

Boyton Parish Council

Casual Vacancy & Co-option Process

The Local Government Act 1972 requires that every vacancy on a local council in England has to be publicly notified by the means of a notice displayed by the clerk within the parish in at least one conspicuous place, as soon as practicable after the occurrence. These notices are available from the Suffolk Association of Local Councils or District Councils.

Where a casual vacancy arises through:

- (a) failure to execute a declaration of acceptance of office
- (b) resignation
- (c) death

the parish council does not have to declare the vacancy formally at one of its meetings, but simply to give public notice.

Resignation has to be in writing, addressed to the Chairman - not the clerk - and is **effective upon receipt** by the Chairman (S.84 LGA 1972). The Chairman's resignation goes to the council and is effective from receipt by the council. Once delivered in writing, even if a resignation quotes a date in the future the **resignation takes effect from the date upon which the letter is received and may not subsequently be withdrawn**. In practice a letter of resignation should be delivered to the clerk who will ensure it reaches the chairman or council.

However, in the following circumstances, the parish council must declare a casual vacancy formally at its meeting and give public notice of the vacancy immediately after the declaration has been made:

- when a councillor ceases to be qualified to be a member of the council, for example, ceases to be a Commonwealth citizen or a Euro National;
- when a councillor ceases to be a member through failure to attend meetings of the council, or of its committees, for six consecutive months beginning with the last attendance, unless the reason for non-attendance was approved by the council before the expiry of the period. (It is important to record reasons for absence in the minutes if they are given and resolve that they shall not lead to disqualification);
- when a councillor becomes disqualified, if he takes up paid employment with the council such as paid clerk;
- when a councillor is adjudged bankrupt (a High Court judgment is required prior to declaring a casual vacancy);
- if a councillor is held responsible by order of the court for incurring or authorising illegal expenditure exceeding £2,000 (a High Court judgment is required prior to declaring a casual vacancy);
- if a councillor is on conviction of any offence in the United Kingdom, Channel Isles or the Isle of Man,
- with a sentence of not less than 3 months imprisonment (whether suspended or not) without the option of a fine (a High Court judgment is required prior to declaring a casual vacancy) ;
- finally, a councillor may be disqualified under any enactment relating to corrupt or illegal election practices (a High Court judgment is required prior to declaring a casual vacancy).

If, within fourteen days of publication of the notice of vacancy, ten electors for the parish give notice in writing to the District Council of a request for an election to fill the vacancy, an election must be held within sixty days from the date on which the notice of the vacancy was given. The period of days excludes Saturdays, Sundays, Christmas Eve, Christmas Day, Good Friday, a Bank Holiday and any day of public thanksgiving or mourning, and it cannot be claimed within six months of the day when the councillor whose office is declared vacant would ordinarily have retired. The election arrangements are dealt with by the appropriate officer of the District Council.

If no poll is claimed in time, the council fills the vacancy as soon as practicable.

If there is less than six months before the next ordinary election, the council may but is not bound to co-opt.

A successful candidate must have received an absolute majority vote of those present and voting (Local Government Act 1972, Sch 12 para 39). It follows therefore that where there are more than two candidates for one vacancy, the first vote may not give one candidate a majority of all the votes cast. In this case, the candidate(s) with the lowest number of votes should be eliminated and a vote taken again until one candidate has a majority of all the votes cast.

This will mostly be a satisfactory procedure unless a number of candidates have obtained the same number of least votes, leaving only one candidate without an absolute majority. In such cases, an alternative method of striking off candidate(s), such as negotiation, are necessary.

At the point where the council has to decide between two candidates, the person presiding at the meeting has a casting vote and this should overcome any difficulty of a tie.

Voting to fill a casual vacancy, as with other questions coming before the council, must be by show of hands unless the council has Standing Orders which provide for voting by some other method. If a secret ballot is held any member may request that the way in which each member voted on any part must be recorded in the Minutes; and a member who wishes the voting to be recorded may make his demand either before or after the vote.

In filling a casual vacancy by co-option the parish council do not have to take into account the name of anyone who has expressed a wish to be considered for co-option. They are free to elect whomsoever they wish, provided of course he is eligible for election.

A council has no reason to exclude the public and press from the co-option procedure and, therefore, must not do so.

The council is not obliged to consider the claims of candidates who were unsuccessful at a previous election. The council can choose not to co-opt candidates that put themselves forward but must bear in mind the duty to co-opt as soon as is practicable and should be mindful of the need to be lawful, fair and transparent in decision-making.

Summary:

- If you have a casual vacancy, publicise it or, if necessary, formally declare it at a meeting of the council.
- If a poll is claimed within fourteen days then an election must be held within 60 days of the notice of vacancy.
- If no poll is claimed the parish council must fill the vacancy by co-option as soon as practicable.

Remember:

Good practice demands that the council should advertise widely for co-optees in the parish in order that all electors have an equal opportunity to be considered. Notice boards, village shop, pub and parish magazine should be used.

Generally, the cost of the election has to be borne by the parish. However, some district councils pay the election costs for their parish and town councils, recognising the importance of elections to the democratic process.

If an election is requested then make sure you have:

- A current copy of the Register of Electors
- Nomination forms, consent to nomination and notes for the guidance of candidates

Assist the Returning Officer by publishing the Notice of Election, Notice of Poll, Statement of Persons Nominated and Declaration of Result. The more publicity you can give the better for all concerned and a higher turn-out for the Poll.

Once the result has been declared the clerk should write to the successful candidate, sending him a copy of the council's Standing Orders, dates of SALC training courses, a Register of Interests form, a Declaration of Acceptance of Office form and notification of the time, date and place of the next parish council meeting. The Declaration of Acceptance must be signed before or at the first council meeting after the election or co-option. The Register of Interests must be completed and returned to the clerk within 28 days of election or co-option. Parish Councils should consider resolving that **all** new councillors attend a SALC training course. Training councillors and clerks is an important part of a council's risk management process.

Each candidate at an election must complete a Declaration of Expenses form and return it to the Returning Officer. These forms are still required even if no expenses have been incurred.

Finally, remember the Returning Officer is available for any advice or assistance you may require.