

APRIL 2018

## **LTN 8 | ELECTIONS**

### **Qualification to vote**

1. Section 2 of the Representation of the People Act 1983 (“the 1983 Act”) provides that a person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he:
  - a. is registered in the register of local government electors for that area;
  - b. is not subject to any legal incapacity to vote;
  - c. is a Commonwealth citizen or an EU citizen; and
  - d. is of voting age (that is, 18 years or over).
2. A person is not entitled to vote as an elector:
  - a. more than once in the same electoral area at any local government election; or
  - b. in more than one electoral area at an ordinary election for a local government area which is not a single electoral area.

### **Qualifications for election and holding office as a councillor**

3. Section 79(1) of the Local Government Act 1972 (“the 1972 Act”) provides, unless disqualified (see paragraph 7 below) a person is qualified to be elected and to be a councillor if he is a qualifying Commonwealth citizen or an EU citizen and on the day on which he is nominated and, if there is a poll, the day of the election he is 18 years of age or over and:
  - a. on that day he is and thereafter he continues to be a local government elector for the area of the authority; or
  - b. he has during the whole of the 12 months preceding that day occupied as owner or tenant any land or other premises in that area; or
  - c. his principal or only place of work during that 12 months has been in that area; or
  - d. he has during the whole of those 12 months resided in that area; or

- e. in the case of a member of a parish or community council he has during the whole of those 12 months resided either in the parish or community or within three miles of it. [The Electoral Commission's interpretation of this provision (namely section 79(1)(e) of the 1972 Act) is that all persons qualify to be elected and to be a member of a parish or community council if they have resided for the relevant 12 months in the parish or community or within three miles of it.]
4. A person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either-
  - is not a person who requires leave under the Immigration Act 1971 ("the 1971 Act ") to enter or remain in the United Kingdom, or
  - is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of the 1971 Act.
5. A person is not a qualifying Commonwealth citizen if he does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the 1971 Act (exceptions to requirement for leave in special cases).
6. With reference to paragraph 3(c) above, a person is qualified for re-election under paragraph 3(c) if he is already a councillor. The Court of Appeal held in *Parker v Yeo* (1992) that being a councillor was "work" and that the work was carried on in the area where the councillor was an elected member.

#### **Disqualifications for election and holding office as a councillor**

7. In accordance with section 80 of the 1972 Act, a person is disqualified from being elected or being a councillor if he:
  - a. holds any paid office or employment (other than the office of chairman, vice chairman or deputy chairman) to which he has been appointed by the council or any committee or sub-committee of the council, or by a paid officer of the council, or by any joint committee on which the council is represented; or
  - b. is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order, a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB of the Insolvency Act 1986;

- c. has within five years before the day of election or since his election been convicted of any offence and sentenced to a term of imprisonment of at least three months (whether suspended or not) without the option of a fine; or
  - d. has been found guilty of corrupt or illegal practices (see paragraphs 17 and 18 below), or was responsible for incurring unlawful expenditure and the court orders his disqualification.
8. In relation to paragraph 7(a) above, when dealing with an office of profit, it is irrelevant that no profit was actually received.

### **The election timetable**

9. Section 37 of the 1983 Act provides that the ordinary elections of local councillors take place on the first Thursday in May every four years.
10. Schedule 2 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (“the 2006 Rules”) applies to the election of councillors to a parish council and, in Wales, to a community council which does not take place with other elections. Schedule 3 to the 2006 Rules applies to such elections which take place at the same time as a Parliamentary, European Parliamentary or other local government election or referendum. The election timetable for the election of councillors to a parish council and, in Wales, to a community council, whether combined with other elections or a referendum or not is below.
  - Publication of notice of election  
Not later than 25th day before the day of election.
  - Delivery of nominations papers  
Not later than 4pm on 19th day before the day of election.
  - Publication of statement as to persons nominated  
Not later than 4pm on 18th day before the day of election.
  - Delivery of notices of withdrawals of candidature  
Not later than 4pm on 19th day before the day of election.

- Notice of poll  
Not later than the sixth day before the day of election.
  - Polling  
Between the hours of 7am and 10pm on the day of election.
11. In calculating the timetable, the following days are disregarded: Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a Bank Holiday and a day appointed for public thanksgiving or mourning.

### **Nomination**

12. The 2006 Rules require a candidate for election to a parish council or community council to be formally nominated. The content of the nomination paper is prescribed by the 2006 Rules. The nomination paper is available at the place and times cited in the publication of the notice of the election. The candidate's full name, full home address and description (if desired) must be given. The description, if any, must not exceed six words in length, and need not refer to the candidate's rank, profession or calling so long as, with the candidate's other particulars, it is sufficient to identify him.
13. The candidate must be nominated by a proposer and a seconder who are electors for the area for which the candidate seeks election (e.g. the parish or community or the ward if it is divided into wards). The proposer and seconder must sign the nomination paper.
14. The 2006 Rules provide that a nomination is not valid unless the candidate consents in writing to the nomination on or within one month before the last day for the delivery of nomination paper. The content of the candidate's consent to nomination form is prescribed by the 2006 Rules. This requires the candidate to confirm his date of birth, certify that he wants to stand for election and that he meets the statutory qualifications to stand for election. The candidate must sign the form in the presence of a witness.
15. The candidate's nomination paper and consent to nomination form must be submitted by 4pm on 19th day before the election. They must be delivered at the place fixed for the purpose by the returning officer, which must be specified in the public notice of the election. The 2006 Rules do not specify the manner of the delivery of the papers. The Electoral Commission's interpretation of the 2006 Rules is that they do not permit the delivery by post, fax, email or other electronic means and must be delivered in person.

Counsel's advice to the Electoral Commission dated March 2014, advises that the 2006 Rules require delivery of the nomination paper and the consent to the nomination form by the candidate or someone entrusted (including a courier) by the candidate with that task. Counsel's advice to the Electoral Commission is available from their website via

[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0005/166379/Delivery-of-Nomination-Papers-Counsel-Advice-FINAL.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/166379/Delivery-of-Nomination-Papers-Counsel-Advice-FINAL.pdf)

### **Expenditure by candidates**

16. Section 76(2)(b) of the 1983 Act provides that expenditure by a candidate on an election is currently (as at April 2018) limited to £740 plus 6p for every entry in the Register of Electors used at the election. The limit is subject to increases from time to time; candidates should check the up to date figure with the Returning Officer. The aforementioned amount is reduced by one quarter for two joint candidates and by one third for three or more joint candidates (section 77 of the 1983 Act).

### **Corrupt and illegal practices**

17. According to the provisions contained in the 1983 Act, various corrupt or illegal practices in relation to elections are criminal offences. Corrupt practices include bribery, impersonation, treating and false declaration of election expenses. Illegal practices include illegal payments (e.g. for paid canvassers and for payments for the conveyance of voters to or from the poll), illegal broadcasting and improper conduct (e.g. the publication of false statements about the conduct or character of a candidate).
18. It is an offence to print or publish material to promote or procure the election of a candidate at an election using e.g. a poster or a manifesto, newspaper advert which does not include the name and address of the printer, promoter (the person causing the material to be published) and publisher (if this person is not the promoter). The "publisher" is the person who is responsible for issuing the document to the public at large, or any section of the public.

### **Voting**

19. The normal method of voting is by personal attendance at the appropriate polling station. Paragraph 4 in schedule 4 to the Representation of the People Act 2000 allows a person to vote by post, or by proxy if the person can show that he cannot reasonably be expected to vote in person. The rules

governing absent voting are somewhat complex and are outside the scope of this Note. Detailed information, and an application form, can be obtained from the electoral registration officer.

### **Poll cards**

20. At ordinary local council elections (e.g. those held every four years) there is no requirement that poll cards be issued. However, it is now common for details of local council elections to be included on the mandatory poll cards issued for ordinary principal council elections which are held on the same day.
21. At local council by-elections poll cards may be issued (see paragraph 31 below).

### **Term of office**

22. Sections 16(3) (for England) and 35(2A) (for Wales) of the 1972 Act provide that a local councillor elected at an ordinary election serves for four years unless before the end of that period he resigns, becomes disqualified or otherwise vacates office. A councillor elected at a by-election or by co-option to a casual vacancy serves until the next ordinary election.
23. As described in paragraph 14 above, a candidate for election must specify in his consent to nomination form the nature of his qualification to be elected as a councillor. It is not unknown for a candidate to specify only one qualification when he has more. In such a case, if he loses that qualification he does not cease to be qualified to be a councillor provided that he retains at least one other. A person who is qualified by residence, by occupation of premises or by place of work does not lose his qualification by moving away after election.

### **Insufficiency of candidates at ordinary election (co-option)**

24. 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, the days specified in paragraph 11 above 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 1972 Act).

25. 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. Legal Briefing L15-08 provides guidance for good practice on the selection of candidates for co-option.
26. Legal Topic Note 7 (Non-Councillor Members of Committees) provides guidance about the appointment of non-councillors to a council's committees.

### **Return of election expenses**

27. The payment of election expenses is subject to Schedule 4 of the 1983 Act. Any claim against a person in respect of any election expenses incurred by or on behalf of a candidate which is not sent in within 14 days after the day of election shall be barred and not paid, and all election expenses so incurred shall be paid within 21 days after the day of election and not otherwise (paragraph 1 of Schedule 4 to the 1983 Act). Where the last day on which the 14 or the 21 day periods mentioned is one of the days mentioned in paragraph 11 above the requirement shall be deemed to relate to the first day thereafter which is not one of those days (section 119 of the 1983 Act). A declaration as to election expenses incurred by a candidate must be in the form set out in Schedule 4 of the 2006 Rules - or in a form to the like effect. A candidate who fails to make the return and declaration within the specified period is liable to conviction. Additionally, such a candidate is unable to sit or vote in the council. If he does sit or vote having failed to make the return or declaration in time he shall forfeit £50 for every day on which he sits or votes (paragraph 4 of Schedule 4 to the 1983 Act).

### **Costs of holding elections**

28. 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**

29. 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 1983 Act; or
  - c. where a principal authority orders a new election under reserve powers – section 39 of the 1983 Act.
30. A by-election to fill a particular vacancy can occur when the membership of the council is increased.
31. A by-election is held in same way as an ordinary election except in relation to poll cards. At a by-election the local council may, not later than noon on the 19th day (calculated by excluding the days specified in paragraph 11 above), require the returning officer to issue official poll cards – paragraph 25 in Part 1 of schedule 2 to the 2006 Rules. The cost of providing the cards is payable by the parish or community council in question.

### **Casual vacancies**

32. 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 paragraphs 40 and 44 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 79 of the Local Government Act 2000 (Wales) or 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 (see paragraph 38 below).
33. 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.
34. 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 33 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 79 of the Local Government Act 2000 (Wales) or section 34 of the Localism Act 2011 (England) or by virtue of a conviction 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 38 below).
35. In accordance with rule 5 of the 2006 Rules, if within 14 days (calculated by excluding those days specified in paragraph 11 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).

36. 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.
37. The council may co-opt whom it pleases (see the Legal Briefing L15-08 referred to in paragraph 25 above) to fill a vacancy, provided the person is qualified to be a councillor (see paragraphs 3-8 above). The person co-opted must receive a majority of the votes of those councillors present and voting at the meeting where the co-option takes place. Where there are more than two candidates for one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Thus where candidate A receives four votes, and candidates B and C each receive two, A is not elected because he has the same number of votes as B and C put together and does not have a majority over their combined votes. Where there are more than two candidates it is desirable to eliminate the candidate with the least number of votes, so that the final vote is between two candidates only. Councils may use NALC's model standing order 8a to confirm the voting process for a casual vacancy which is contested. An abstention is not a vote and not part of the count.

### **Failure to attend meetings**

38. 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).
39. 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).

#### **Declaration of acceptance of office**

40. 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 44 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. In Wales, the declaration of acceptance of office is in the form prescribed in the Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004/1508.

#### **Registration of interests**

41. 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 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 (England)). In Wales, within 28 days of becoming a councillor, a person must notify the Monitoring Officer of the personal interests set out in para 10(2)(a) of the schedule to Local Authorities (Model Code of Conduct) (Wales) Order 2008/788 and any other financial interests required by his council's code of conduct.

### **Election of chairman**

42. Sections 15 and 34 of the 1972 Act (for England and Wales respectively) provide that the Chairman of a local council must be elected from among the councillors as the first business of the annual council meeting in May. He remains in office until his successor is elected (at the following meeting unless in the interim he resigns, dies or otherwise vacates office).
43. Schedule 12, paragraphs 11 and 27 of the 1972 Act (for England and Wales respectively) provide that since the chairman of the council must preside at all council meetings which he attends, he must if present preside at the election of his successor (who may, following re-election, be himself). As chairman, he has, as well as his ordinary vote, a casting vote, in the event of a tie between candidates for his post and he must exercise the latter. Section 15 of the 1972 Act provides, where following an ordinary election, the chairman ceases to be a councillor he nevertheless remains chairman of the council until his successor takes office. If present at the annual council meeting he must preside at the election of his successor but has only a casting vote. As soon as his successor is elected, he vacates office and can no longer participate as a councillor in the meeting.
44. Upon election to the office of the chairman of a local council, the councillor must sign a declaration of his acceptance of that office, in the presence of another councillor or the clerk. The chairman's declaration of acceptance of office must be delivered at the meeting at which he is elected or, if permitted by the council, before or at a later meeting fixed by the council. Failure to deliver the signed declaration at the due time results in automatic vacation of office of chairman. A chairman is elected annually and therefore a

declaration must be made every year by whoever is elected as chairman – see section 83(4) (a) of the 1972 Act.

### **Vice-chairman**

45. Section 15(6) and 34(6) of the 1972 Act provides that a council may but need not elect a vice-chairman.
46. A councillor elected to the office of vice-chairman does not have to sign and deliver a declaration of acceptance of that office (although he must deliver his signed acceptance of office as a councillor (see paragraph 40 above)).

### **Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
2	The Chairman of local councils	Explains the election process of the chairman at the annual meeting.
7	Non-Councillor Members of Committees	Sets out the powers of councils to appoint non-members to committees.
80	Members' conduct and the registration and disclosure of their interests (England)	Explains the provisions of the Localism Act 2011.

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