

CO-OPTION

Introduction

Legal Topic Note 8 -“Elections” describes in detail the circumstances which permit and legislation relating to the co-option of persons to fill the vacancies in a parish and community council (“a local council”). The purpose of this Briefing is to identify and recommend good practices in respect of a co-option process.

Public notice of vacancies

s.87(2) of the Local Government Act 1972 (“the 1972 Act”) requires a local council to give public notice of casual vacancies. There is no statutory requirement to give public notice of local council vacancies which remain unfilled after an ordinary election (s.21(2) Representation of the People Act 1985). NALC recommends that councils give public notice of vacancies which arise in both circumstances to encourage transparency and to attract more candidates. NALC also recommends that the public notice given by a council invites applications from candidates who satisfy (i) the eligibility criteria for being a councillor and (ii) the competencies listed in a person specification, agreed by the council. More information about (i) and (ii) is below.

(i) Eligibility for co-option

A person is eligible to be co-opted provided he is qualified to be a councillor pursuant to s. 79 of the 1972 Act and is not disqualified pursuant to 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.

Candidates standing for a local council election must submit to the Returning Officer a form (prescribed by Part 7 of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006) which (a) confirms their consent to nomination and (b) includes a declaration that they meet the aforementioned statutory qualifications to stand for election. However 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 councillors, NALC recommends that councils require candidate(s) for co-option to declare or certify in writing that they:

- meet the criteria for eligibility, set out in s. 79 of the 1972 Act, to be a member of the council

and

- are not disqualified, pursuant to s.80 of the 1972 Act, to be a member of the council.

A council may need to investigate or obtain evidence about a candidate’s eligibility to be a councillor if this is challenged.

(ii) Person specification

After receipt of a candidate's written self-certification which confirms he meets the statutory requirements to be a member of a local council, the council will need to fairly consider if candidates are suitable for co-option. Candidates may be assessed by whether or not they meet the criteria in a person specification, agreed by the council. An *example* of a person specification is in the Appendix to this Briefing.

Decision making

The decisions made by a local council about (i) whether or not to co-opt when vacancies remain unfilled after an ordinary election and (ii) who to co-opt when vacancies remain unfilled after an ordinary election and when casual vacancies arise 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, (s.1(2) Public Bodies (Admission to Meetings) Act 1960) 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.

This briefing was issued by Meera Tharmarajah, Head of Legal Services

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Appendix

<p>Name of Local Council _____</p> <p>Description of Office (may include particular committee membership or other responsibilities) _____</p>		
COMPETENCY	ESSENTIAL	DESIRABLE
<p>Relevant knowledge, Education, Professional Qualifications & Training</p>	<ul style="list-style-type: none"> • Sound knowledge and understanding of local affairs and the local community. • Other requirements as appropriate 	<ul style="list-style-type: none"> • A levels/Degree level and or • Specific Vocational training or professional qualification (e.g. accountant, teacher, surveyor, architect) may be specified.
<p>Experience, Skills, Knowledge and Ability</p>	<ul style="list-style-type: none"> • Solid interest in local matters. • Ability and willingness to represent the Council and their community. • Good interpersonal skills. • Ability to communicate clearly both orally and in writing. • Ability and willingness to work closely with other members and to maintain good working relationships with all members and staff. • Good reading and analytic skills. • Ability and willingness to work with the council's partners (e.g. voluntary groups, other parish councils, principal authority, charities). • Ability and willingness to undertake relevant training. • Ability to work under pressure. 	<ul style="list-style-type: none"> • Knowledge of HR, procurement, contract management, financial control or risk management and compliance, public relations • Experience of working in another public body or not for profit organisation • Experience of working with voluntary and or local community/ interest groups. • Basic knowledge of legal issues relating to town and parish councils or local authorities. • . • Experience of delivering presentations. • Experience of working with the media. • Experience in financial control/budgeting • Experience of staff management
<p>Other requirements</p>	<ul style="list-style-type: none"> • Ability and willingness to attend meetings of the council (or the meetings of other local authorities and local bodies) in the evening and events in the evening and at weekends. • Flexible • Enthusiastic. 	