

The Electoral Commission's response to the Northern Ireland Office consultation paper – *Improving Electoral Registration Procedures in Northern Ireland*

1 Introduction

- 1.1 The Electoral Commission welcomes the opportunity to comment on the Northern Ireland Office's (NIO) consultation paper "Improving Electoral Registration Procedures in Northern Ireland". The consultation paper seeks views on a number of questions relating to registering to vote in Northern Ireland and outlines a number of proposed changes to absent voting procedures and voting from abroad. The paper also seeks views on whether the Chief Electoral Officer (CEO) should participate in the Commission's performance standards scheme and if responsibility for promoting public awareness in respect of registrations and elections should be the responsibility of the CEO in Northern Ireland.

2 Overview

- 2.1 The Commission has previously commented on a range of issues concerning electoral registration in Northern Ireland including most recently the Representation of the People (Northern Ireland) Regulations 2008. We have also published a series of research reports and election reports addressing key aspects of electoral registration in Northern Ireland¹.
- 2.2 The Commission's response supports:
- removing the three month residency requirement for electoral registration in Northern Ireland
 - amending and improving the administrative framework for absent vote applications in Northern Ireland
 - amending the legislation on overseas voters to take account of the nationality provisions in the Belfast (Good Friday) Agreement
 - the extension of the Commission's performance standards framework for registration and elections to the work of the CEO
 - extending the list of specified authorities to include Further Education Colleges
 - extending the list of prescribed photographic ID to include EU driving licences

¹ These reports are available at:
http://www.electoralcommission.org.uk/search?mode=results&queries_search_query=research

- the CEO taking responsibility for public awareness activity in respect of registration and elections in Northern Ireland.

3 Issues on which views are sought

Residency requirements:

Should the three month residency requirement for registration in Northern Ireland be removed?

- 3.1 The system of electoral registration in Northern Ireland still depends on a qualifying period of three months, unlike Great Britain where it is possible to apply for inclusion on the register as soon as a person has moved house. The residency requirement has applied since it was introduced by the Ireland Act 1949. Historically, this was because of concern about the possible abuse of multiple registrations in Northern Ireland and the risk that people living outside Northern Ireland could move to Northern Ireland for a short period simply in order to register to vote.
- 3.2 In response to the consultation on the Representation of the People (Northern Ireland) Regulations 2008² we questioned the continuing value of the three month residency qualification given the strict anti-fraud and identity requirements built into the registration system following the introduction of the Electoral Fraud (Northern Ireland) Act 2002. The requirements now placed on people wishing to register have largely made the three month residency requirement obsolete.
- 3.3 Anyone applying to register to vote in Northern Ireland must provide evidence of residence and proof of their address. Residence can be proven from an official document such as a driving licence or other document such as a bank statement or utility bill. To comply with the three month residency requirement the document must be dated between three and six months before the person applies to be registered. Address can be proven from any of the documents used to prove residence but must be dated less than three months before the person applies to be registered. Therefore a person wishing to register must provide two sets of similar documentation, with different dates and for different purposes.
- 3.4 We support the proposal to remove the three month residency requirement as there is no evidence that it serves any purpose in respect of safeguarding the accuracy and integrity of the electoral register. There is some evidence that it unnecessarily delays potential electors having their names added to the register including those returning to Northern Ireland from extended travel or working abroad.

² Commission response to draft Representation of the People (Northern Ireland) regulations 2008 February 2008

Access to the register in case of emergency

Do you agree that the Chief Electoral Officer should be able to release information contained in the register to provide assistance where there is an imminent and serious risk to a person?

- 3.5 Regulation 94 of the Representation of the People (Northern Ireland) Regulations 2008 prohibits the CEO from providing information contained in the full electoral register to anyone other than as specified in the Regulations. The specified bodies include the British Library, elected representatives, the Electoral Commission and the police.
- 3.6 The CEO has told us that he has been contacted twice in the last year by medical practitioners who urgently needed to obtain up to date contact details of patients at risk. Although GPs and others are permitted to examine the full register at an Electoral Office, it is unlikely they there would be sufficient time for this to take place in the event of an emergency.
- 3.7 The CEO has advised us that he is better placed to retrieve information quickly and accurately from the electoral register. The Electoral Office's IT system can search and find an individual based on limited details, for example a name and date of birth and can search the entire register on name alone. Any other body or authority with access to the register must look at each parliamentary constituency and would not have access to personal details beyond name and address.
- 3.8 Our long-held policy position is that the electoral register should be used only for electoral purposes³. However given the unique structure of electoral administration in Northern Ireland, where there is a single CEO and one centrally held electoral register, the case for amending the legislation to allow the CEO alone to provide up to date information in the event of a medical emergency is in the interests of voters generally. Therefore, we would be supportive of this change in the context of Northern Ireland.

Absent voting and voting from abroad

Absent vote applications and procedures

Should an individual be able to attest up to two absent vote applications at a particular election?

- 3.9 Anyone applying for a postal or proxy vote at a particular election in Northern Ireland must give a valid reason why they require an absent vote and must have their application attested. These applications must be signed and attested by someone who: is aged 18 years or over; lives in the UK; knows the applicant but is not related to them; and has not attested any other application for that particular election.

³ *The Marked Electoral Register* The Electoral Commission 2005

- 3.10 The consultation paper asks whether an individual should be able to attest up to two absent vote applications at the same election. The CEO highlighted this issue at the Commission's post election seminar in June 2009. He said that often applications for an absent vote for a particular election made by two people living in the same household are attested by the same person, frequently a neighbour. This situation results in one of the applications being rejected under current rules and according to the CEO this has been a recurring problem at elections in Northern Ireland. Data from the Northern Ireland Assembly Elections 2007 shows that 76 absent vote applications (4% of the total) were rejected due to double attestation. Given that absent vote applications are submitted close to the time of an election there is usually insufficient time to inform the applicant and have them resubmit their application to enable them to vote at the election concerned.
- 3.11 We would support the proposal that provision is made to allow the same person to attest up to two applications at the same election on the grounds that it addresses a recurring problem which prevents a number of individuals from exercising their right to vote.

Do you agree that those in receipt of the higher rate of Attendance Allowance or higher rate care component of DLA should not be required to have their absent vote attested?

- 3.12 An application for an absent vote (postal or proxy) on the grounds of blindness or other disability in Northern Ireland must be attested by a named healthcare professional as outlined in regulation 57 of the 2008 regulations. Attestation is not required if the applicant is registered as a blind person by a Health and Social Services Board or the applicant is in receipt of the higher rate of the mobility component of the Disability Living Allowance (DLA). In GB attestation is only required for applications to vote by proxy for an indefinite or definite period. Applications to vote by post or applications to vote by proxy at a particular election do not require attestation. However those who are registered blind by their local authority or who are in receipt of the higher rate of the mobility component of DLA do not need to have their proxy application for a definite or indefinite period attested.
- 3.13 The consultation paper proposes including two further benefits which would exempt applicants from the requirement to have their applications attested. Receipt of the higher rate mobility component of DLA is restricted to those people who have applied and meet the eligibility criteria before their 65 birthday. The consultation paper suggests that someone who may not have applied for the higher rate DLA before they are 65 but who fulfil the criteria for receiving the benefit are often instead entitled to the higher rate of Attendance Allowance. The consultation proposes that the exemption from attestation should be extended to those in receipt of the higher rate of Attendance Allowance and also those in receipt of the higher rate care component of DLA.
- 3.14 To qualify for the higher rate Attendance Allowance or the higher rate care component of DLA a person must be so severely disabled as to need, from another person, attention or supervision during the day and night⁴. Individuals

⁴ www.direct.gov.uk/disability-dla.

in receipt of these benefits will have been through an assessment process to determine entitlement which may also have involved a medical examination. Receipt of these benefits could reasonably indicate that the person applying for an absent vote has a severe disability or impairment and reasonably requires an absent vote.

3.15 We support this proposal as it would benefit individuals in receipt of specified disability benefits, who are applying for an absent vote by providing for a quicker and more straightforward application process. Although the system for applying for an absent vote is different in GB extending the categories of people exempt from attestation would also benefit electors living in GB and the UK government may wish to consider this.

Should the list of those who can attest absent vote applications be extended to include other healthcare professionals?

3.16 Applications for an absent vote in Northern Ireland on the grounds of blindness or other disability must be attested and signed by a healthcare professional specified in Regulation 57 of the Representation of the People (Northern Ireland) Regulations 2008. The list of healthcare professionals includes registered medical practitioners, nurses, Christian Science practitioners and those in charge of residential or nursing homes.

3.17 The consultation seeks views on whether this list should be extended to include other suitably qualified healthcare professionals working in the community. This would therefore enable people living independently in the community to avail of a greater range of health professionals to attest their application. We are aware from the most recent election in Northern Ireland of a small number of people having to visit their doctor's surgery specifically to have their application attested. Some of these people were at the same time being attended at home by social workers and podiatrists who were not qualified to attest the relevant application. We believe that broadening the list of health care professionals would be in the interests of the voter and we support the proposal.

Should postal vote applicants who request that their ballot is sent to a different address provide reasons for this?

3.18 This measure was introduced in Great Britain in 2007 as an amendment to the Representation of the People Regulations 2001 (following the Electoral Administration Act 2006). An elector must explain why their circumstances are such that they wish an alternative address to be used. If no explanation is given an Electoral Registration Officer may then wish to check with the elector and obtain an explanation or choose to reject the application. We support this measure as it will provide additional security in processing absent vote applications and will allow for consistency across the UK.

Voting from abroad

Should the requirement for an applicant to declare that they are a British Citizen on an Overseas Elector's Declaration be amended in respect of

Northern Ireland and do the 2008 regulations require further amendment in relation to this?

- 3.19 Persons from Northern Ireland living abroad can apply to be registered as an overseas elector. Overseas electors can vote in UK and European Parliamentary elections, but not Northern Ireland Assembly or Local Government elections. However, to qualify as an overseas elector a person must have been on the Northern Ireland electoral register at some point within the last 15 years or, if they were not old enough to vote, their parent or guardian must have been registered. A person wishing to apply as an overseas elector may only apply to vote in the same Parliamentary Constituency in which they lived before moving abroad.
- 3.20 The application form, which reflects the requirements in the Representation of the People Act 1985, currently requires the applicant to declare that they are a British citizen. This has been challenged by one of the main political parties in Northern Ireland in that it is inconsistent with the Good Friday/Belfast Agreement which recognises the 'birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose'⁵.
- 3.21 The CEO has advised that he would favour an amendment to the legislation as it would encourage more people to register as overseas electors. We recognise that some people may be deterred from registering as overseas electors due to a reluctance to identify themselves as British. We therefore support amending the regulations to allow for a declaration of Irish citizenship for Northern Ireland citizens only.

Performance Standards

Should the Chief Electoral Officer participate in a performance standards scheme tailored to meet the unique duties of the Office?

- 3.22 Powers for the Electoral Commission to set and monitor performance standards for Electoral Registration Officers and Returning Officers were introduced in Great Britain by Section 67 of the Electoral Administration Act 2006. However these provisions were not extended to Northern Ireland at the time of commencing the Act, with the result that the performance standards framework developed by the Commission does not currently extend to Northern Ireland.
- 3.23 The Commission's performance standards framework has been fully operational in Great Britain since July 2008, and Electoral Registration Officers (EROs) and Returning Officers (ROs) are now assessed against published and widely accepted performance standards each year for both electoral registration and elections management.
- 3.24 We have used information from our assessments of performance to identify where support may be needed to improve performance. We have developed further guidance and resources to support improvement across a large number

⁵ Annex 1 Constitutional Issues paragraph 1(vi) The Agreement

of EROs and ROs and engage with individual EROs/ROs at a more detailed level to identify specific barriers to performance improvement.

- 3.25 Extending the performance standards framework to include the CEO for Northern Ireland would improve transparency and accountability for the delivery of electoral registration and elections in Northern Ireland, without compromising the operational independence of the CEO. Increased transparency and accountability for performance would help to ensure and demonstrate that the interests of voters, political parties and candidates are put first.
- 3.26 Repealing section 78(2)(b) of the Electoral Administration Act 2006 would have the effect of extending the current performance standards provisions to Northern Ireland. This change would mean that a clear legal and operational framework would be in place to assess performance in Northern Ireland, consistent with the framework already in place in the rest of the United Kingdom. The Commission would remain under a clear statutory duty to consult the Secretary of State and any other relevant body or individual before publishing any performance standards for Northern Ireland, as is already the case in Great Britain. We believe this is an important safeguard to ensure the standards are appropriate and reflect the concerns of all stakeholders in Northern Ireland.
- 3.27 We recognise that the legal and administrative frameworks for elections and electoral registration in Northern Ireland differ from those currently in place in Great Britain. For example, EROs in Great Britain are currently assessed on the approach they take to carrying out house-to-house enquires as part of the annual canvass. This standard would not be appropriate in Northern Ireland, given the relatively infrequent nature of the canvass. However we expect that, wherever possible, performance standards for Northern Ireland should follow those currently in place for EROs and ROs in Great Britain. This would allow for meaningful comparisons to be made between the quality of service provided to people in Northern Ireland and those living elsewhere in the UK.
- 3.28 This approach would also avoid duplicating or compromising the clear statutory registration objectives, set out in the Representation of the People Act 1983 as amended by Section 10ZB of the Northern Ireland (Miscellaneous Provisions) Act 2006, against which the CEO is currently required to report. These objectives have the potential to provide a strong degree of public accountability for performance on the basis of outcomes, which could be complemented by clear and appropriate management performance standards. We welcome the CEO's commitment to working with us in developing performance standards for Northern Ireland.

Other issues

Should Further Education Colleges be added to the list of specified authorities that the Chief Electoral Officer is able to request information from for registration purposes?

- 3.29 The Northern Ireland (Miscellaneous Provisions) Act 2006 introduced continuous registration and abolished the annual canvass for Northern

Ireland. In addition, the CEO was given access to appropriate data sources to enable him to ensure that individuals' records are kept up to date, and to take proactive steps to target those not on the register for registration.

- 3.30 Regulation 42 of the Representation of the People (Northern Ireland) Regulations 2008 sets out the specified authorities which the CEO in meeting his statutory registration objectives has the power to request information from. The specified authorities are district councils, the Registrar of Births and Deaths in Northern Ireland, the Northern Ireland Health & Social Care Business Services Organisation and secondary schools.
- 3.31 The provisions enabled the CEO to contact secondary schools as part of his 'schools initiative' aimed at increasing the number of attainers on the register. This activity significantly increased the number of attainers on the register from 224 in December 2007 to 16,809 in March 2009.
- 3.32 The proposal to add Further Education colleges to the list of specified authorities would enable the CEO to target more young people over 16 and specifically allow the CEO to reach this target group in the first six weeks of their attendance at an FE College (when attendance is linked to continuing benefit entitlement). This is in line with and would better facilitate the CEO's duty to take proactive steps to target those not on the register for registration. We therefore support this proposal.

Should the Chief Electoral Officer be able to summarily remove a person from the register if informed by the relevant authority in another jurisdiction that the person has died?

- 3.33 Regulation 35 of the 2008 regulations outlines the procedure for the CEO to remove a person from the electoral register. The summary procedure details specified circumstances in which a person has ceased to satisfy conditions for registration. The specified circumstances include notification by a relative or executor of the elector or by the Registrar General of Births and Deaths in Northern Ireland or by the Senior Coroner for Northern Ireland that the elector has died. On receipt of this information the CEO is able to remove the deceased person's details from the register without having to carry out a review.
- 3.34 However if the CEO receives information from a Registrar in another part of the UK or another jurisdiction, he is unable to remove that person's details from the register and must carry out a review by writing to the deceased's family before removing their details from the register.
- 3.35 We support the proposal as this would allow the CEO to receive and act upon notification from a relevant authority similar to one already specified in the existing legislation. Including the wording 'another jurisdiction' would allow the CEO to receive information from not just the Republic of Ireland but also other parts of Great Britain. The proposal would allow for a more sensitive approach allowing the CEO to remove a person from the register without having to carry out a review when he is informed by a specified authority that an elector had died. This proposal would also further enhance the CEO's capacity to maintain an accurate register.

Should the list of acceptable ID to be used when voting be extended to include EU driving licences?

3.36 The Electoral Fraud (Northern Ireland) Act 2002 introduced the requirement to present a specified form of photographic identification when attending the polling station to vote in person. Since 2007 there have been minor changes to the forms of acceptable ID with the Translink Blind Pass and War Disabled SmartPass being added to the list and the dropping of the requirement that ID must be current. These changes were supported by the Commission. There is now widespread understanding of the photographic ID requirements at elections in Northern Ireland with 99% of those surveyed after the 2007 Assembly election saying they did not encounter any difficulty with their ID at polling stations. We are aware of a small number of difficulties encountered by people who presented EU driving licences at the recent European election. Therefore, we have no objection to including EU driving licences to the list of acceptable ID.

Should responsibility for promoting public awareness in respect of registration and elections transfer to the Chief Electoral Officer?

3.37 The CEO has the statutory responsibility for ensuring people are registered to vote in Northern Ireland. Both the Commission and the CEO undertake activity promoting registration. However, the Commission and the CEO agree that this approach may not achieve the best results from the point of view of the voters for whom we undertake this work.

3.38 The Commission supports the proposal that the CEO assumes responsibility for public awareness campaigns given his responsibility for maintaining the electoral register and managing elections for the whole of Northern Ireland. We are willing to work with the CEO and the NIO to ensure the CEO receives appropriate funding for this activity.

3.39 Section 69 of the Electoral Administration Act 2006 places a duty on EROs in the UK to encourage and promote electoral registration. However, given that the Commission was at that time funded to undertake this activity Section 69 was not commenced in Northern Ireland. The CEO has informed us that if he had the responsibility for campaigns activity in Northern Ireland, he would have no objection to the commencement of Section 69.

The Electoral Commission
October 2009