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STATUTORY INSTRUMENTS

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**2010 No. 1178**

**The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010**

**Procedures for filling casual vacancies**

3. After section 11 of the 1962 Act insert—

**“Procedures for filling casual vacancies: interpretation**

**11A.**—(1) For the purposes of this Part (other than section 11J(3)) a person (“P”) who is a member of a district council—

- (a) stood as an independent when elected if the statement of persons nominated for the purposes of the last election for P’s seat showed no description or the description “independent” in respect of P;
- (b) stood in the name of a registered party when elected if that statement showed a description of the type mentioned in rule 5A(1A) of the Local Elections Rules<sup>(1)</sup> in respect of P;
- (c) stood in the name of two or more registered parties when elected if that statement showed a description of the type mentioned in rule 5A(1C) of the Local Elections Rules in respect of P.

(2) If P is a member of the district council by virtue of being returned in accordance with section 11D, 11E or 11F, a reference in subsection (1) to the description in respect of P is a reference to the description in respect of the last member elected to the seat at an election.

(3) In this Part—

“nominating officer”, in relation to a registered party, means the person registered as its nominating officer under the Political Parties, Elections and Referendums Act 2000<sup>(2)</sup> in the Northern Ireland register (within the meaning of that Act);

“registered party” means a party registered under that Act in that register;

“statement of persons nominated” means the statement of persons nominated published under rule 12 of the Local Elections Rules<sup>(3)</sup>.

(4) References in this Part to a person being qualified to be returned are to be construed in accordance with sections 3 and 4 of the Local Government Act (Northern Ireland) 1972<sup>(4)</sup>.

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(1) Rule 5A was inserted by [S.I. 2001/417](#) and is amended by Article 4 of this Order.

(2) [2000 c. 41](#); Part 2 of this Act concerns registration of political parties. Relevant amendments have been made to this Part by Part 7 of the Electoral Administration Act [2006 \(c. 22\)](#).

(3) The Local Elections Rules are contained in Schedule 5 to the 1962 Act. They were substituted in their entirety by Schedule 1 to the Local Elections (Northern Ireland) Order 1985 ([S.I. 1985/454](#)) and although they have been amended on a number of occasions since then no amendments have been made to rule 12.

(4) [1972 c. 9 \(N.I.\)](#); sections 3 and 4 were amended by section 11 of the Elected Authorities (Northern Ireland) Act [1989 \(c. 3\)](#). Section 3 was also amended by [S.I. 1995/1948](#) and section 18 of, and paragraph 47 of Schedule 1 to, the Electoral Administration Act [2006 \(c. 22\)](#). Section 4 was also amended by [S.I. 2005/1455](#), [S.I. 2005/1968](#) and [S.R. 2006/21](#).

### **Initial response to vacancy**

**11B.**—(1) On receipt of a notice of a casual vacancy to which section 11(4)(a) or (b) applies from the clerk of a district council under section 11(4AB) the Chief Electoral Officer must determine, by reference to the statement of persons nominated for the purposes of the last election to the seat, whether the previous member—

- (a) stood as an independent when elected (see section 11D),
- (b) stood in the name of a registered party when elected (see section 11E), or
- (c) stood in the name of two or more registered parties when elected (see section 11F).

(2) This section is subject to sections 11H (transitional provision for previously co-opted members) and 11J (transitional provision for elected members).

### **Independent members: list of substitutes**

**11C.**—(1) A member of a district council who stood as an independent when elected may give to the Chief Electoral Officer a list in accordance with subsection (2) (in this Act referred to as a “list of substitutes”).

(2) That list must—

- (a) be dated,
- (b) be signed by the member,
- (c) set out the names, addresses and dates of birth of not more than six persons for the purpose of filling any casual vacancy in the member’s seat and indicate, where more than one person is named, an order of preference, and
- (d) be signed by those persons indicating their consent to be contacted in accordance with section 11D.

(3) Where the member has given the Chief Electoral Officer more than one list of substitutes, the latest list supersedes any earlier one.

### **Independent members: filling casual vacancies**

**11D.**—(1) The following provisions apply if—

- (a) a casual vacancy arises in the seat of a member of a district council,
- (b) the Chief Electoral Officer determines the previous member stood as an independent when elected, and
- (c) the previous member has given the Chief Electoral Officer a list of substitutes.

(2) As soon as practicable after receiving the notice of the vacancy the Chief Electoral Officer must take such steps as appear to the Chief Electoral Officer to be reasonable to contact the person who appears as the first choice in the list of substitutes with the request mentioned in subsection (3).

(3) That request is for the person to respond in writing in accordance with subsection (4) within 14 days from the date of the Chief Electoral Officer’s request indicating whether the person is prepared to fill the vacancy.

(4) If the person is prepared to fill the vacancy, the response must—

- (a) state the person’s date of birth,
- (b) declare that to the best of the person’s knowledge and belief the person is qualified to be returned to fill the vacant seat,

- (c) declare that the person has made and served on the clerk of the council a declaration in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989(5), and
- (d) be signed and dated by the person.
- (5) Subsection (6) applies if—
  - (a) the Chief Electoral Officer has taken reasonable steps to contact a person on the list of substitutes but has been unable to do so,
  - (b) a person on the list of substitutes fails to respond to the Chief Electoral Officer’s request in accordance with subsections (3) and (4), or
  - (c) a person on the list of substitutes responds to the Chief Electoral Officer’s request to indicate that the person is not prepared to fill the vacancy.
- (6) If this subsection applies—
  - (a) the person is not returned for the seat in question, and
  - (b) the Chief Electoral Officer must repeat the procedure in subsection (2) in respect of each subsequent person (if any) whose name and address appears in the list of substitutes until the vacancy is filled or the names on the list are exhausted.
- (7) If a person responds to the Chief Electoral Officer’s request in accordance with subsections (3) and (4) indicating that the person is prepared to fill the vacancy the Chief Electoral Officer must—
  - (a) declare that person to be returned to fill the vacant seat, and
  - (b) notify the person’s name to the clerk of the council.
- (8) But the Chief Electoral Officer may not declare a person to be returned to fill the vacant seat unless the clerk of the council has confirmed to the Chief Electoral Officer that a declaration by that person in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989 has been received by the clerk.
- (9) If the Chief Electoral Officer is unable to fill the vacancy under this section, an election must be held to fill the vacancy.
- (10) If—
  - (a) a casual vacancy arises in the seat of a member of a district council,
  - (b) the Chief Electoral Officer determines the previous member stood as an independent when elected, and
  - (c) the previous member has not given the Chief Electoral Officer a list of substitutes,an election must be held to fill the vacancy.
- (11) This section is subject to section 11K (unfilled vacancies in a local election year).

**Members for registered parties: filling casual vacancies**

- 11E.**—(1) This section applies if—
- (a) a casual vacancy arises in the seat of a member of a district council, and
  - (b) the Chief Electoral Officer determines the previous member stood in the name of a registered party when elected.
- (2) As soon as practicable after receiving the notice of the vacancy the Chief Electoral Officer must ask the nominating officer of that registered party to nominate in writing,

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(5) 1989 c. 3; the declaration was amended by section 125 of, and paragraph 7 of Schedule 15 to, the Terrorism Act 2000 (c. 11).

within 28 days from the date of the Chief Electoral Officer’s request, a person (“P”) to fill the vacancy.

(3) The nomination must be made and signed by the nominating officer of the registered party and must specify a person who—

- (a) is qualified to be returned to fill the vacant seat, and
- (b) has made and served on the clerk of the council a declaration in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989(6).

(4) The nomination must be accompanied by a declaration that is signed and dated by P and that—

- (a) states P’s date of birth,
- (b) gives P’s consent to being returned to fill the vacant seat in the name of the registered party,
- (c) declares that to the best of P’s knowledge and belief P is qualified to be returned to fill the vacant seat, and
- (d) declares that P has made and served on the clerk of the council a declaration in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989.

(5) If the nominating officer responds to the Chief Electoral Officer’s request in accordance with subsections (2) to (4), the Chief Electoral Officer must—

- (a) declare P to be returned to fill the vacant seat, and
- (b) notify P’s name to the clerk of the council.

(6) But the Chief Electoral Officer may not declare P to be returned to fill the vacant seat unless the clerk of the council has confirmed to the Chief Electoral Officer that a declaration by P in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989 has been received by the clerk.

(7) An election must be held to fill the vacancy if the nominating officer does not respond to the Chief Electoral Officer’s request in accordance with subsections (2) to (4).

(8) This section is subject to sections 11G (parties no longer registered) and 11K (unfilled vacancies in a local election year).

### **Members for two or more registered parties: filling casual vacancies**

**11F.**—(1) This section applies if—

- (a) a casual vacancy arises in the seat of a member of a district council, and
- (b) the Chief Electoral Officer determines the previous member stood in the name of two or more registered parties when elected.

(2) As soon as practicable after receiving the notice of the vacancy the Chief Electoral Officer must ask the nominating officers of each of those registered parties jointly to nominate in writing, within 28 days from the date of the Chief Electoral Officer’s request, a person (“P”) to fill the vacancy.

(3) The joint nomination must be made and signed by the nominating officers of all of the registered parties and must specify a person who—

- (a) is qualified to be returned to fill the vacant seat, and

- (b) has made and served on the clerk of the council a declaration in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989.
- (4) The joint nomination must be accompanied by a declaration that is signed and dated by P and that—
  - (a) states P’s date of birth,
  - (b) gives P’s consent to being returned to fill the vacant seat in the names of the registered parties,
  - (c) declares that to the best of P’s knowledge and belief P is qualified to be returned to fill the vacant seat, and
  - (d) declares that P has made and served on the clerk of the council a declaration in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989.
- (5) If the nominating officers respond to the Chief Electoral Officer’s request in accordance with subsections (2) to (4), the Chief Electoral Officer must—
  - (a) declare P to be returned to fill the vacant seat, and
  - (b) notify P’s name to the clerk of the council.
- (6) But the Chief Electoral Officer may not declare P to be returned to fill the vacant seat unless the clerk of the council has confirmed to the Chief Electoral Officer that a declaration by P in the form set out in Part 2 of Schedule 2 to the Elected Authorities (Northern Ireland) Act 1989 has been received by the clerk.
- (7) An election must be held to fill the vacancy if the nominating officers do not respond to the Chief Electoral Officer’s request in accordance with subsections (2) to (4).
- (8) This section is subject to sections 11G (parties no longer registered) and 11K (unfilled vacancies in a local election year).

#### **Party or parties no longer registered**

- 11G.**—(1) This section applies if—
- (a) a casual vacancy arises in the seat of a member of a district council,
  - (b) the Chief Electoral Officer determines the previous member stood in the name of a registered party or two or more registered parties when elected, and
  - (c) on the day on which the Chief Electoral Officer receives the notice of the casual vacancy, the party or (as the case may be) at least one of the parties is no longer a registered party.
- (2) An election must be held to fill the vacancy.
- (3) This section is subject to section 11K (unfilled vacancies in a local election year).

#### **Transitional provision for previously co-opted members**

- 11H.**—(1) This section applies in relation to a member (in this section referred to as a “co-opted member”) of a district council who was chosen by the council to fill a casual vacancy under section 11 as it had effect without the amendments made by the Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010.
- (2) A co-opted member may notify the Chief Electoral Officer in writing that, in the event of a casual vacancy to which section 11(4)(a) or (b) applies in the member’s seat, the vacancy is to be treated as if—
- (a) the member stood as an independent when elected,

- (b) the member stood in the name of a registered party when elected, or
  - (c) the member stood in the name of two or more registered parties when elected.
- (3) A co-opted member may only give one notification under this section.
- (4) If the co-opted member notifies the Chief Electoral Officer in accordance with subsection (2)(a), section 11C applies as if the member stood as an independent when elected.
- (5) If the co-opted member notifies the Chief Electoral Officer in accordance with subsection (2)(b) or (c), the member must, at the same time, provide the name of the registered party or (as the case may be) parties in question.
- (6) The following provisions apply if there is a casual vacancy to which section 11(4)(a) or (b) applies in the seat of a co-opted member.
- (7) The notification of the vacancy by the clerk of the council to the Chief Electoral Officer under section 11(4AB) must indicate that the member of the council whose seat has become vacant was a co-opted member.
- (8) If the co-opted member has given a notification to the Chief Electoral Officer in accordance with this section, the Chief Electoral Officer must make the determination under section 11B by reference to the notification (and not by reference to the statement of persons nominated for the purposes of the last election to the seat).
- (9) If the co-opted member has not given a notification to the Chief Electoral Officer in accordance with this section—
- (a) section 11B does not apply, and
  - (b) an election must be held to fill the vacancy.
- (10) Subsection (9) is subject to section 11K (unfilled vacancies in a local election year).

### **Transitional provision for elected members**

**11J.**—(1) This section applies in relation to a member of a district council elected as a member of that council at the local general election in 2005 or at an election to fill a casual vacancy held after that election but before the coming into force of the Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010.

- (2) If—
- (a) a casual vacancy to which section 11(4)(a) or (b) applies arises in the seat of such a member, and
  - (b) the statement of persons nominated for the purposes of the last election to the member's seat is not readily available,

the Chief Electoral Officer must make the determination required by section 11B in accordance with subsection (3).

(3) The Chief Electoral Officer must make the determination on the basis of such enquiries as the Chief Electoral Officer considers necessary as to whether the previous member—

- (a) stood as an independent when elected, or
- (b) stood in the name of a registered party when elected.

### **Unfilled vacancies in a local election year**

**11K.**—(1) This section applies if—

- (a) section 11D, 11E, 11F, 11G or 11H would otherwise require an election to be held to fill a casual vacancy, and
- (b) the election would be held on or after the first day of January in a local election year.

(2) This section applies if a casual vacancy that is otherwise required to be filled in accordance with section 11D, 11E or 11F remains unfilled on the day on which the Chief Electoral Officer publishes notice of an election in a local election year under rule 1(2) of the Local Elections Rules(7).

(3) The vacancy is deemed to have been caused by the expiry of the normal term of office and accordingly is to be filled on the election day in that year.”.

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(7) The Local Elections Rules are contained in Schedule 5 to the 1962 Act. They were substituted in their entirety by Schedule 1 to the Local Elections (Northern Ireland) Order 1985 (S.I. 1985/454) and have been amended on a number of occasions since then. No amendments have been made to rule 1.