

## **EXPLANATORY MEMORANDUM TO**

### **THE EUROPEAN PARLIAMENTARY ELECTIONS (AMENDMENT) REGULATIONS 2013**

**2013 No. 2876**

**1.** This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These Regulations make updates to the rules for the administration and conduct of European Parliamentary elections flowing from changes made for UK Parliamentary elections in the Electoral Registration and Administration Act 2013 (c.6) (the “ERA Act”) and associated secondary legislation. They also provide for the implementation of EU Directive 2013/1/EU concerning non-national EU citizens standing as candidates at European Parliamentary elections, 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 These Regulations amend the European Parliamentary Elections Regulations 2004 (S.I. 2004/293) (the “2004 Regulations”), and make minor amendments to the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184) (the “2001 Franchise Regulations”) and the European Parliamentary Elections Act 2002 (c.24) (the “2002 Act”). They are needed to support the effective administration of the European Parliamentary elections that will be held in Spring 2014.

4.2 Many of the provisions in the Regulations carry through, for the conduct of European Parliamentary elections, amendments that have been made for the conduct of UK Parliamentary elections by the ERA Act or will be made by the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013, the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 and the Representation of the People (Ballot Paper) Regulations 2013 (these instruments will be laid in draft after these Regulations).

4.3 The Regulations transpose, for Great Britain and Gibraltar, 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 EU 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 Northern Ireland by a separate instrument amending the European Parliamentary Elections (Northern Ireland) Regulations 2004.

- 4.4 In part, the Lord President of the Council relies on powers in section 2(2) of the European Communities Act 1972 (c.68) to make these Regulations. He will be designated to do so by the European Communities (Designation Order) 2013 (S.I. 2013/1445), which has been laid before Parliament and will come into force on 12 July 2013.
- 4.5 The Regulations also contain amendments consequential on the coming into force of section 27(3) of the Political Parties and Elections Act 2009 (c.12) (meaning of local returning officer).
- 4.6 The Regulations also make minor changes consequential on changes in the law of Gibraltar, namely the repeal of the Criminal Procedure Act and its replacement by the Criminal Procedure and Evidence Act 2011.

## **5. Territorial Extent and Application**

- 5.1 The amendments to the 2004 Regulations extend to England, Wales, Scotland, and Gibraltar. The amendments to the 2001 Franchise Regulations extend throughout the UK. The amendments to the 2002 Act extend throughout the UK and to Gibraltar.

## **6. European Convention on Human Rights**

- 6.1 Chloe Smith, the Minister for Political and Constitutional Reform, has made the following statement regarding Human Rights:

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

## **7. Policy background**

- 7.1 The Regulations carry through a number of policies contained within the ERA Act and the secondary legislation related to it, so they can have effect at European Parliamentary elections. Some of the provisions contained within the ERA Act, such as enabling Police Community Support Officers to enter polling stations, have been replicated here in full because, in such cases, the ERA Act did not change the law for European Parliamentary elections. In many other cases, these regulations mirror the Representation of the People (England and Wales)(Description of Electoral Registers and Amendment) Regulations 2013 (and the equivalent Scotland regulations), which will be laid before Parliament in draft and will add to the electoral administration provisions of the ERA Act in respect of UK Parliamentary elections.

7.2 These changes are being made now so they can have effect at the next European Parliamentary elections, scheduled for Spring 2014. They are designed to improve the accessibility and security of the voting process, and implement a number of recommendations which have been made by (amongst others) the Electoral Commission and the Association of Electoral Administrators, since the last European Parliamentary elections in 2009.

7.3 The key elements are:

- Enabling postal votes to be issued as soon as practicable at an election. This is to facilitate the early despatch of postal votes after the close of nominations and give administrators the flexibility to despatch postal votes earlier than the 11<sup>th</sup> day before the poll, which is the earliest postal votes may be issued to many postal voters at present.
- As a consequence of the earlier despatch of postal votes, enabling electors to cancel postal votes following receipt and arrange instead to vote in person or by proxy, provided they do this before the postal vote application deadline (i.e. at least 11 working days before the poll) and that the postal ballot papers have not been completed and returned to the Returning Officer. This ensures the current flexibility afforded to electors to change their voting arrangements is maintained.
- Postal vote identifier rejection notifications - Electoral Registration Officers (EROs) will inform electors after a poll where the signature or date of birth (known as “postal vote identifiers”) which they supply on the postal voting statement failed to match those held on record or had simply been left blank. This is to help to ensure those electors can participate effectively in future elections and not have their ballot papers rejected at successive polls because of a signature degradation or because they are making inadvertent errors. EROs will not be obliged to inform individuals where fraud is suspected.
- 100% of postal vote identifiers on postal voting statements to be checked against those held on record, rather than a minimum of 20%. This reflects practice by Returning Officers at recent national elections, and ensures all postal votes are subject to the same high level of scrutiny.
- Extension of “emergency” proxy provisions – to those absent on the grounds of business or service. This is to ensure that those who are absent at short notice for business or service reasons are eligible to apply for an emergency proxy vote in the days before the election.
- Updates to voting forms for accessibility – the intention is to ensure that the forms which voters use at elections are as clear and easy to use as possible to improve the voter’s experience and encourage more effective engagement in the voting process.
- Reflecting for European Parliamentary elections the ERA Act’s provision for UK Parliamentary elections whereby Returning Officers' fees may be reduced or withheld by the Secretary of State following a recommendation by the Electoral Commission.

- Reflecting for European Parliamentary elections the ERA Act's provision for UK Parliamentary elections whereby voters waiting in a queue at the close of poll (i.e. at 10pm on polling day) for the purpose of voting, may be issued with a ballot paper and cast their vote.

7.4 In addition, the Regulations implement Council Directive 2013/1/EU, which makes changes to Council Directive 93/109/EC (which provides that EU citizens living in a Member State of which they are not nationals may vote and stand as a candidate in European Parliamentary elections in their state of residence). 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 citizenship that they were not disqualified from standing in European Parliamentary elections in that state when submitting their nomination. Under the new Directive, from the 2014 polls, this will change and the UK Government will be obliged to request information from the other Member State. 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 where they reside.

7.5 The key elements of our proposed transposition of the Directive are as follows:

- The deadline for a party to submit its nomination papers, including the list of candidates, or for an individual to submit nomination papers, remains at the 19<sup>th</sup> working day before the date of the poll.
- Any 'EU candidate' wishing to stand (i.e. be included on a party list or stand as an independent) will need to submit a declaration that they are not disqualified to the Returning Officer by 4pm on the 24<sup>th</sup> day prior to polling day (i.e. 5 working days before the close of nominations on the 19<sup>th</sup> working day before the date of the poll). Returning Officers must send a copy of the declaration to the Secretary of State (a named contact will be provided in the in Cabinet Office) as soon as practicable. The Cabinet Office will then ask for the information about the candidate's eligibility to stand from their home state and forward the response to the relevant Returning Officer as soon as practicable.
- If an 'EU candidate' misses the 24<sup>th</sup> day deadline they may themselves obtain confirmation of their eligibility to stand from their home state and submit that information and their other nomination papers by the close of nominations on the 19<sup>th</sup> day for their nomination to proceed. In order to comply with the Directive, the "state to state" checking process would still take place to confirm the information supplied by the candidate was correct.
- We would expect that satisfactory information will in most cases be received by the close of nominations on day 19. If it is not received by then, in accordance with the Directive, the 'EU candidate' will stay on the ballot paper. In the unlikely event that information is received after the close of nominations from the candidate's home state which disqualifies them then, at the allocation of seats by the Returning Officer, votes for the candidate are to be disregarded or, if the person is standing for a party, the seat will go to the next person on the party's list.

- 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.
- 7.6 Consolidation: The Law Commission is undertaking a review of electoral legislation. It issued a scoping report on 11 December 2012 and expects to issue a consultation on reforming the law in late 2014.

## **8. Consultation outcome**

- 8.1 The Electoral Commission has been consulted on this instrument as required by sections 7(1) and (2)(a) of the Political Parties, Elections and Referendums Act 2000 (c.41) and by section 17(4) of the European Parliament (Representation) Act 2003 (c.7). In addition, we have consulted informally with representatives of the Association of Electoral Administrators, the Society of Local Authority Chief Executives and other interested parties (in particular, SCOPE on the design of the forms). We have also worked closely with the Government of Gibraltar on the drafting and policy content of the Regulations, insofar as they extend to Gibraltar.
- 8.2 The Electoral Commission's response welcomed the Government's approach to the updating of the conduct rules for European Parliamentary elections; they also made certain recommendations. The Government has changed the regulations in response to the Commission's recommendation that all types of postal voter can cancel their postal vote and change their voting arrangements up to the present deadline of the 11<sup>th</sup> day before an election. The Regulations now provide that electors may change their voting arrangements up to the 11<sup>th</sup> day before an election, provided they or their proxy have not already attempted to vote by completing and sending the original postal vote to the Local Returning Officer.
- 8.3 The Electoral Commission has also made a number of comments on the drafting, and we have made amendments in certain cases in response to these. We have also made some amendments to the voting forms, in response to comments received during consultation.
- 8.4 In addition, the Cabinet Office has undertaken a programme of public user testing of the revised voting forms (including poll cards, postal voting statements and the ballot paper).

## **9. Guidance**

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

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The attached impact assessments were produced relating to the conduct elements of the ERA Act and remain applicable to this instrument. A separate full regulatory impact assessment has not been prepared for this instrument because no impacts on the private, public or voluntary sectors are foreseen,

other than those set out in the attached impact assessments prepared for the ERA Act.

**11. Regulating small business**

11.1 The legislation does not apply to small business.

**12. Monitoring & review**

12.1 The Cabinet Office keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

**13. Contact**

**Matt Carey** at the Cabinet Office, tel 020 7271 6370: email: [matt.carey@cabinet-office.gsi.gov.uk](mailto:matt.carey@cabinet-office.gsi.gov.uk) can answer any queries regarding the instrument.