Draft Order laid before Parliament under section 84(4) of the Northern Ireland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

NORTHERN IRELAND

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

Made - - - -	***
	In accordance with
Coming into force - -	*Article 1(2)*

At the Court at Buckingham Palace, the *** day of *** 2010

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 7(3) of the Political Parties, Elections and Referendums Act 2000(**1**) the Electoral Commission has been consulted prior to this Order being laid before Parliament.

In accordance with section 84(4) of the Northern Ireland Act 1998(**2**) a draft of this Order has been laid before and approved by resolution of each House of Parliament.

Accordingly, Her Majesty, in exercise of the powers conferred on Her by section 84(1) and (3) of the Northern Ireland Act 1998, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010.

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

(3) In this Order "the 1962 Act" means the Electoral Law Act (Northern Ireland) 1962(**3**).

(4) The amendments made by this Order have effect in relation to casual vacancies (within the meaning of section 11(4) of the 1962 Act(**4**)) arising on or after the day on which it comes into force.

(**1**) 2000 c. 41; amendments have been made to section 7(2) of this Act, but those amendments are not relevant to this Order.
(**2**) 1998 c. 47; section 84 was amended by the Elections Act 2001 (c. 7).
(**3**) 1962 c. 14 (N.I.).
(**4**) Section 11(4) was amended by S.I. 1985/1208 (N.I. 15).

Casual vacancies in district councils

2.—(1) Section 11 of the 1962 Act(**5**) (election and term of office of members of district councils) is amended as follows.

(2) In subsection (4), in the words following paragraph (c), for "occurs" substitute "arises".

(3) In subsection (4A), for paragraphs (a) and (b) substitute "by a person returned or elected in accordance with sections 11D to 11K.".

(4) After that subsection insert—

"(4AA) Any person returned as mentioned in subsection (4A) shall be deemed for all purposes to have been duly elected as a member of the council.

(4AB) The clerk of a district council must as soon as practicable after a casual vacancy arises notify the Chief Electoral Officer—

(a) that a casual vacancy has arisen in the council, and

(b) of the name of the member of the council whose seat has become vacant (in this Act referred to as the "previous member").

(4AC) The clerk of a district council must, within 7 days from any other matter concerning a casual vacancy coming to the clerk's knowledge, report it to the Chief Electoral Officer.".

(5) Omit subsections (4B) and (4C).

(6) In subsection (5)—

(a) after "deemed" insert "for the purposes of rule 1(3) of the Local Elections Rules(**6**)",

(b) in paragraph (a), for "the vacancy exists" substitute "an election must be held to fill the vacancy in accordance with section 11D, 11E, 11F, 11G or 11H", and

(c) omit the words following paragraph (b).

(7) In subsection (6)—

(a) for "occurring" substitute "arising", and

(b) for "member whom he has succeeded" substitute "previous member".

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;

(**5**) Section 11(1) was amended by S.I. 1972/1998 (N.I. 21) and S.I. 2009/225; section 11(1A) was inserted by S.I. 1985/454 and amended by S.I. 2005/862 and S.I. 1992/810 (N.I. 6) and by virtue of S.I. 2009/225 does not apply to the local general election to be held in 2011; section 11(3) was amended by S.I. 1985/454; subsections (4A) to (4B) were inserted by S.I. 1985/1208 (N.I. 15) and amended by the Elected Authorities (Northern Ireland) Act 1989 (c. 3); and section 11(5) was amended by S.I. 1992/810 (N.I. 6).

(**6**) 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.

(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(**7**) 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(**8**) 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(**9**).

(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(**10**).

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,

(**7**) Rule 5A was inserted by S.I. 2001/417 and is amended by Article 4 of this Order.

(**8**) 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).

(**9**) 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.

(**10**) 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.

(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(**11**), 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.

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

(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, 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(**12**).

(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.

(**12**) 1989 c. 3.