

Draft Order laid before Parliament under section 96(2) of the Northern Ireland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

NORTHERN IRELAND

**The Northern Ireland Assembly (Elections) (Amendment) Order
2010**

Made - - - - ***

Coming into force - - ***

In accordance with section 7(1) and (2)(h) of the Political Parties, Elections and Referendums Act 2000(a), the Electoral Commission has been consulted prior to making this Order.

A draft of this Order has been laid before Parliament in accordance with section 96(2)(b) of the Northern Ireland Act 1998(b) and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State in exercise of the powers conferred by section 34(4) and (6) of the Northern Ireland Act 1998 makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Northern Ireland Assembly (Elections) (Amendment) Order 2010.

(2) This Order comes into force on the day after the day on which it is made.

(3) In this Order—

“1983 Act” means the Representation of the People Act 1983(c);

“2001 Order” means the Northern Ireland Assembly (Elections) Order 2001(d); and

“2008 Regulations” means the Representation of the People (Northern Ireland) Regulations 2008(e).

(4) In this Order a reference to a “rule” is a reference to the Parliamentary elections rules or the relevant Parliamentary election rule contained in Schedule 1 to the 1983 Act(f).

(a) 2000 c. 41.

(b) 1998 c. 47; amendments have been made to section 96 but they are not relevant to this Order.

(c) 1983 c. 2.

(d) S.I. 2001/2599 was amended by S.I. 2002/1964, S.I. 2003/2989, S.I. 2007/308 and S.I. 2009/256.

(e) S.I. 2008/1741 was amended by S.I. 2010/278.

(f) Relevant changes to the rules are referenced at the appropriate places in this Order.

Unfilled seats at an election

2. After article 7(a) of the 2001 Order (by-elections) insert—

“Unfilled seats at an election

8.—(1) If at an Assembly election no person is or remains, or an insufficient number of persons are or remain, validly nominated to fill the vacancy or vacancies in respect of which the election is held, the Chief Electoral Officer must order an election to fill any vacancy which remains unfilled.

(2) The day appointed for the poll shall be the first Thursday after the expiry of 30 days beginning with the day fixed as the day of the election mentioned in paragraph (1).

(3) In computing the period of time mentioned in paragraph (2), any day which is a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday or a bank holiday is to be disregarded.

(4) In paragraph (3) “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(b) in Northern Ireland.”.

Amendment of Schedule 1 to the 2001 Order

3.—(1) Schedule 1 to the 2001 Order (application with modifications of statutory provisions relating to elections) is amended as follows.

(2) After the entry in respect of section 66A(c) of the 1983 Act (prohibition on publication of exit polls) insert—

“Section 66B(d) (failure to comply with conditions relating to the supply etc of certain documents)”.	
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(3) In the right-hand column of the Schedule, alongside the entry in respect of rule 5(e) of the rules (notice of election) insert—

“At the end of the rule, insert the following paragraph—

“(4) The notice of election must state the address to which the applications mentioned in paragraph (2) must be sent.”.

(4) In the right-hand column of the Schedule, after the entry in respect of rule 8(f) (consent to nomination) insert—

	“After rule 8 insert the following rule— “ Use of mark in place of signature 8A.—(1) Where a person (“P”) is required to sign his or her name under rules 6, 7 or 8 but is unable to do so because of blindness or any other
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(a) Article 7 was amended by S.I. 2009/256.

(b) 1971 c. 80.

(c) Section 66A was inserted by section 15 of, and paragraphs 3 and 6 of Schedule 6 to, the Representation of the People Act 2000 (c. 2).

(d) Section 66B was inserted by section 41 of the Electoral Administration Act 2006 (c. 22)

(e) Rule 5 was amended by part 1 of Schedule 2 and paragraph 74 of Schedule 4 to the Representation of the People Act 1985 (c. 50); section 15 of, and paragraphs 3 and 10 of Schedule 6 to, the Representation of the People Act 2000 (c. 2); and section 19 of the Electoral Administration Act 2006.

(f) Rule 8(3)(c) was inserted by section 22 of the Electoral Administration Act 2006.

	<p>disability or because he or she is unable to read, P may instead place a mark in place of any signature.</p> <p>(2) The mark mentioned in paragraph (1) must be witnessed by one person who must include his or her signature and address.””.</p>
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(5) In the right-hand column of the Schedule, alongside the entry in respect of rule 14A(a) (correction of minor errors) insert—

“In paragraph (2), after sub-paragraph (b) insert—

“(ba) obvious errors of spelling in relation to the description of a registered political party (including a joint description) authorised as mentioned in rule 6A(b);””.

(6) In the right-hand column of the Schedule, alongside the entry in respect of rule 19(c) (the ballot papers), after the paragraph beginning “For paragraph (2A) substitute” insert the following paragraphs—

“After paragraph (2B) insert—

“(2C) If, on behalf of a candidate who is the subject of two or more parties’ authorisations under rule 6A(1B) the registered nominating officers of those parties so request, the ballot paper must contain, against the candidate’s particulars, the registered emblem of one of those parties (or, as the case may be, one of its registered emblems).

(2D) The request mentioned in paragraph (2C) must be—

- (a) made in writing by the nominating officers of the parties jointly to the returning officer, and
- (b) received by the returning officer before the last time for the delivery of nomination papers.”

After paragraph (4) insert—

“(5) In this rule “registered nominating officer” means the person registered as a party’s nominating officer under the Political Parties, Elections and Referendums Act 2000(d) or a person authorised by the nominating officer to act on his or her behalf.””.

(7) In the right-hand column of the Schedule, alongside the entry in respect of rule 28(e) (issue of official poll cards) insert—

“After paragraph (1A) insert—

“(1B) An official poll card need not be sent to any person—

- (a) as an elector if he or she is placed on the absent voters list for the election;
- or

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- (a) Rule 14A was inserted by section 19(8) of the Electoral Administration Act 2006 (c. 22); it was amended by paragraph 8 of Schedule 1 to the Political Parties and Elections Act 2009 (c. 12).
 - (b) Rule 6A was inserted by paragraph 2 of Schedule 2 to the Registration of Political Parties Act 1998 (c. 48); amended by section 38 of the Political Parties, Elections and Referendums Act 2000 (c. 41); and amended by sections 49, 52 and 74 of, and paragraphs 104 and 129 of Schedule 1 to, the Electoral Administration Act 2006.
 - (c) Rule 19 was amended by section 13 of, and paragraph 4 of Schedule 2 to, the Registration of Political Parties Act 1998 (c. 48); and sections 30, 47 and 74 of, and paragraphs 69 and 87 of Schedule 1 and Schedule 2 to, the Electoral Administration Act 2006.
 - (d) 2000 c. 41; section 24 requires parties to register a nominating officer.
 - (e) Rule 28 was amended by sections 10 and 47 of, and paragraphs 2, 14, 69 and 70 of Schedule 1 to, the Electoral Administration Act 2006 (c. 22).

(b) as a proxy if he or she is entitled to vote by post as proxy at the election.””.

(8) In the right-hand column of the Schedule, alongside the entry in respect of rule 29(a) (equipment of polling stations)—

(a) before the paragraph beginning “In paragraph (5)” insert—

“In paragraph (2) after “unlocked” insert “or, where the box has no lock, the seal being broken”.”; and

(b) after the paragraph beginning “In paragraph (5)” insert—

“After paragraph (5) insert—

“(5A) Where proof has been given to the returning officer’s satisfaction of the death of a candidate named in the ballot paper as an independent candidate (within the meaning of rule 60)(b) the returning officer must provide each presiding officer with sufficient number of notices informing the voters that the candidate has died for display in every compartment of every polling station.””.

(9) In the right-hand column of the Schedule, alongside the entry in respect of rule 30(c) (appointment of polling and counting agents) insert—

“In paragraph (3), for the word “second” substitute “fifth”.”.

(10) In the right-hand column of the Schedule, alongside the entry in respect of rule 31(d) (notification of requirement of secrecy) insert—

“In paragraph (a) for “blind voter” substitute “voter with disabilities””.

(11) In the right-hand column of the Schedule, alongside the entry in respect of rule 33 (keeping of order in station) insert—

“In paragraph (2)(a) omit “in or near that station””.

(12) In the right-hand column of the Schedule, alongside the entry in respect of rule 34 (sealing of ballot papers) insert—

“After the words “lock it up” and after the words “so locked” in both places insert “(if it has a lock)””.

(13) In the right-hand column of the Schedule, after the entry in respect of rule 37 (voting procedure) insert—

	<p>“After rule 37 insert the following rule—</p> <p>“Disclosure of information regarding ballot papers</p> <p>37A.—(1) During the taking of the poll the presiding officer and the clerks appointed to attend at the polling station may not disclose how many ballot papers have been issued to voters; but</p>
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- (a) Rule 29 was amended by section 24 of, and paragraph 79 of Schedule 4 to, the Representation of the People Act 1985 (c. 50); section 13 of the Representation of the People Act 2000 (c. 2); sections 10, 31 and 47 of, and paragraphs 2, 14, 69 and 89 of Schedule 1 to, the Electoral Administration Act 2006 (c. 22) (“2006 Act”); and section 30 of, and paragraph 6 of Schedule 4 to, the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33). Amendments were also made by section 11 of the 2006 Act but they do not apply to Northern Ireland.
- (b) Rules 60-65 were substituted for rule 60 by section 24 of the 2006 Act.
- (c) Paragraph (5) of Rule 30 was amended by section 158 of, and Schedule 22 to, the Political Parties, Elections and Referendums Act 2000 (c. 41).
- (d) Rule 31 was substituted by section 24 of, and paragraph 80 of Schedule 4 to, the Representation of the People Act 1985 (c. 50).

	<p>this is subject to paragraph (2).</p> <p>(2) The presiding officer may disclose that information to—</p> <p>(a) the returning officer, or</p> <p>(b) any other person in accordance with directions given by the returning officer.</p> <p>(3) Any direction under paragraph (2)(b) must be given before the commencement of the poll.””.</p>
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(14) In the right-hand column of the Schedule, alongside the entry in respect of rule 43(a) (procedure on close of poll) insert—

“In paragraph (1)(a) after “key” insert “(if it has a lock)””.

(15) In the right-hand column of the Schedule, in the entry in respect of rule 44C(1)(b)—

- (a) in sub-paragraph (a) omit “and other unique identifying mark”; and
- (b) in sub-paragraph (d) after “printed number” insert “and other unique identifying mark”.

(16) After the entry in respect of rule 53(c) (return or forfeiture of candidate’s deposit) insert—

“Rule 53A(d) (destruction of home address forms)”.	
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(17) In the right-hand column of the Schedule, alongside the entry in respect of rule 60 (independent candidate) for the words “Omit paragraph 4.” substitute—

“For paragraph (4) substitute—

“(4) If the number of persons shown as standing nominated in the statement of persons nominated is less than or equal to the number of persons to be elected the returning officer must—

- (a) if polling has not begun, countermand notice of the poll;
- (b) if polling has begun, direct that the poll is abandoned;
- (c) subject to rule 65, treat the election as an uncontested election.””.

(18) In the right-hand column of the Schedule, alongside the entry in respect of rule 61 (deceased independent candidate wins) after the entry beginning “In paragraph (1)” insert—

“For paragraph (2) substitute—

“(2) Rule 50 (declaration of result) does not apply but the returning officer must—

- (a) declare that the votes given to the deceased candidate are equal to or exceed the quota (as the case may be),
- (b) declare that no candidate is elected, and
- (c) give public notice of—
 - (i) the number of first preference votes given for each candidate,

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- (a) Rule 43 was amended by section 13 of the Representation of the People Act 2000 (c. 2); sections 31 and 47 of, and paragraphs 69 and 79 of Schedule 1 to, the Electoral Administration Act 2006 (c. 22); and paragraph 6 of Schedule 4 to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33).
 - (b) Rules 44A to 44M were amended by S.I. 2009/256.
 - (c) Rule 53 was amended by section 13 of, and paragraph 83 of Schedule 4 to, the Representation of the People Act 1985 (c. 50).
 - (d) Rule 53A was inserted by section 24 of the Political Parties and Elections Act 2009 (c. 12).

- (ii) any transfer of votes,
- (iii) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (iv) the order in which the successful candidates would have been elected if it were not for the provisions of this rule, and
- (v) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 44C(3).”.

(19) Omit the entry in respect of rule 62 (deceased independent candidate with equality of votes).

(20) In the right-hand column of the Schedule, alongside the entry in respect of rule 65(a) (abandoned poll) omit “omit sub-paragraph (a), and”.

Amendment of Schedule 2 to the 2001 Order

4.—(1) Schedule 2 to the 2001 Order (application with modifications of provisions of subordinate legislation relating to elections) is amended as follows.

(2) After the entry for regulation 55 of the 2008 Regulations (general requirements for an absent vote) insert—

“Regulation 55A(b) (additional requirement for applications for ballot papers to be sent to a different address to that in register)	Omit paragraphs (1)(a) and 1(c).
Regulation 55B (additional requirement for applications for ballot papers to be sent to different address from that shown in the record kept under section 6(3) or section 9(6) of the 1985 Act)	In sub-paragraph (a) for the words “the record kept under section 6(3) of that Act” substitute “the record kept under paragraph 1(3) of Part 1 of Schedule 2 to the 1985 Order(c)”.
	In sub-paragraph (b) for the words “section 9(6) of that Act” substitute “paragraph 4(5) of Part 1 of Schedule 2 to the 1985 Order”.

(3) Amend the right-hand column of the Schedule alongside the entry in respect of regulation 59(d) of the 2008 Regulations (additional requirements for applications in respect of a particular election) as follows—

(a) after the entry beginning “In paragraphs (4)(b)” insert—

“For sub-paragraph (c) of paragraph (5) substitute—

“(c) that he or she is treating the applicant in connection with the illness specified in paragraph (4) or that the applicant is receiving care from him or her in respect of that illness;”

In paragraph (7)—

(a) for sub-paragraph (c) substitute—

“(c) that he or she is treating the applicant in connection with the circumstances set out in the application in accordance with paragraph (1) or that the applicant is receiving care from him or her in respect of those circumstances;”;

(a) Rule 60 was substituted by rules 60-65 by section 24 of the Electoral Administration Act 2006 (c. 22).

(b) Regulations 55A and 55B were inserted by regulation 5 of S.I. 2010/278.

(c) Part 1 of Schedule 2 was substituted by article 5 of, and Schedule 2 to, S.I. 1987/168; it was amended by S.I. 1990/595; S.I. 1992/809; S.I. 1997/867; S.I. 1998/3150; S.I. 2002/2835; S.I. 2005/1969; and will be amended by the Local Elections (Northern Ireland) Order (S.I. 2010/ xxxx).

(d) Regulation 59 was amended by S.I. 2010/278.

- (b) in sub-paragraph (d)(i) after “illness” insert “or other health related matter”; and
- (c) for sub-paragraph (d)(iii) substitute—
 - “(iii) that in those circumstances he or she cannot reasonably be expected to vote in person at his or her allotted polling station;””; and
- (b) after the entry beginning “In paragraph (8)(b)” insert—
 - “In paragraph (8)(d) omit “chief”.”.
- (4) In the right-hand column of the Schedule, alongside the entry in respect of regulation 68 of the 2008 Regulations (certificate of employment) insert—
 - “In paragraph (2) omit “chief”.”.
- (5) In the right-hand column of the Schedule, alongside the entry in respect of regulation 83 of the 2008 Regulations (postal ballot box and receptacles) insert—
 - “In paragraph (4) after “postal ballot box” insert “(if it has a lock)”.”.
- (6) In the right-hand column of the Schedule, alongside the entry in respect of form F in Schedule 3 to the 2008 Regulations (certificate of employment) insert—
 - “After “police officer” omit “chief”.”.

Northern Ireland Office
Date

Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Northern Ireland Assembly (Elections) Order 2001 (“the 2001 Order”).

Article 2 of this Order inserts a new article 8 in the 2001 Order and makes provision for the Chief Electoral Officer to hold an election to fill any vacancies that remain unfilled following an election. This may be because of the death of one or more candidates such that fewer candidates are nominated than there were seats to be filled or simply because too few candidates were nominated in the first place.

Schedule 1 to the 2001 Order applies, amongst others and with modifications as appropriate, provisions of the Representation of the People Act 1983 (“1983 Act”) and the Parliamentary elections rules (“the Rules”), which are contained in Schedule 1 to that Act, to Assembly elections. Article 3 of this Order applies further provisions of the 1983 Act and the Rules to Assembly elections and amends existing applications and modifications. In particular, section 66B of the 1983 Act is now applied by article 3(2) to Assembly elections. It is now an offence if a person breaches the conditions relating to the supply of election documents that are contained in part 7 of the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741) (“2008 Regulations”). Part 7 applies to Assembly elections by virtue of Schedule 2 to the 2001 Order. Article 3(4) inserts a new rule 8A. This will enable a person required to sign their name when, for example, subscribing a nomination paper or signing a home address form, to use their mark instead providing that mark is witnessed by another person. The modifications to rule 19 made by article 3(6) enable candidates who are standing in the name of two or more registered political parties to request that the emblem of one of those parties is included alongside their particulars on the ballot paper. The request must be made by the nominating officers of those parties jointly. Article 3(7) modifies the application of rule 28 so that an official poll card need not be sent to those who have postal votes at Assembly elections. Article 3(13) inserts a new rule 37A which prohibits the disclosure of information by presiding officers concerning the number of ballot papers that have been issued to voters, other than in accordance with any directions given by the returning officer. The amendments made by paragraphs (8), (12) and (14) (and article 4(5)) ensure that ballot boxes need only be locked if they have a lock. Various changes are made to the provisions concerning death of candidates. Article 3(17) substitutes a new rule 60(4). If

following the death of an independent candidate the number of candidates standing nominated is less than or equal to the number of seats to be filled, the election is treated as an uncontested election. Rule 62 is no longer applied to Assembly elections and rule 61(2) is substituted to ensure that the declaration given by the returning officer is consistent with an election using the single transferable vote.

Schedule 2 to the 2001 Order applies, amongst others and again with modifications as appropriate, the 2008 Regulations. These Regulations were amended by the Representation of the People (Northern Ireland) (Amendment) Regulations 2010 (S.I. 2010/278) and the changes made by article 4 of this Order reflect those amendments. Article 4(2) applies new regulations 55A and 55B of the 2008 Regulations. Those applying for an absent vote will now have to provide reasons if the address to which their vote is to be sent is different to that at which they are registered or which is shown in the relevant record. Article 4(3) modifies the application of regulation 59 which concerns applications for absent votes. Health professionals certifying applications will now need to certify that they are treating or have cared for the applicant in connection with the illness or health related matter specified (rather than that they have seen the applicant in connection with those matters as previously required). Article 4(3)(b), (4) and (6) modifies the requirement for chief inspectors of the Police Service of Northern Ireland to sign certificates of employment for the purposes of rule 32 (admission to polling station). These may now be signed by those of or above the rank of inspector.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

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