

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT EUROPEAN PARLIAMENTARY  
ELECTIONS ACT 2002 (AMENDMENT)  
REGULATIONS 2018

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ELECTIONS (AMENDMENT) REGULATIONS 2018

*Tuesday 23 January 2018*

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**The Committee consisted of the following Members:**

*Chair:* MRS MADELEINE MOON

- |  |   |
|--|---|
| † Afolami, Bim ( <i>Hitchin and Harpenden</i> ) (Con)      | † Milling, Amanda ( <i>Cannock Chase</i> ) (Con)                  |
| † Brock, Deidre ( <i>Edinburgh North and Leith</i> ) (SNP) | † Robinson, Mary ( <i>Cheadle</i> ) (Con)                         |
| † Cunningham, Alex ( <i>Stockton North</i> ) (Lab)         | † Smith, Cat ( <i>Lancaster and Fleetwood</i> ) (Lab)             |
| † Dent Coad, Emma ( <i>Kensington</i> ) (Lab)              | † Smith, Chloe ( <i>Parliamentary Secretary, Cabinet Office</i> ) |
| † Docherty, Leo ( <i>Aldershot</i> ) (Con)                 | † Swire, Sir Hugo ( <i>East Devon</i> ) (Con)                     |
| † Elliott, Julie ( <i>Sunderland Central</i> ) (Lab)       | † Tomlinson, Michael ( <i>Mid Dorset and North Poole</i> ) (Con)  |
| † Fletcher, Colleen ( <i>Coventry North East</i> ) (Lab)   |   |
| † Foster, Kevin ( <i>Torbay</i> ) (Con)                    | Leoni Kurt, <i>Committee Clerk</i>                                |
| † Frith, James ( <i>Bury North</i> ) (Lab)                 |   |
| † Lopez, Julia ( <i>Hornchurch and Upminster</i> ) (Con)   | † <b>attended the Committee</b>                                   |
| McGinn, Conor ( <i>St Helens North</i> ) (Lab)             |   |

## Sixth Delegated Legislation Committee

Tuesday 23 January 2018

[MRS MADELEINE MOON *in the Chair*]

### Draft European Parliamentary Elections Act 2002 (Amendment) Regulations 2018

2.30 pm

**The Parliamentary Secretary, Cabinet Office (Chloe Smith):** I beg to move,

That the Committee has considered the draft European Parliamentary Elections Act 2002 (Amendment) Regulations 2018.

**The Chair:** With this it will be convenient to consider the draft European Parliamentary Elections (Amendment) Regulations 2018.

**Chloe Smith:** It is a pleasure to serve under your chairwomanship, Mrs Moon.

The purpose of the regulations is to make changes to the procedure for filling MEP vacancies in Great Britain and Gibraltar to reduce the likelihood that a European parliamentary by-election will be required in the run-up to the UK leaving the European Union. Following the referendum, the UK will be leaving the EU. The Prime Minister is clear that the United Kingdom will cease to be a member of the EU on 29 March 2019. After the UK has left the EU, we will no longer have Members of the European Parliament, and we will no longer participate in European parliamentary elections. While the UK remains a member of the EU, however, we are obliged to make arrangements to fill any MEP vacancies that may arise—for example, due to the resignation or death of a sitting MEP.

Electoral law provides that in Great Britain and Gibraltar a vacant MEP seat will stay with the party that won the seat at the previous European parliamentary general election, and it is filled with reference to the unelected candidates on that party's list of candidates at that election in the region where the vacancy arises. If it is not possible to fill a vacant seat from the winning party's list because there is nobody else left on it who is willing or suitable to take up the seat, a by-election is held to fill the vacancy. I should say that a different system applies in Northern Ireland, and I will cover that later.

To date, no by-elections have been needed to fill a vacancy as it has been possible to fill vacant seats from the relevant party list. We consider, though, that in some areas there is now a significant risk of a by-election being necessary due to the number and circumstances of the candidates remaining on some party lists. For example, in the east midlands region, there are two candidates remaining on each of the lists for the Conservatives and UKIP. The cost of a by-election would be around £10 million. In the north-east, there is one candidate remaining on the Labour party list. The cost of a by-election there would be around £5 million.

In Scotland, there are four candidates on the SNP list, although it is not clear whether they would all be willing or able to take up a vacant seat. Two are MPs, and an MP cannot also be an MEP. The cost of a by-election in Scotland would be around £13 million. I am sure that Members understand why those figures vary; it is not because of the parties I have mentioned, but because of the circumstances of the regions. As a further example, UKIP won a seat in Wales in 2014. Although there are three persons on its reserve list, we think there might be difficulties in filling any vacancy that might arise, which could lead to a by-election being necessary. The cost of a by-election in Wales would be around £7 million.

I am sure Members are beginning to see the point of the regulations. As this European Parliament gets closer to its end, existing MEPs might consider standing down from the role to pursue opportunities elsewhere, which will increase the risk of a by-election being necessary if it is not possible to fill vacant seats from those candidates on the relevant party lists.

The Government consider that, in the circumstances, there is strong justification for taking action to reduce the likelihood of a by-election occurring before the UK leaves the EU. As I have indicated, there would be significant financial costs to the public purse in holding a by-election. Given that the UK will be leaving the EU, the turnout at such a poll could be low and electors might query the value of holding it.

The statutory instruments therefore make sensible, precautionary changes to the process for filling vacant MEP seats. They will reduce the likelihood of any costly by-elections in Great Britain. The instruments provide that if a vacancy cannot be filled from the list of candidates for the party that won the seat at the previous round of elections, the party that holds the vacant seat may instead nominate a person to fill the vacancy and be returned as an MEP for that party.

Turning to the detail of the proposed changes, the European Parliamentary Elections Act 2002 (Amendment) Regulations 2018 amend the regulation-making powers in section 5 of the European Parliamentary Elections Act 2002 concerning the procedure for filling vacant MEP seats. Using the new powers, the European Parliamentary Elections (Amendment) Regulations 2018 amend the European Parliamentary Elections Regulations 2004, which set out provisions governing the conduct of European parliamentary elections in Great Britain and Gibraltar.

The proposed changes in the European Parliamentary Elections (Amendment) Regulations 2018 address the position whereby a vacancy has arisen and it is not possible for the regional returning officer to fill the vacant MEP seat from the list of the party that won the seat in the region at the previous election.

As I briefly mentioned, under the proposed changes, where the outgoing MEP stood for a registered party, the RRO will still initially seek to fill the vacancy through approaching in turn the reserve candidates on the party's list of candidates for the relevant region. If the RRO is unable to fill the vacancy from the party list because that list is exhausted, that will no longer trigger a by-election. Instead, the RRO must ask the nominating officer of the party that previously won the seat to nominate a person to fill the vacant seat and be returned as an MEP for that party. The person must meet the existing requirements to be an MEP—for example, in terms of age and nationality.

Under the proposed changes, the nominating officer must respond within 28 days to the RRO, giving the name of the person who is to fill the vacant seat. In the event of the nominating officer being unable to nominate a person within 28 days, a by-election will be held to fill the vacancy. We think it extremely unlikely that a party will not be able to nominate a person to fill the vacancy within the 28 days and so cause a by-election. The regulations make similar provision for independent candidates and jointly nominated candidates.

**Alex Cunningham** (Stockton North) (Lab): Can the Minister help me a little? Pardon my ignorance of this matter, but people are elected as part of a party list, yet they can apparently resign from the party and retain their seat in the European Parliament. Is it the case that the regulations will not affect that situation? Can a person no longer be a member of a party but still retain their seat, despite the fact that the public, as in the case of the north-east of England, voted for a party and that person has resigned and is now an independent? In that case, will that person retain their seat, meaning that the provisions do not have to be put in place?

**Chloe Smith:** I am grateful to the hon. Gentleman in two ways: for giving me the chance to finish my cough sweet—he will be able to hear I am struggling somewhat—and for giving me the instance that he had in mind when he raised his question. I believe his point is correct: the regulations do not change that existing scenario. If Members want to discuss what will happen if a person, under a future scenario, became an independent, for example, and so ceased to represent the party for which they originally took their seat, we can do so, but I do not believe the regulations change the particular instance the hon. Gentleman has in mind.

The changes are modelled on the process that Parliament previously agreed for filling MEP vacancies in Northern Ireland; it has been successfully used to fill a vacant seat there. I should explain that the single transferable vote is used for European parliamentary elections in Northern Ireland, which differs from the system used in Great Britain. Under STV, there are no party lists and in the event of a vacancy the nominating officer of the party that previously won the seat will nominate the person to be the new MEP. They will then be returned to the seat by the chief electoral officer for Northern Ireland.

We have consulted on the instruments with the Electoral Commission and others, such as the Society of Local Authority Chief Executives, the Association of Electoral Administrators and the Government of Gibraltar. There is general agreement among those whose views were sought on the instruments that it is desirable to avoid a European parliamentary by-election across a region just before the UK leaves the EU.

Our law provides that if a vacancy occurs less than six months before the next European parliamentary election, the seat remains vacant until that election and it is not necessary for a by-election to be held. We are maintaining that position, but without the changes there would be a period of almost a year when it would be necessary to hold a by-election if a vacant seat could not be filled from the candidates on the relevant party list.

In summary, the statutory instruments make sensible and proportionate changes to the process for filling vacant MEP seats. The changes are designed to reduce

the likelihood of any costly European parliamentary by-elections being required in Great Britain before the UK leaves the EU. I commend the regulations to the Committee.

2.40 pm

**Deidre Brock** (Edinburgh North and Leith) (SNP): It is a great pleasure to serve under your chairmanship, Mrs Moon.

I certainly empathise with the intent behind this move: who would want to continue incurring the cost of elections for a Chamber that will have no further relevance in a few months' time? There are the obvious additional benefits for the Conservative party, too, in that local difficulties such as Belinda Don and Alex Story can be easily swept under the carpet. Jilted candidates cannot make too much of a fuss if the principle of nomination rather than election has been established, can they? That, though, runs counter to democracy. The idea that a party, or indeed an individual in the case of independents, can simply nominate a new parliamentarian is not one that sits easily with me, and I suspect it will not sit easily with many people.

I accept that the d'Hondt system used on a list appoints rather than elects people to a casual vacancy, but at least those who were on the lists at the general election were put before the voting public. If we run down the route of nominating a party favourite who was not on the lists for the election in question, we are in danger of endorsing the idea that people can become parliamentarians without being subjected to any public scrutiny. The electorate will not have had the chance to endorse—or, more pertinently, to reject—them at the ballot box.

The Minister might be interested to know that the Scottish Parliament operates a d'Hondt system for the additional Member lists for regional MSPs, so if a list is exhausted, the seat lies vacant until the following election. That has happened. The death of Margo MacDonald in 2014 after being elected as an independent on her own list meant that her seat lay vacant for two years, before being filled at the 2016 Holyrood general election.

Personally, I would like to see Ministers take this away and have another think. It would surely be better to be short an MEP or two than to take the democracy out of the system—potentially take the democracy out of the system altogether. However, that is not what is on offer here today and I gather I will be in the minority, so I simply place on record my concerns about possible abuses of the system, and I request that the Minister keep a sharp eye out for such possible practices in future.

2.42 pm

**Cat Smith** (Lancaster and Fleetwood) (Lab): It is a pleasure to serve under your chairmanship, Mrs Moon. I welcome the Minister to her post. We share not only a first initial and a surname, but now a policy brief. I am sure there will be no confusion whatever.

As the Minister said, the regulations allow for vacant seats in the European Parliament to be filled by the sitting party's nomination, or in the case of independent parties, substitution. That is what we are discussing. The purpose of the regulations is to reduce the likelihood of a by-election in the run-up to 2019. As we prepare to

[*Cat Smith*]

leave the EU, our country needs certainty and stability, not confusion and chaos. A European Parliament by-election between now and our departure from the EU is certainly not in the interest of the public purse.

While we do not oppose the adoption of the regulations, given the huge cost of an EU by-election and the fact that we are leaving the EU, there are some points that I would like to place on record. My concern is that the proposals give far too much power to political party machines, further adding to our country's democratic deficit. That will allow party leaders to nominate whoever they want, overlooking the confidence of the people and the list of names that was placed before the people at the last election to take place in this country.

I do not want to comment too much on private party matters. The fiasco concerning the replacement of two Conservative MEPs in the north-east, which went public last summer and during which the candidate next on the nomination list was overlooked, shows that the Conservative party is expert in this regard. Does this perhaps explain why the Government are so keen to introduce the regulations—to save further embarrassment later? Unlike the Conservative party, the Opposition are truly democratic and we recognise the huge contribution of our many Labour party members—of course, we do not know how many Conservative party members there are—in the decision making of our party.

The proposals are also timely, given what we all suspect is the imminent or possible collapse of UKIP. I am sure the Minister will be aware that MEPs elected under a particular party label have left the party to become independents in the last few days. If such a person subsequently resigns as an MEP, what is the position? Does the replacement come from the party under whose banner the first person was elected? I would like to hear the Minister's comments on that.

Those are a few of my concerns regarding the proposals, but, as I have said, the Opposition will not oppose the regulations, given the huge cost of an EU by-election and the fact that we will be leaving the EU.

2.45 pm

**Chloe Smith:** I appreciate the Committee's comments and welcome its support for the regulations. Of course, I will keep a close eye on the brief, as the hon. Member

for Edinburgh North and Leith asks—that is absolutely my intention in taking up this new role. I thank the hon. Member for Lancaster and Fleetwood for her welcome, and I look forward to working with all the Opposition spokespeople on such issues.

As the hon. Lady set out, this is the right thing to do at this moment because it gives us stability as we consider the UK's exit from the EU. I do not intend to dwell on the party political points that have been made, except to remind the hon. Lady that it was a Labour Government who brought in the process for filling MEP vacancies in Northern Ireland, which forms the basis of the proposed model, as I outlined. I do not think that we have a party political argument worth having, but we do have something worth looking at in the public interest—the cost of holding by-elections and the appetite for votes that might be regarded as having little value as we approach the UK's exit from the EU.

To answer the point made by the hon. Member for Stockton North about politicians who become independents—that point was, I think, repeated—such a person could remain as an independent. If they in turn subsequently vacated the seat, the original party from which they moved—the party that could be seen to have won the original election—would fill the seat, so the process that we are talking about would pass back to the hands of the original party, even if a person had become an independent in the meantime.

That is well in line with the principles of democracy that we should be looking to, because the people had their choice at the original election, albeit under the list system, and they chose between the parties. That choice is emphasised in these regulations.

I commend the regulations to the Committee and thank it for its support.

*Question put and agreed to.*

#### **DRAFT EUROPEAN PARLIAMENTARY ELECTIONS (AMENDMENT) REGULATIONS 2018**

*Resolved,*

That the Committee has considered the draft European Parliamentary Elections (Amendment) Regulations 2018.—(*Chloe Smith.*)

2.47 pm

*Committee rose.*