

Let's Get It Right

INTRODUCTION

This booklet is intended to provide Parish and Town Councils and their Clerks with a short and informative guide to election procedures. It covers some other consequential and related topics that often tend to either stretch the memory or give rise to needless difficulties on those more infrequent occasions when they occur.

It is hoped that these brief references to some very relevant topics will be sufficient for Parish and Town Councils and will prove to be helpful.

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PART 1 – ELECTION PROCEDURES

1. LEGAL CONTEXT AND BUDGETS

Parish and Town Councillors are elected to serve for a period of four years. Ordinary elections therefore occur every four years and are usually held in conjunction with District Council elections. In some cases where it has been decided that Councils will retire in thirds, elections will be held in three years out of every four. The responsibility for the conduct of local council elections rests with the Returning Officer of the District or Borough Council in whose area the Parish is situated.

The Returning Officer will almost certainly seek to recover the costs of running a Parish Council election and where this is done local councils are likely to be invoiced soon after the election. Even if there is no poll, uncontested election fees, printing and administration costs will be covered.

The attributable costs consist essentially of hiring the polling station, printing of notices, poll cards, including their postage or delivery (but only where requested by the Parish Council concerned), ballot papers, the cost of postal voting, and payment of fees to the Returning Officer and his staff. Costs vary greatly and it can be misleading to offer realistic figures, although individual Returning Officers may be prepared to give some guidance. Even where Parish elections are uncontested, i.e. where a poll is not required, there will be a nominal amount of expenses incurred. Where Parish Council elections are combined with District Council elections, certain of the costs will be shared.

It is important that Parish Councils make some form of estimate provision in an election year. Although the costs of running a by-election are similarly recoverable, this is more difficult to budget for since such elections are unforeseen. Electoral administrators will usually be able to provide some estimated figures to guide parishes in setting their budgets.

2. THE ELECTION TIMETABLE

The election timetable is computed in accordance with statutory guidelines. Saturdays, Sundays and Bank Holidays and other specified days are excluded from the calculation of the various timetable dates before the date of election (polling day).

The election process and timetable begins with the publication of the Notice of Election. The notice must be published by the Returning Officer and contains information about the Parishes (and wards of Parishes) where elections are to take place, the number of seats to be filled, where nomination papers can be obtained, the deadline for their return, and information about absent voting deadlines. The last date for publication of this notice is the 25th day (so computed) before the day of election. The Returning Officer must ensure that a notice is published in some conspicuous place or places within the Parish. Further copies can be sent to Parish Councils to supplement publicity. The Returning Officer may ask the Parish or Town Council to place notices on his/her behalf.

3. NOMINATIONS

(1) Nomination arrangements

Every candidate (including existing Councillors) must be validly nominated, which involves submission of a properly completed nomination paper and also a candidate's consent to nomination. Nomination papers are normally available from the Returning Officer, but Parish Clerks can assist by collecting sets for their existing councillors and other interested persons. Parish and Town Clerks may do anything to assist this and other electoral processes, but should be careful not to do anything which might give rise to confusion or delay or their being seen as acting as unofficial election agents. It is the responsibility of the candidates to ensure that their nominations are properly completed and received by the Returning Officer. Parish candidates should avoid their nomination being dealt with together with their district papers or by election agents if they are standing in both elections.

It is important to note that present legislation requires that all nomination papers are delivered in person to the office of the Returning Officer, or as

otherwise specified on the Notice of Election. This means that nominations cannot be received by post. Depending on the practice adopted by individual Returning Officers, it is likely that any nominations received by post will not be accepted and will therefore not be checked for validity. If the position changes between now and the election your electoral services manager (ESM) will contact you to explain the conditions for the acceptance and checking of nomination papers.

This does not necessarily mean that candidates must deliver their nominations in person. At Parish elections there is no definition of who may deliver a nomination paper. This means that candidates are entitled to entrust their papers to a third party to deliver them on their behalf. However, candidates must be careful to ensure that the person delivering the nomination is authorised to make any changes needed to validate the nomination. Parish clerks should consider very carefully before agreeing to deliver nomination papers on behalf of candidates, especially if they act in this capacity for some but not all candidates.

Please also note that most Returning Officers will have arrangements in place to ensure that all nomination papers delivered in time can be checked informally prior to formal submission.

(2) The Nomination Paper

The nomination paper is required to give the personal details of the candidate, including the candidate's home address in full (including the postcode). No abbreviations should be used. Candidates may now take advantage of the provision on the nomination paper allowing use of a commonly used forename and/or surname. Thus, a candidate may be identified by the name they are generally known as but must also include their full name on the nomination paper. A commonly used name may be rejected by the Returning Officer but only on the grounds that it is likely to mislead or confuse electors, or is obscene or offensive. If a common name is rejected on one of these grounds it does not affect the validity of the nomination itself. If agreed, the commonly used name will be included on election notices and on the ballot paper.

In addition, a description of not more than six words may be introduced to supplement the personal particulars included in the nomination. Any

description listed on the nomination paper will be included on election notices and on the ballot paper if the election is contested. Should there be a wish to include a political description; this must be authorised by a certificate issued by, or on behalf of, the registered nominating officer of a qualifying registered political party. A valid certificate of authorisation must be supplied with the nomination paper.

Each nomination paper must contain the details of the proposer and seconder who must be registered for the particular Parish or ward of the Parish for which the candidate is seeking election. Reference must be made to the current Register of Electors in force and not any previous one. No elector can subscribe more nominations than there are seats to be filled, or for more than one ward or Parish. The Returning Officer may now make minor corrections to nomination papers but the onus is on candidates to ensure that their nomination paper is completed correctly and in full.

(3) The Candidate's Consent

The consent to Nomination form is the candidate's consent and his or her certification as to qualifications for election and holding office which, apart from being 18 years of age and a Commonwealth citizen, citizen of the Republic of Ireland or a citizen of another Member State of the European Community, are as follows:

Is and continues to be a registered local government elector for the Parish

OR

*In the whole of the twelve months preceding the day of nomination
has occupied land or other premises in the Parish*

OR

*In the whole of the twelve months preceding the day of nomination has resided
in the Parish, or within 4.8 kilometres (3 miles) of it.*

OR

In the whole of the twelve months preceding the day of nomination has had his or her principal or only place of work in the Parish

and has no disqualifications such as:

- ✚ holding any appointment with the Parish Council
- ✚ being an adjudged bankrupt (i.e. subject of a bankruptcy restrictions order or interim order)
- ✚ been convicted of any offence within the last five years and imprisoned for a period of not less than three months
- ✚ having committed any other electoral or financial corrupt or illegal practices

NB (1) This is a brief guide for exclusion; the full list of disqualifications are set out on the nomination paper itself, but further information can be obtained from the Returning Officer or ESM at your District or Borough Council.

Candidates are now required to give their date of birth.

The deadline for the delivery of nomination papers is 4pm on the 19th day (so computed) before the day of election.

The deadline for the withdrawal of a nomination is now also 4pm on the 19th day before the poll.

A nomination will be invalid unless both the nomination and the consent form are returned by this deadline.

The information on the nomination paper will be reproduced exactly on the Statement of Persons Nominated and, subsequently, on the ballot papers.

(4) Decisions on Validity of Nominations

The Returning Officer (or more likely a deputy appointed on his or her behalf) will adjudicate on the of submitted nominations in a timely manner and will send a letter to each nominated candidate at the address shown on the nomination either confirming the nomination as valid or rejecting it. Nomination papers may be rejected on specific limited grounds. The only grounds for rejection are that the paper either does not contain the particulars of the candidate or subscribers which are required by law or that the paper is not subscribed as required.

If a nomination is rejected there are no grounds of appeal. The only option available to the candidate is to start again with a fresh nomination, including a different proper and seconder, if there is sufficient time to deliver it.

(5) The Statement of Persons Nominated

This is an official notice published by the Returning Officer and is the first listing of those candidates that have been validly nominated. It should not be confused with the notice of poll. It is only required to be published at the place where nominations are delivered and has to be done by no later than 4pm on the 18th day (so computed) before the day of election. The Returning Officer will prepare the Statement of the Persons Nominated as soon as possible after the last time for submitting nomination papers and a copy may be sent to the Parish Clerk for publishing locally.

Information about the identity and number of candidates nominated for election will not usually be given by the Returning Officer or any member of his or her staff until after the close of the nomination period.

As the latest time for withdrawal of candidature now coincides with the close of the nomination period it will not be apparent whether a contested poll will take place until that time.

4. ELECTION OR POLL?

It is important to understand the difference. An election is being held regardless of whether it is contested or uncontested.

Where an election is contested, the Returning Officer will make arrangements for a poll to be held between 7am and 10pm on the day specified.

It is uncontested if there are there the right number of candidates (or fewer) for the seats to be filled. If there are more candidates than seats to be filled the election is contested and a poll is held.

In an uncontested election the Returning Officer is required to give notice to the Proper Officer (normally the Clerk) of the Parish Council of those persons elected and this will be done as soon as practicable after the deadline for withdrawals has passed.

Despite this notification, persons elected without a contest at ordinary elections do not take office any earlier. All candidates elected in either contested or uncontested elections will take office on the fourth day after the day of poll.

In the event of a vacancy or vacancies remaining through insufficient candidates having been nominated in the first place, the Parish Council may co-opt, provided there is a quorum of elected councillors to act.

N.B. See part 2 of this booklet for items "Taking Office" and "Insufficient Nominations".

5. THE ELECTION CAMPAIGN

i) Election Literature

It is perfectly acceptable and commonplace for candidates at contested Parish elections to produce literature in the form of posters, handbills etc. They should remember and be reminded that it is a statutory requirement for all such literature to bear the name and address of the printer and promoter of the material, and of any person on behalf of whom it is being published. This is commonly known as the imprint. Folded leaflets used as a window or car sticker should bear the endorsement on their face. Candidates are advised against producing literature that in any way refers to or promotes their own or other District Council election candidatures. If in any doubt, consult the Returning Officer well in advance. Complaints to the Director of Public Prosecutions and investigations by the police are best avoided at this level.

A standard imprint for an independent candidate might read as follows: Printed by [printer's name and address]. Promoted by [agent's name] of [agent's address] on behalf of [candidate's name] of [candidate's address]. If the candidate is also the promoter of the material, the 'on behalf of' part of the imprint is not needed.

Please note that all literature produced to promote the election of a candidate must include an imprint. This must include on the face of the document the name and address details as stated above. It is of course now easy to print such

material at home and therefore the name and address requirement applies in this case to anyone who is producing it.

(ii) Candidate's Expenses

All candidates must account for all their expenses incurred in connection with the conduct or management of the election. The limit on expenses is calculated on the basis of a flat rate plus an amount for each elector in the current Register of Electors for the parish (or ward). The limit is set by statute and often changes prior to an election. The current limit (August 2014) is £740, together with an additional 6p for every entry in the register although there are reductions for joint candidates. Candidates should check with their local electoral administrator that the limit has not changed at the time of their candidature. Typical expenses would be for the hire of premises, media airtime, stationery and printing. Candidates should not ignore this statutory requirement and ensure prompt and proper completion of the forms when sent out by the Returning Officer after the election, regardless of whether that election was contested or expenses incurred. **Candidates do not always appreciate that the return of this form is mandatory and the failure to do so is an illegal practice.**

6. THE POLL

(i) Poll Cards

The Returning Officer automatically issues official poll cards for District Council Elections. Parish Councils may request poll cards to be issued for parish elections where they are not combined with District Council elections. Since the deadline for requesting poll cards coincides with the deadline for receipt of nominations (4pm on the 19th day) Parish Councils will not necessarily know whether the election is to be contested and combined. Unless an approach has already been made by the Returning Officer, Parish Councils may therefore submit a holding request in anticipation of there being just a contested parish election. If poll cards are requested, Parish Councils are likely to have to bear the expense.

(ii) Notice of Poll

The Returning Officer is required to publish no later than the 6th day before the day of election, the notice of poll in the electoral area (parish or ward of the

parish) where contested elections are taking place. This notice contains full details of the candidates, their proposers and seconders, where the polls will take place and which groups of electors are assigned to particular polling stations. Parish Councils can assist in arranging for the display of further copies of the notice.

iii) Absent Voting

Normal absent voting facilities are available at parish elections. The deadline for receipt by the Electoral Registration Officer (ERO) of requests for a new postal vote or to change or cancel an existing postal voting arrangement is 5pm on the 11th day before the day of election. The deadline for applications to vote by proxy is 5pm on the 6th day before the day of election. Electors can apply to be treated as absent voters for a particular election or for an indefinite period. Applications must contain prescribed information including a signature and date of birth that must be capable of being scanned by the ERO. These personal identifiers are then used to undertake comparison checks with the security statements returned by electors with their completed ballot papers. This is a guard against voting fraud. Application forms are available from and returnable to the ERO. Candidates may request lists of existing absent voters for use when canvassing. However, they are advised not to become involved in assisting electors to either apply for or make their postal vote, although it is appreciated that requests for assistance are sometimes made. There is a code of conduct for political parties, candidates and canvassers on the handling of postal applications and ballot papers. This may be viewed on the Electoral Commission's website at www.electoralcommission.org.uk.

iv) Registering to vote

The deadline for registering to vote at an election is 12 midnight twelve working days before polling day. Parish candidates should note that the system for registering to vote in the United Kingdom changed earlier in the year from a household based registration system to one where the onus for registering is on the individual elector. This is called Individual Electoral Registration (IER) and requires the elector to provide their National Insurance Number and date of birth.

7. THE RESULT

The result of the poll is required to be published by the Returning Officer. This is normally done at the place of the count and also at the District Council Offices. A copy may be sent to the Parish Clerk for display in the parish. Indeed Parish Clerks may wish to make sure they obtain one for publication particularly where centralised counts are held and the result is declared in a place well away from the parish. The Returning Officer is required to give notice to the Proper Officer of the Parish Council of those persons elected as a result of the poll. A separate notification is given by the Returning Officer to those individual persons elected.

FURTHER INFORMATION

For further information about the nomination process and all aspects of becoming a parish council candidate please see the Electoral Commission's website at: www.electoralcommission.org.uk

Search under 'Candidate or agent' to find detailed information relating to Parish elections.

PART 2 – OTHER RELATED ISSUES

1. TAKING OFFICE

At ordinary elections, all persons elected whether as a result of a poll or not, take office on the same day. The polling day or day of election will have been set, and the law provides that those persons elected take office on the fourth day after the date of the poll. Existing councillors, unless they have been elected for a further term, retire on that day also. If the fourth day is a Bank holiday, retirements etc. take place on the following working day.

2. CODE OF CONDUCT

All councillors are required to abide by the Code of Conduct as adopted by the individual Parish Council. Councillors must sign a declaration of acceptance of these principles. Councillors may be reported for alleged breaches in the code.

Alleged breaches of the Code of Conduct must now be reported to and investigated by the Monitoring Officer of the District or Borough Council concerned. If an allegation appears to warrant investigation it is investigated by the Standards Committee of the local authority and penalties can be imposed where appropriate.

3. REGISTER OF INTERESTS

Councillors are required to register in their authority's register of members' interests details of their pecuniary interests, as described in the Model Code of Conduct. Written notification of your interests must be sent to the Parish Council's Monitoring Officer within 28 days of your election or co-option. You must also notify the Monitoring Officer of any new interests or changes to those interests within 28 days of becoming aware of the change. Your Council's Monitoring Officer will be an officer of the District or Borough Council in the Parish Council's area and details of where to send the forms will be given to the Parish Clerk. Further advice on the register may be obtained from the Council's Clerk, the District or Borough Council's Monitoring Officer or the Essex Association.

4. FIRST MEETING

The first meeting of the new Council after ordinary elections must be held within 14 days of the newly elected members taking office. The statutory Declaration of Acceptance of Office must be made by all councillors at or before the first meeting unless the Council gives consent at that meeting for any Declarations to be made at some specified later date. This is most important since the responsibility to make and deliver such Declarations rest solely with the persons elected. Failure to do this means that the seat becomes vacant as at the date by which the requirement had to be met.

Parish and Town Councils will undoubtedly wish to keep an eye on this and try to see that these matters are properly dealt with. Declarations can be made in the presence of the Proper Officer, if the Clerk is so designated, rather than another member of the Council. Completed Declarations should be retained as parish records.

The first item of business at the first meeting must be the election of Chairman. The outgoing or retiring Chairman should, if present, take the Chair for this item. This is so even if the retiring Chairman is no longer a Councillor. If he is no longer a Councillor, he will not have an original vote but will have a casting vote on the matter of the election of the new Chairman if there is an equality of votes. A Vice-Chairman will preside in the absence of the Chairman but will have no different status to any other member appointed to preside over a meeting. The person presiding will be able to exercise a casting vote.

5. INSUFFICIENT NOMINATIONS AT ELECTION

Provided there is quorum of elected Councillors to begin with, the parish may fill by co-option an outstanding vacancy or vacancies as a result of insufficient nominations at ordinary elections. No further notice requires to be given of the vacancy or vacancies and there is no time limit in which the co-options must take place. However, it is possible for the District Council to act after a period of 35 days following the day of the election to fill any vacancies. The District Council may also review the size of a Parish Council in the event of a consistent shortfall of nominations at elections.

6. CO-OPTION

Whether as a result of filling vacancies arising through insufficient candidates at the outset or a casual vacancy mid-term, co-option may be seen as an appointment rather than an election. However, the question of qualifications and, in particular, disqualifications are relevant since the Act states that these are qualifications for election and holding office as a member of a local authority. Persons co-opted are, of course, not subject to the normal electoral process, and therefore not elected as such. They do, nevertheless, become a member of the local authority. However, to be on the safe side, Parish Councils would be well advised to have regard to this when considering co-option (see Sections 79 & 80 of the Local Government Act 1972).

7. CASUAL VACANCIES

Casual vacancies can occur at any time during the term of office of elected councillors. Vacancies are deemed to occur when a Councillor dies, becomes disqualified in some way, or fails to attend a number of meetings. In the case of resignation, this has to be by notice in writing and delivered to the Chairman. The vacancy occurs upon receipt of that notice. Public notice of the casual vacancy has to be given by the Parish Council as soon as practicable after it has occurred. A copy should be sent to the Returning Officer to whom local government electors may submit requests that an election be held. If no request or an insufficient number of requests are received by the Returning Officer, then the Parish Council will be required to fill the vacancy by co-option. If an election is called, but no-one is nominated, the seat remains unfilled until another election is called.

If a casual vacancy occurs during the six months prior to the next ordinary elections, there is no question of a separate election being held. Public notice of the vacancy still has to be given and the Parish Council may fill it by co-option for the remaining period of the term of office.