Office, has made the following statement regarding Human Rights:

“In my view the provisions of the European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2013 are compatible with the Convention rights”.

7. Policy background

- 7.1 These Regulations update the existing legislation governing the conduct of European Parliamentary Elections in Northern Ireland as part of the Government’s preparations for the next European Parliamentary Election, due to be held in 2014. In summary, the Regulations:

- implement Council Directive 2013/1/EU;
- allow persons waiting in a queue at the polling station at the close of the poll to vote;
- make it an offence for a person to stand for election in more than one electoral region;
- add “Community licence” to the definition of “driving licence” in the provisions relating to the form of identity which is acceptable on an application for a ballot paper at a polling station;
- implement a number of technical changes to absent voting already made for parliamentary and local elections in Northern Ireland; and
- give the Chief Electoral Officer for Northern Ireland (the “CEO”) greater flexibility in deciding where polling stations for European elections should be located.

Changes stemming from Council Directive 2013/1/EU

- 7.2 The Regulations implement Council Directive 2013/1/EU, which amends Council Directive 93/109/EC concerning the right of non-

national EU citizens to stand as a candidate in elections to the European Parliament. The position at previous European Parliamentary elections was that a candidate who wished to stand for election in the UK and who was an EU citizen (but not a UK, Irish or Commonwealth citizen) had to provide certification from their member State of nationality that they were not disqualified from standing in European Parliamentary elections in that member State when submitting their nomination. As a result of the amendments made by Directive 2013/1/EU, from the 2014 polls, this will change and the UK Government will be obliged to request information from the member State of nationality. This requirement is to be applied across all member States and is intended to remove a perceived barrier to non-nationals standing for election in member States in which they reside. Similar legislation is being taken forward in Great Britain, although the use of the STV count system in Northern Ireland means that the process of implementation must be slightly different in Northern Ireland. Irish citizens in the UK are treated on the same basis as British citizens for these purposes; therefore, the changes only apply to citizens of the Union who are not British, Irish or Commonwealth citizens.

7.3 The key elements of our transposition of the Directive are as follows.

- The deadline for a candidate to submit nomination papers remains the 19th day before the poll.
- Any 'EU candidate' wishing to stand will need to submit a declaration that they are not disqualified to the returning officer at the Electoral Office headquarters (currently St Anne's House, 15 Church Street, Belfast, BT1 1ER) by 4 p.m. on the 24th day before the polling day (i.e. 5 working days before the close of nominations). Returning officers send a copy of the declaration to the Secretary of State (whose role may be carried out by the Lord President of the Council) as soon as practicable. The Secretary of State will then contact the candidate's home member State to ask for information about the EU candidate's eligibility to stand for election. The Secretary of State will send any response back to the returning officer.
- EU candidates who miss the 24th day deadline may themselves obtain confirmation of their eligibility to stand from their home member State. If such information confirms that the candidate is not disqualified, it can be submitted by the candidate together with the specific declaration and the other nomination papers by the 19th day before the poll. The Secretary of State will still send the EU candidate's specific declaration to the home member State to seek information on eligibility in order to verify it.

- In most cases, information will have been received in relation to an EU candidate's eligibility by the close of nominations on the 19th day before the poll. If it is not received by then, the EU candidate will nonetheless remain on the ballot paper. In the unlikely event that information is received after the close of nominations from the EU candidate's home member State indicating that the EU candidate is disqualified, the EU candidate will be excluded from the election at the first stage of the count and his or her votes will be transferred to the next available preference indicated on the ballot paper. If no preference is indicated on a ballot paper for any candidate other than a disqualified EU candidate (or a candidate who has withdrawn), then the ballot paper will be rejected.
- There is a new provision, as required by the Directive, for the Secretary of State to provide information to another member State in respect of a UK national standing as a candidate in that member State.

Changes already made for Westminster elections in Northern Ireland

- 7.4 Section 19 of the Electoral Registration and Administration Act 2013 (c.6) provides that persons inside the polling station, or queuing outside the polling station, at the close of the poll (i.e. at 10 p.m. on polling day) can apply for a ballot paper. Although that provision is not yet in force, it is anticipated that it will be brought into force before the next parliamentary election. These Regulations make the same change in respect of European Parliamentary elections in Northern Ireland. Note that no provision is made in relation to the delivery of postal ballot papers by persons queuing at polling stations. This is because, in contrast to Great Britain, there is no provision permitting delivery of postal ballot papers to polling stations; in Northern Ireland postal ballot papers must be delivered to the returning officer.
- 7.5 The elections rules for parliamentary, local and European Parliamentary elections all provide for the type of identification that is accepted by voters applying for a ballot paper at those elections. In relation to parliamentary and local elections, amendments were introduced in 2010 to ensure that a Community driving licence is an acceptable form of identification. These Regulations make the same change in respect of European Parliamentary elections.
- 7.6 The absent voting provisions for parliamentary, local and European elections all make provision in respect of who can attest an application on the grounds of disability or ill health and where a person can apply for a postal ballot paper to be sent. In relation to parliamentary and local elections, amendments were introduced in 2010 requiring applicants for a postal vote to give an explanation when applying for a ballot paper to be sent to a different address to that in the register or the registration officer's record, and amending the requirements in relation

to attestation of applications for an absent vote on the grounds of blindness or other disability or at a particular election. These Regulations make the same change in respect of European Parliamentary elections.

Greater flexibility in choosing which polling districts and places to use

- 7.7 Polling districts and places designated for European Parliamentary elections were previously the same as those used for parliamentary elections. In turn, the polling places for parliamentary elections were based on those for local elections. As a result of local government reform in Northern Ireland, the local government boundaries will no longer be the same as the parliamentary boundaries, and so the polling station schemes for local and parliamentary elections will need to be different. These Regulations provide that, as the default position, polling places for European Parliamentary elections will be the same as those for local elections. This will allow for local and European elections to be combined in 2014 should the local elections be brought forward. However, these Regulations also give the Chief Electoral Officer the flexibility to use some different polling districts and places (for example, those for parliamentary elections) if special circumstances make it desirable to do so.

Other amendments

- 7.8 The Regulations make it an offence in Northern Ireland for a person to stand as a candidate in a European Parliamentary election in more than one electoral region in the United Kingdom. This brings Northern Ireland into line with the position in Great Britain.

8. Consultation outcome

- 8.1 The Electoral Commission has been consulted on these Regulations as required by sections 7(1) and (2)(a) of the Political Parties, Elections and Referendums Act 2000 (c.41). In addition, the Chief Electoral Officer for Northern Ireland and his office, the Electoral Office for Northern Ireland, have been consulted.
- 8.2 The Electoral Commission's response welcomed the Government's approach to the updating of the conduct rules for European Parliamentary elections. Where changes were made to the equivalent regulations for Great Britain, and following consultation, corresponding changes have been made to these Regulations.

9. Guidance

- 9.1 The Electoral Commission will continue to prepare and issue guidance relating to the conduct of elections.

10. Impact

10.1 There is 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 Northern Ireland Office will keep the Regulations under review. The Government will work with the Electoral Commission, which has a statutory duty to report on the running of the European Parliamentary elections, the Chief Electoral Officer for Northern Ireland and other stakeholders to ensure that any legislative lessons which are learnt in 2014 can be applied for future elections.

13. Contact

13.1 Philippa Saunders, Head of the Constitutional Policy Team at the Northern Ireland Office Tel: 0207 210 6431 or email: philippa.saunders@nio.x.gsi.gov.uk can answer any queries regarding the instrument.