



Election and Co-Option Procedure

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Keresley Parish Council Election and Co-Option Procedure

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General

The Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (“the 2006 Rules”) applies to the election of councillors to a parish or community council. Elections are run by the principal authority and there is no role for a local council in relation to ordinary elections. Where there is a casual vacancy (see paragraphs 10 to 15 below) the initial role of the local council is public notification of the vacancy. If an election is required to fill a casual vacancy it is run by the principal authority. If no election is required, the local council controls the process of co-option (see paragraphs 17 to 22 below).

Costs Of Holding Elections

1. The cost of holding a local council election is paid by the local council if the principal authority so requires. Where a local council election is combined with a principal council election the cost of the combined polls (excluding the costs attributable solely to one election) is apportioned equally between the elections (section 36(3B) of the 1983 Act).

By-Elections

2. A by-election of a whole council takes place:
 - a.) where a new council comes into existence in a year other than that in which the principal authority councillor for the parish or community is elected – sections 89(2) and 95 of the Local Government and Public Involvement in Health Act 2007; or
 - b.) where an election is declared void following an election petition – section 135 of the Representation of the People Act 1983 (“the 1983 Act”); or
 - c.) where a principal authority orders a new election under reserve powers – section 39 of the 1983 Act.
4. A by-election to fill a particular vacancy can occur when the membership of the council is increased.

Insufficiency Of Candidates At Ordinary Election

3. Section 21 of the Representation of the People Act 1985 provides that where an insufficient number of candidates is validly nominated at an ordinary local council election to fill the vacancies on the council, those who have been validly nominated are automatically elected as councillors. Provided that those elected constitute at least a quorum (three or one third of the total number of councillors, whichever is the greater), the council (e.g. those elected unopposed) may co-opt any person or persons to fill the vacancies. If the power of co-option is not exercised within 35 days (in calculating which, Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a Bank Holiday and a day appointed for public thanksgiving or mourning are excluded), the principal authority may then exercise its powers to hold a further election or to take other appropriate action to fill the vacancies. A principal authority



has wide reserve powers to do anything necessary to constitute a council properly (section 39(4)(b) of the 1983 Act), including the temporary appointment of councillors pending a further election (section 91 of the Local Government Act 1972 (“the 1972 Act”).

4. Before exercising the power of co-option, the council does not have to give public notice of the vacancy or vacancies, although it may do so if it wishes. In practice, the giving of public notice is a sensible way to attract possible candidates for co-option.

Casual Vacancies

5. According to section 87 of the 1972 Act, a casual vacancy occurs when:
 - a.) a councillor fails to deliver his declaration of acceptance of office at the proper time (see paragraph 11 below); or
 - b.) a councillor resigns; or
 - c.) a councillor dies; or
 - d.) in the case of a councillor who is disqualified by virtue of a criminal conviction under section 34 of the Localism Act 2011 (England), the expiry of the period for making an application or appeal or, if an appeal or application has been made, the date that any such application or appeal process comes to an end;
 - e.) on the date of a report or certificate of an election court that declares an election void;
 - f.) a person ceases to be qualified to be a councillor for a reason not mentioned above; or
 - g.) a councillor fails to attend meetings for six consecutive months.

Declaration Of Acceptance Of Office

6. In accordance with section 83(4) of the 1972 Act, on being elected to office, a councillor must sign a declaration of his acceptance of office, in the presence of another councillor or the clerk. The declaration must be delivered before or at the first meeting of the council after election or, if permitted by the council at that meeting, before or at a later meeting fixed by the council. If a councillor fails to deliver the signed declaration at the due time, he thereupon vacates office and a casual vacancy arises. There is no provision allowing a declaration to be delivered retrospectively. A councillor who is elected as the chairman of a local council must sign and deliver a separate declaration of acceptance of the office of chairman (see paragraph 26 below). In England, the declaration of acceptance of office is in the form prescribed in the Local Elections (Declaration of Acceptance of Office) Order 2012/1465.



Failure To Attend Meetings

7. Under section 85 of the 1972 Act, a councillor vacates office if he fails to attend a relevant meeting for six consecutive months after his last attendance, unless before the expiry of that period the council approves a reason for his absence. The following constitute a relevant meeting:
 - a.) a meeting of the council, or any of its committees or sub-committees; or
 - b.) a meeting of a joint committee, joint board or similar body by which any of the council's functions are for the time being discharged or which are advising the council on any matter relating to the discharge of its functions
 - c.) a meeting of any body of persons at which the attendance of the councillor is as a representative of the council (e.g. the annual meeting of the County Association counts as attendance at a council meeting).
8. A council cannot approve a reason for a councillor's absence from a meeting if no reason is given. To simply record in the minutes of a meeting that a councillor was absent does not amount to approval for his absence. A councillor must give a reason for his absence from a meeting and the minutes of that meeting must document that approval for a councillor's absence was agreed by resolution and, where appropriate, the reason for absence. Further guidance about the data protection implications of this is explained in Legal Topic 5 (Parish and Community Council Meetings).
9. Under section 87(2)(b) of the 1972 Act, in most instances of a casual vacancy arising, the local council must give public notice of it as soon as practicable after the casual vacancy is deemed to have occurred and in accordance with the requirements of section 232 of the 1972 Act. Section 232 confirms public notice of a casual vacancy is effected by the council giving notice in conspicuous place(s) in its area and in any such other manner, if any, as appears to the council to be desirable for giving publicity.
10. Where a casual vacancy arises in any of the three circumstances set out below the council must (i) forthwith declare the office vacant (unless the High Court has already done so) (section 86(1) of the 1972 Act) and (ii) give public notice of the vacancy in accordance with the requirements of section 232 of the 1972 Act (see paragraph 14 above) immediately after it declares the office vacant (section 87(2)(a) of the 1972 Act). The three circumstances are that a member of a local council:
 - a.) ceases to be qualified to be a member of the council;
 - b.) becomes disqualified for being a member of the council otherwise than under section 34 of the Localism Act 2011 (England) or by virtue of a conviction (paragraph 5d) or a breach of any provision of Part II of the Representation of the People Act 1983; or
 - c.) ceases to be a member of the council by reason of failure to attend meetings for six consecutive months without approval of his absence from the council (see paragraph 12 above).



Filling A Casual Vacancy

11. In accordance with rule 5 of 2006 Rules), if within 14 days (calculated by excluding those days specified in paragraph 7 above) after public notice has been given, at least 10 electors give written notice to the proper officer of the principal authority of a request for an election to fill the vacancy, then a by-election must be held except where the vacancy occurs within six months before the date when the councillor in question would have regularly retired (e.g. four days after the next ordinary election). If a by-election is called, and an insufficient number of candidates is nominated those nominated are elected (see section 39(5)(b) of the 1983 Act) and the district council must call a further by-election to fill the remaining vacancy or vacancies (see section 39(1)(b) of the 1983 Act).

Co-Option

12. If no by-election is called, the council must as soon as practicable after the expiry of the 14 day period fill the vacancy by co-option. If the vacancy falls within the six month period the council may but need not, fill the vacancy. It must still, in the latter case, give public notice of the vacancy.

Eligibility For Co-Option

13. A person is eligible to be co-opted provided he is qualified to be a councillor (see s.79 of the 1972 Act) and is not disqualified by s.80 of the 1972 Act. Legal Topic Note 8 provides full commentary about the provisions of sections 79 and 80 of the 1972 Act.
14. Candidates standing in local council elections must submit to the Returning Officer a form (prescribed by Part 7 of paragraph 1 to Schedule 2 of the 2006 Rules) which (a) confirms their consent to nomination and (b) includes a declaration that they meet the aforementioned statutory qualifications to stand for election. Candidates who wish to be co-opted on to a local council are not subject to such requirements. To ensure that councils consider for co-option only those candidates who are eligible to be 6 councillors, NALC recommends that councils require candidate(s) for cooption to declare or certify in writing that they meet the criteria for eligibility set out in s.79 of the 1972 Act and are not disqualified under s.80 of the 1972 Act. A council may need to investigate or obtain evidence about a candidate's eligibility to be a councillor if this is challenged.
15. A local council may wish to indicate that people with specific skills and expertise (e.g. accountancy, HR, Planning) are particularly welcome to apply. This should not be part of the formal notice and it must be clear that people without those skills are still eligible to apply. In cases where there are more candidates than vacancies, a council will need to fairly consider who to coopt and such skills and expertise may be taken into account according to a council's particular needs.



16. Where the number of candidates is less than or equal to the number of vacancies, the candidates shall be appointed to the council if they meet the s.79 eligibility criteria and they are not disqualified under s.80.

Decision Making

17. Decisions made by a local council about whether or not to co-opt when vacancies remain unfilled after an ordinary election and who to co-opt when any casual vacancy arises should be transparent.

In NALC's view it would be difficult for a local council to argue that there are special reasons which justify excluding the public during a council meeting when it is making decisions about a matter of public interest such as co-option. Decisions about co-option which are made at council meetings when the public have been excluded will not eliminate the need for a council to explain, for example to unsuccessful candidates, the reasons for its decisions.

Co-Option Procedure

18. In the event of the Parish Council being required to fill a vacancy by co-option the following procedure will be used:-
- a.) The vacancy will be advertised within the parish and by the principal authority
 - b.) Interested persons will be required to register their interest with the Clerk
 - c.) Notice of the intention to co-opt the vacancy will be given in the agenda of the Parish Council
 - d.) All of those who have expressed an interest in the vacancy will be invited to attend a meeting
 - e.) The Chair will invite each candidate to address the Members outlining their reasons for wishing to fill the vacancy and their relevant skills and experience.
 - f.) Each candidate will be allocated a maximum of 5 minutes.
 - g.) The Chair will then request those Councillors present to nominate any of the candidates. Candidates require a proposer and seconder to progress to the voting stage.
 - h.) The Chair will then place the names of those who have been nominated and seconded into alphabetical order and proceed to a vote.
 - i.) Voting will be by a show of hands until a candidate receives an absolute majority of those Councillors present. At this stage the successful Councillor will be declared elected.



- j.) Should no single candidate receive a majority on the first vote the candidate with the lowest number of votes is eliminated. Voting will then take place on the remaining candidates and continue until the candidate receives an absolute majority.
- k.) The successful candidate is then declared co-opted to the council and will be summoned to attend the next council meeting when they will sign their Declaration of Acceptance.

Registration Of Interests

19. Within 28 days of becoming a councillor in England, a person must notify the Monitoring Officer of any “disclosable pecuniary interests” as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464. The definitions of disclosable pecuniary interests are given in Legal Briefing L10-12. In England, the code of conduct adopted by a council under section 27(2) of the Localism Act 2011 Act may require a councillor to give notification of interests which are not disclosable pecuniary interests within 28 days of his election to office. This will be the case if a council has adopted NALC’s template code of conduct (see Legal Briefing L09-12). Upon re-election or re-appointment, a councillor in England must also within 28 days notify the Monitoring Officer of ‘disclosable pecuniary interests’ not already included in his or her register of interests. Further guidance is given in Legal Topic Note 80 (Members’ conduct and the registration and disclosure of their interests).

Signed Dated