*Draft Order laid before Parliament under section 96(2)(b) of the Northern Ireland Act 1998 (c. 47), for approval by resolution of each House of Parliament. This draft instrument replaces the one which was laid on 5 November 2008 and withdrawn on 20 November 2008 before having been published.*

DRAFT STATUTORY INSTRUMENTS

# 2009 No.

# NORTHERN IRELAND

## The Northern Ireland Assembly (Elections) (Amendment) Order 2009

*Made - - - - 2009*

*Coming into force in accordance with Article 1(2)*

In accordance with section 7(1) and (2)(h) of the Political Parties, Elections and Referendums Act 2000(**1**), 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(**2**) and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State in exercise of the powers conferred by sections 34(4) to (6), and 35(1), (2) and (5) of the Northern Ireland Act 1998(**3**), makes the following Order:

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Northern Ireland Assembly (Elections)(Amendment) Order 2009.

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

(3) Article 6 shall not apply to a vacancy in the seat of a member of the Assembly notified to the Chief Electoral Officer under articles 6 or 7 of the Northern Ireland Assembly (Elections) Order 2001(**4**) before the coming into force of this Order.

(4) In this Order "the 2001 Order" means the Northern Ireland Assembly (Elections) Order 2001.

(**1**) 2000 c. 41.
(**2**) 1998 c. 47.
(**3**) The powers in section 34(4) are extended by section 34(5) and (6) and those in section 35(1) are extended by section 35(2) and (5).
(**4**) S.I.2001/2599 as amended by the Northern Ireland Assembly (Elections)(Amendment) Order 2002 (S.I.2002/1964), the Northern Ireland Assembly (Elections)(Amendment) Order 2003 (S.I.2003/2989) and the Northern Ireland Assembly (Elections)(Amendment) Order 2007 (S.I.2007/308).

**Amendment of Article 2 of the 2001 Order**

**2.** In article 2 of the 2001 Order for the definition of the 2001 Regulations substitute—

""2008 Regulations" means the Representation of the People (Northern Ireland) Regulations 2008(**5**);"

**Substitution of Article 3 of the 2001 Order**

**3.**—(1) For article 3 of the 2001 Order substitute—

"**Application of certain provisions for Assembly elections**

**3.**—(1) The provisions of the 1983 Act, the Elections (Northern Ireland) Act 1985(**6**) and the 1985 Act which are specified in the left-hand column of Schedule 1 to this Order shall, subject to—

(a) any modifications and exceptions specified in relation to those provisions in the right-hand column of that Schedule; and

(b) the provisions of paragraph (3) below,

apply for the purposes of an Assembly election.

(2) The provisions of the 2008 Regulations, the Election Petition Rules 1964(**7**) and the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992(**8**) which are specified in the left-hand column of Schedule 2 to this Order shall, subject to—

(a) any modifications and exceptions specified in relation to those provisions in the right-hand column of that Schedule; and

(b) the provisions of paragraph (3) below,

apply for the purposes of an Assembly election.

(3) Unless the context otherwise requires, in the provisions applied by Schedules 1 and 2 to this Order—

(a) any reference to a parliamentary election (except the references specified in paragraph (5)) shall be construed as a reference to an Assembly election and a reference to a parliamentary general election shall be construed as a reference to a general election to the Assembly;

(b) any reference to the parliamentary elections rules shall be construed as a reference to those rules as applied for the purposes of Assembly elections;

(c) any reference to a parliamentary elector shall be construed as a reference to an elector entitled to vote at an Assembly election and references to the register of electors shall be construed accordingly;

(d) any reference to a parliamentary election petition shall be construed as a reference to an Assembly election petition;

(e) any reference to an overseas elector shall be disregarded;

(f) any provision having effect only in Great Britain or any part of it, including a provision relating to a local government election or local government electors, shall be disregarded;

(**5**) S.I. 2008/1741.
(**6**) 1985 c. 2.
(**7**) S.R. & O. (N.I.) 1964 No.28 as amended by S.R. & O. (N.I.) 1985 No.347.
(**8**) S.R. & O. (N.I.) 1992 No.448.

(g) any reference to a return in the context of a return to the writ of election and return to Parliament shall be construed as a reference to the declaration of result made by the returning officer under rule 50 of the election rules;

(h) in the heading of the forms in Schedule 3 to the 2008 Regulations which are applied by this Order, for the words "REPRESENTATION OF THE PEOPLE ACTS" substitute "NORTHERN IRELAND ASSEMBLY ELECTION";

(i) any reference to an enactment or instrument made under an enactment shall be construed as a reference to that enactment or instrument as applied by this Order; and

(j) in the event that different provision is made in relation to parliamentary elections in Great Britain and parliamentary elections in Northern Ireland, the provisions relating to parliamentary elections in Northern Ireland are applied by this Order.

(4) Section 35(2)(h) of the Judicature (Northern Ireland) Act 1978(**9**) shall apply in relation to an Assembly election petition as it applies in relation to a parliamentary election petition and as though the references in that section to the 1983 Act were references to that Act as applied by Schedule 1 to this Order.

(5) The references to "parliamentary election" to which paragraph (3)(a) above does not apply are those in section 160(4)(a)(i) of the 1983 Act(**10**) and section 173(1)(a)(i) of that Act(**11**)."

(2) Schedule 1 (substitution of Schedule 1 to the 2001 Order) has effect.

(3) Schedule 2 (substitution of Schedule 2 to the 2001 Order) has effect.

**Amendment of Article 4 of the 2001 Order**

**4.** In article 4 of the 2001 Order which shall become paragraph (1) of that article, at the end add—

"(2) A person is not entitled to vote as an elector—

(a) more than once in the same constituency at any Assembly election; or

(b) in more than one constituency at a general election to the Assembly."

**Amendment of Article 6 of the 2001 Order**

**5.** In article 6 of the 2001 Order for paragraph (1)(b) substitute—

"that member—

(i) did not belong to a registered party at the time he was returned; and

(ii) had given a notice in accordance with article 6A to the Officer; and".

**Insertion of new Articles 6A and 6B**

**6.** After article 6 of the 2001 Order insert—

"**Vacancies arising during an Assembly term: independent members**

**6A.**—(1) A member who has been returned who was not a member of a registered party at the time he was returned may give to the Chief Electoral Officer a notice in accordance with paragraph (2).

(2) The notice referred to in paragraph (1) must—

(**9**) 1978 c. 23; section 35(2)(h) was amended by Schedule 8 to the 1983 Act.
(**10**) Section 160(4) was substituted by Schedule 17 to the Political Parties, Elections and Referendums Act 2000 (c. 41).
(**11**) Section 173 was substituted by section 136 of the Political Parties, Election and Referendums Act 2000.

(a) be signed by the member;

(b) set out the names and addresses of not more than six persons to act as a substitute for the member and indicate, where more than one person is so named, an order of preference; and

(c) be signed by those persons, indicating their consent to be contacted in accordance with article 6(2).

(3) A substitute is a person who, in the event of the member's seat falling vacant, is returned in place of that member as a member of the Assembly.

(4) For the purposes of article 6 the "relevant notice" shall be taken to be the last notice given by the member concerned to the Chief Electoral Officer where the member has given more than one notice under this article.

**Vacancies arising during an Assembly term: members of registered parties**

**6B.**—(1) The Chief Electoral Officer ("the Officer") must act in accordance with this article where—

(a) he has been notified by—

(i) an election court or the High Court under section 144 or 146 of the 1983 Act, as applied by article 3 of, and Schedule 1 to, this Order; or

(ii) the presiding officer of the Assembly under section 35(3) of the 1998 Act,

that a vacancy exists in the seat of a member of the Assembly;

(b) at the time that member was returned he belonged to a registered party ("the relevant registered party") whether or not he continued to do so; and

(c) the vacancy has arisen other than as a result of the resignation of a person who has been returned as a member for more than one constituency.

(2) As soon as practicable after being notified that a vacancy exists under paragraph (1) or the circumstances in paragraph (4) arise, the Officer shall ask the nominating officer of the relevant registered party to nominate in writing, within seven days of receipt of the Officer's request, a person to fill the vacant seat and be returned as a member of the Assembly.

(3) On receipt of a nomination under paragraph (2), the Officer shall write to the person nominated asking him to respond in writing within seven days of receipt of the Officer's request stating that he is willing and able to be returned as a member of the Assembly or, if he is not, that fact.

(4) Paragraph (5) applies where the person nominated—

(a) does not respond in writing within seven days to a request under paragraph (3); or

(b) states that he is not willing or able to be returned as a member of the Assembly.

(5) Subject to paragraph (8), in the circumstances set out in paragraph (4), the Officer shall repeat the procedure set out in paragraphs (2) and (3).

(6) Where the person nominated does respond in accordance with paragraph (3) that he is willing and able to be returned as a member of the Assembly, the Officer shall declare that person to be so returned.

(7) The Officer shall give public notice of a declaration under paragraph (6) and send it to the presiding officer of the Assembly.

(8) If having applied the procedure in paragraphs (2) and (3) twice by virtue of paragraph (5) no person has been returned as a member of the Assembly, then article 7 shall apply.

(9) In this article and article 6 a "registered party" is a party registered in the Northern Ireland register within the meaning of part 2 of the Political Parties, Elections and Referendums Act 2000(**12**) and the "nominating officer" in relation to a party means the person registered as the party's nominating officer under that part of that Act.".

**Amendment of Article 7 of the 2001 Order**

**7.** In article 7(1) of the 2001 Order for the words "article 6(4) above" substitute "either article 6(4) or article 6B(6).".

Northern Ireland Office
Date

Minister of State

(**12**) 2000 c. 41. Part 2 establishes two registers of political parties: the Great Britain register and the Northern Ireland register.