



Northern
Ireland
Office

**GOVERNMENT RESPONSE
TO CONSULTATION**

**Improving the
Administration of
Elections to the
Northern Ireland
Assembly**

**Includes proposals relating
to filling vacancies in the
Northern Ireland Assembly
and European Parliament.**

October 2008

IMPROVING THE ADMINISTRATION OF ELECTIONS TO THE NORTHERN IRELAND ASSEMBLY: DRAFT GOVERNMENT RESPONSE TO CONSULTATION

Introduction

1. In July 2008, the Northern Ireland Office published a consultation document on *Improving the Administration of Elections to the Northern Ireland Assembly*. That paper sought views on a number of matters relating to the administration of Assembly elections and was accompanied by a draft of the Northern Ireland Assembly (Elections) (Amendment) Order 2008. One of the key issues considered as part of the consultation was the method of filling seats that have been vacated by members of the Assembly (MLAs) during term and, related to that, the question of whether any changes should also extend to the filling of seats vacated by Northern Ireland members of the European Parliament (MEPs) during term.

Responses were received from a number of bodies and political parties (for a list of respondents see Annex A).

2. This document is available on the NIO website: www.nio.gov.uk under Public Consultation. Printed copies of this response may also be obtained free of charge from:

Elections Unit
Northern Ireland Office
11 Millbank
London SW1P 4PN
Email: ElectionsUnit@nio.x.gsi.gov.uk

You may make additional copies of this response without seeking permission. This document can also be made available on request in different formats, for individuals with particular needs. Please call

02072106569 for any queries in relation to this response. The NIO textphone number is 02890527668.

3. If you have any concerns or complaints about the consultation process you should contact the NIO's consultation co-ordinator, Donna Knowles on 02890527015, by e-mail Donna.Knowles@nio.x.gsi.gov.uk or by post:

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4. The consultation has assisted the NIO greatly in formulating overall policy on the administration of Assembly elections in Northern Ireland and we are grateful to all those who provided a response.

Key Issues Relating to Assembly Elections

Filling of MLA Vacancies

5. All but one respondent agreed that the current system for filling seats vacated by members of the Northern Ireland Assembly during term requires reform.
6. The Chief Electoral Officer for Northern Ireland and most political parties who provided responses supported the proposal that legislative changes should be brought forward to allow for the nomination of persons to fill vacant seats in the Assembly to occur at the time the seat becomes vacant. They were also in agreement that the vacancy should be filled by an individual named by the nominating officer of the party which the former MLA belonged to at the time of his or her election.
7. The Electoral Commission proposed an alternative process where candidates would still propose a list of substitutes when standing for election. This list would be endorsed by the party nominating officer and would also be published by the Chief Electoral Officer on the Electoral Office website. The party nominating officer would also be required to notify the Chief Electoral Officer of any changes made after the election and these changes would again be published on the Electoral Office website.
8. The single respondent who rejected any change outright did so because they believed that the likelihood of a substitute list being exhausted would be small and that the proposals may result in parties removing elected members who have become unpopular with the party leadership and substituting them with “placemen”. The respondent also questioned the rationale for giving nominating officers the power to nominate replacements and submitted that this takes no account of the

fact that parties can, and frequently do, change their positions on many issues.

9. All those who commented on the position of Independents agreed that the substitute system should be retained for them, but that the Independent MLA should be allowed to modify their list after being elected.
10. **As noted above, all but one respondent agreed that the current system requires reform and that outdated substitute lists had caused a number of problems in recent years. Again, all but one respondent also agreed with the view outlined in the consultation paper that, when electors vote for representatives of political parties, they do so because they support that party's position on certain matters in line with that party's manifesto.**
11. **In relation to the concern expressed by one respondent, that the proposal set out in the consultation document may result in parties removing members and replacing them with "placemen", it is important to remember that the proposals would only permit a nominating officer to be able to nominate a replacement MLA once a seat has been vacated. The nominating officer would not assume any powers to remove an MLA whatsoever.**
12. **We are grateful to the Electoral Commission for its alternative proposal and have considered the merits of this. We appreciate that there would be benefits in having a system in which voters know at the time of voting who a replacement MLA might be. However, the Commission's proposal also provides for this list to be modified by the nominating officer post-election. While there are good reasons why such modification should be possible, this means that the electorate cannot be certain that the substitutes on the list published before the election would remain the same; this potentially diminishes the benefits of publication. We believe**

that the Commission's proposal provides in essence a very similar outcome to the proposal set out in the consultation paper in that the nominating officer would still have the power to decide on who should fill a vacant seat post-election.

13. With this in mind, and considering the responses received from other consultees, we have concluded that in the event of an Assembly seat becoming vacant, the nominating officer of the political party the vacating member belonged to at the time of his or her election should be permitted to nominate a replacement to fill the party member's seat.
14. A variation of the substitutes system will still be required for Independents. Independent candidates will still be able to submit a list of up to six substitutes but from the time they are elected rather than when submitting their nomination papers as is currently the case. This will minimise the administrative burden on Independent candidates by ensuring that they do not need to seek possible substitutes before being elected. This list may be changed by the Independent member, by notifying the Chief Electoral Officer during term.
15. We will include provision to this effect in the Order.

Abolition of Subscribers and Deposits

16. Deposits are an established feature of most elections. Candidates for the UK Parliament, Scottish Parliament and Welsh Assembly all pay a deposit of £500; candidates for Assembly elections in Northern Ireland pay a deposit of £150. The Chief Electoral Officer has suggested that, at its current level, the deposit for Northern Ireland Assembly elections serves no useful purpose. All other respondents that addressed this issue were in favour of retaining the deposit but increasing it to £500 in line with other UK elections.

17. The removal of the requirement for candidates to provide nomination papers that have been signed by a proposer, seconder and eight other subscribers would bring electoral practices in Northern Ireland further into line with those for the Scottish Parliament and Welsh Assembly. Due to the administrative burden involved in this process the majority of respondents that addressed this issue were in favour of the abolition of subscribers altogether. A small number suggested that the Welsh Assembly system of one subscriber per candidate could be introduced. Only one response recommended the continuation of the current practice.
18. **Deposits and the requirement for subscribers are linked in that both serve to discourage nominations from frivolous candidates. A higher deposit level would be likely to provide a greater disincentive to frivolous candidates which might in turn justify a significant reduction in the number of subscribers needed.**
19. **However, as noted by a number of respondents, we would wish to fully assess the equality implications of raising the deposit level before making legislative provision. For this reason, we do not propose to make provision within the current draft Order relating to subscribers and deposits, but will proceed with further work to assess the equality implications of such a proposal.**

The Role of Polling Agents

20. The proposal that polling agents should be abolished received contrasting comments from respondents. Some respondents suggested that the perceived illegal activities of polling agents have been undermining confidence in the electoral process and, as the requirement for photographic ID at polling stations has provided an effective check against personation, it would be better to abolish them

altogether. Others stressed that polling agents are key to ensuring public trust in the electoral system.

21. There was limited support for the introduction of specific provisions regulating the conduct of polling agents at Assembly elections. However, the majority of respondents that addressed this issue were satisfied that section 66 of the Representation of the People Act 1983 provides sufficient clarity on the behaviour expected of polling agents. The Electoral Commission suggested that the existing legislation could be accompanied by a voluntary code of conduct and stronger enforcement of the secrecy requirements. The Commission also stated that it would wish to see a UK wide consultation on the role of polling agents, tellers and representatives who operate within the polling stations.
22. Respondents were divided on whether the requirement that electoral numbers must be called out should be removed.
23. **The responses have provided a useful indication of the differing points of view regarding the role of polling agents. There is clearly a lack of consensus on a way forward at this time and for this reason we will not be bringing any amendments relating to polling agents forward in the current Order. Nevertheless, we will keep the issue of polling agents under review and will continue to work with the respondents to this consultation and others to address the issues that have been identified.**

Restrictions on Sub-Agents

24. The current legislation does not specify a limit on the number of sub-agents that can be appointed for each county constituency. All respondents agreed that restrictions on sub-agents per constituency should be introduced. However, there were differing views on what the restrictions should be. Suggested amendments included:

- allowing a maximum number of only two per constituency;
 - setting the maximum number in line with the size of the constituency;
 - setting the maximum number in line with the number of MLAs returned for each constituency; and
 - allowing a maximum number of one per District Electoral Area.
25. **All respondents agreed that restrictions on the number of sub-agents are required and we are very grateful to respondents for providing a wide variety of suggested ways forward. In light of these, we do not propose to include provision relating to the number of sub-agents in the current Order, but will carry out further analysis and consultation on the various options proposed.**

Suspension of the Count

26. Most respondents were in favour of the automatic suspension of the count at a specific time unless there is agreement that it should continue, in line with practice at Local Government elections.
27. **We will include provisions within the current Order to legislate for the automatic suspension of the count at 11.00pm unless there is agreement between all of the election agents and the returning officer that it should continue.**

Provision of Information by Presiding Officer

28. There is currently no statutory provision regulating how and when presiding officers should release information on the number of ballot papers that have been issued on the day of election. Most respondents that addressed this issue recommended the continued release of this

information at regular intervals. There remains however a need to address perceptions that the process of providing this information is not being conducted even-handedly.

29. **We note the support amongst parties for continuing the practice of releasing information on the number of ballot papers issued. We appreciate also the need to ensure that there is a consistent approach to this practice at polling stations across Northern Ireland. There is however a divergence of views amongst respondents on the extent to which the provision of such information should be provided for in statute. We will conduct further analysis of the responses with a view to piloting a statutory scheme for application at the next scheduled elections in Northern Ireland (the European Parliamentary elections in 2009). If this scheme is successful, we will aim to make similar legislative provision for Assembly elections at a later date.**

Publication of Statement of Persons Nominated

30. All respondents that addressed this issue supported the proposal that the deadline for the delivery of nomination papers should be brought forward to 1:00pm on the 16th day before the date of the poll. They also agreed that the deadline for publication of the statement of persons nominated should be extended to 6.00pm to ensure that the returning officer has sufficient time to compile and verify the statement.
31. **Provisions to amend the timescales for the publication of the Statement of Persons Nominated as outlined above will be included in the current Order.**

Minor Issues

32. *Multiple Voting*

All respondents that addressed this issue agreed with the proposal that it should be made clear on the face of the Order that electors are only able to vote once in Assembly elections. **Provision to provide for this will be included in the current Order.**

33. *Period taken for nominations*

All but one of the respondents that addressed this issue were in favour of extending the period taken for nominations to between the 25th and 16th day before the date of the poll. **Provision to provide for this will be included in the current Order.**

34. *Party Emblems*

All respondents that addressed this issue agreed that the nominating officers of political parties should be able to make the application to include a registered party emblem on the relevant ballot paper on behalf of all the party's candidates. **Provision to provide for this will be included in the current Order.**

Replacing MEPS

35. All respondents maintained the same position in respect of filling MLA vacancies when responding on proposals relating to filling MEP vacancies. The Electoral Commission proposed its alternative approach and one respondent rejected the proposals outright (both discussed above). All other respondents agreed with the proposal outlined in the consultation document.

36. **In line with the approach taken to Assembly vacancies, we will bring forward legislative amendment to the European Parliamentary Elections Act 2002 to remove the requirement for automatic by-election in Northern Ireland in the event of an MEP vacancy and instead provide for the nominating officer of the party that the vacating MEP belonged to at the time he or she was elected to nominate a replacement at the time the vacancy arises.**

- 37. In respect of Independents we will also seek to make legislative provision to allow for Independent candidates to submit a list of substitutes to the Chief Electoral Officer when elected and for that list to be modified post-election.**

**Elections Unit
Northern Ireland Office
October 2008**

List of Respondents to the Consultation

The NIO was grateful to receive responses from the following parties, bodies and individuals:

- I. Chief Electoral Officer for Northern Ireland
- II. Democratic Unionist Party
- III. Electoral Commission
- IV. Jim Allister QC MEP
- V. Jim Nicholson MEP
- VI. Social Democratic and Labour Party
- VII. Sinn Fein
- VIII. Ulster Unionist Party