



Electoral Services Team

A guide to casual Vacancies for Town / Parish Councils

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Introduction

These notes have been written to supplement the teams existing knowledge to provide a useful insight in to the background and processes concerning casual vacancies, elections caused by casual vacancy and the process of co-option.

It is important to note however that, these notes whilst may be beneficial as a starting point, should not be constructed as definitive guidance. If any person or body, such as a parish council, parish clerk or prospective candidate requires legal advice on any matter it is incumbent upon them to seek their own legal advice. Similarly, irrespective of these notes, the decision of the appointed Returning Officer will be final in all matters.

Finally, if you have any general queries regarding these notes or other electoral matters, please contact us on

Lianne Richards, Elections Manager 01730 234370
Electoral Services Officer 01730 234093 / 234048

Or for full guidance or independent advice you should contact

The Electoral Commission - <https://www.electoralcommission.org.uk/contact-us>
Or Tel 0333 103 1928

Guidance - <https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/parish-and-community-council-elections-in-england-and-wales>

Term of office

Town / Parish councillors hold office for a period of four years (or if elected or co-opted part way through the cycle, for the remainder of that period only). Councillors formally retire on the fourth day after the ordinary day of the election.

All new councillors take office (provided they have made declaration of acceptance of office) on the day which their predecessors retire (Local Government Act 1972, Section 16(3)).

Causes of a casual vacancy

The six causes of a casual vacancy are specified along with the effective date of vacancy in each case within (*LGA 1972, sec 8*) they are:

Failure to accept office: failing to complete a declaration of acceptance of office within the proper time will cause a vacancy. Acceptance of office must be done before or at the first meeting of the parish council, unless the parish council permits otherwise, which cannot be retrospective. The effective date of the vacancy is the closing date for making declarations of acceptance of office.

Receipt of resignation: A parish councillor may resign their office at any time by written notice delivered to the chairman of the parish council. There is no special form for the notice. There is no procedure for withdrawing a notice of resignation once it is made. There is no need to report the resignation to the district council for it to take effect. The resignation takes effect upon receipt, and this is the effective date of vacancy.

Death: The vacancy is deemed to have occurred on the date of the death.

Ceasing to be qualified: this would normally only occur where a parish councillor had used their registration as an elector as their qualification, (for nomination and election), and where that qualification had been lost because they had ceased to be on the register of electors. The parish council must declare the vacancy forthwith, and the vacancy is deemed to have occurred on the date of this declaration. It should be noted however that this would not be the case if other qualifications were validly held. Furthermore proving disqualification in this instance may be difficult as we do not retain nomination papers, (even if we did they could no longer be legally viewed).

Becoming disqualified: through bankruptcy, office holding, surcharge, conviction, court order or being found guilty of corrupt or illegal practices in election law.

Failure to attend meetings: if a parish councillor fails throughout a period of six consecutive months from the date of their last attendance to attend any meeting of the parish council (including committees, sub committees or as a representative of the parish council), they shall, unless the failure was due to some reason approved by the parish council before the expiry of that period, cease to be a member of the parish council. The effective date of the vacancy is the date declared by the parish council.

When does the Vacancy begin from and notice published:

Vacancy Reason	Effective date (when Vacancy Occurs)	Publication of Notice of vacancy
Failure to accept Office	The closing date for a declaration to be made	As soon as practicable after the vacancy occurs
Resignation	When the resignation is received	As soon as practicable after the vacancy occurs
Death	On the day of the death	As soon as practicable after the vacancy occurs. We would suggest that the notice is not published until after the funeral has taken place as a mark of respect
Ceasing to be qualified	The council must declare the vacancy as soon as possible and the vacancy is deemed to have occurred on the date of this declaration.	As soon as the vacancy is declared
Becoming disqualified	The council must declare the vacancy as soon as possible	As soon as the vacancy is declared
Failure to attend meetings	The vacancy occurs on the date declared by the council by resolution.	As soon as the vacancy is declared

Action/s to take when a casual vacancy occurs

Vacancy notice: a vacancy notice must be advertised as soon as notification has been received by the parish council, (*LGA 1972, sec 87(2)*). A copy of this notice should be forwarded to the East Hampshire District Council Returning Officer (via the District Council elections office) as soon as possible. A copy of a suitable notice is attached at the back of this guidance pack. It should also be noted that in the case of a vacancy occurring through death of an existing councillor that it is customary to wait until after the funeral before advertising such a vacancy.

An election must be called: if ten electors of the parish or parish ward send a request to the Proper Officer of East Hampshire District Council, within 14 days. An election must then take place within 60 days; all dates will be computed in accordance with the (*LEPCR 2006, sch 2, sec 1-6*). The calculation of the 14/60 day periods are both "DIES NON" and commence from the day of the posted notice.

Whilst there is no form of words for the electors' request it will be helpful if the signatures of the electors are accompanied by printed names, addresses and elector numbers from the current electoral register. Example at the back of the guidance pack.

No call for election/ need for co-option: if no request for an election is received within 14 days then the parish council must seek to fill the vacancy by co-option as soon as practicable after the expiry of the notice. (*LEPCR 2006, sec5 (5)*). In regard to co-option the process to be followed is a matter for the Parish Council its self provided that it works within legislative boundaries. It is also the parish council that may co-opt whoever it pleases to fill a casual vacancy, (provided that, that person is qualified to serve as a councillor).

Key dates – vacancy timetable

Post Notice of Vacancy:	Day 0 (day following receipt of notification of vacancy)
Notice of Vacancy expires:	+ 14 Dies Non (date of notice = 1 st day)
Latest Date of Election:	+ 60 Dies Non (date of notice = 1 st day)

Exceptions

In the case of a casual vacancy occurring in the last six months before the ordinary election, the parish council is required to give a notice of the casual vacancy but an election is not held. The council may co-opt or leave any vacancy unfilled until the next ordinary election. (LEPCR 2006, Sec 5 (6)).

Following an ordinary election, if the parish council has a quorum, (LGA 1972), then it must co-opt as soon as is practicable, to the remaining vacancies, (RPA 1985, Sec 21). If the vacancy to be filled remains vacant outside of the 35 day period then the District authority may intervene (RPA 1985, Sec 21 cites RPA 1983, Sec 40). However, even after 35 days, the parish council may co-opt without the need to advertise such vacancies if the Returning Officer indicates that he does not wish to invoke his powers to call an election. This is because the Notice of Election (now expired) has acted as the vacancy notice and there is no provision for a further notice to be advertised.

When an election is called (ten electors)

In the case of an election being requested to fill a casual vacancy the District Council Returning Officer will set a date for polling day, and the election process will begin with the publication of a notice of election, copies of which will be supplied to the parish clerk.

That notice will state where and when nomination papers may be collected and the date by when they should be delivered back to the Returning Officer. It also provides the date of the poll in the event of a contest.

Below are calculations for statutory dates associated with the calling of an election. These statutory calculations are in accordance with the LEPCR Rules 2006. In the case of an election actually being called, a statutory timetable with “Live” dates will be provided by the District Council Returning Officer.

Key election timetable dates:

Election Day (E) (last possible date)	+60 Dies Non (day following notice is day 1)
Notice of Election	E – 25 (Last possible date)
Close of Nominations	E – 19 (4pm)
Publish Statement of Persons Nominated	E – 17 (Noon)
Close of Withdrawal of Candidates	E – 19 (4pm)
Notice of Poll	E – 6
Polling	E (7am – 10pm on day of election)

Please note that the above timetable will be computed in accordance with LEPCR 2006 and will exclude “Dies Non”:-

- A Saturday or a Sunday
- Christmas Eve, Christmas Day, Good Friday or a Bank Holiday or
- A day appointed for thanksgiving or mourning

Qualifications to be a parish councillor

A person is qualified to be elected and to be a parish councillor (LGA 1972, Sec 79 (1)), if they are a British, Commonwealth, Republic of Ireland or European Union citizen and on the day of their nomination and subsequently the day of poll they are aged 18 or over, in addition, the person must meet at least one of the following criteria:

1. on the relevant day and thereafter they continue to be on the electoral register for the parish, or
2. during the whole of the twelve months before that day they have owned or tenanted land or premises in the parish, or
3. during the whole of the twelve months before that day their principle or only place of work has been in the parish, or
4. During the whole of the twelve months before that day they have resided in the parish or within 4.8 kilometres of it.

Except for qualification (1), which must continue for the length of office, the above qualifications must apply for the period covering nomination and election, (LGA 1972, Sec79(2)).

Certain people are disqualified from outstanding, these include paid officers of the council (including clerks), bankrupts and those subject to recent sentences of imprisonment (within last 5 years prior to date of election). (LGA 1972, Sec 80).

The nomination process

Candidates should be particularly mindful of the statutory timetable. This timetable must be adhered to fully and without exception. Importantly, nomination papers should be submitted in good time and not later than noon on the statutory closing date.

The Local Elections (Parish and Communities) Rules 2006 clearly state the requirements of a nomination, and that the District Council Returning Officer must rule as invalid any nominations that fail to meet these requirements. However, if nomination papers are completed carefully and ahead of the closing date then there is less chance of unintended error and rejection by the District Council Returning Officer.

Nomination packs will include

- A nomination paper

- Home address form
- A consent to nomination form, and
- guidance as appropriate

A copy of the relevant register of electors can be supplied to each successful candidate. This copy will be supplied on the understanding that it will only be used for electoral purposes, and that its contents will not be supplied or disclosed to any third party or used for any other purpose – it is illegal to use this register for any other purpose and any person doing so will be personally liable to a fine if this rule is contravened. (RPR 2002, Sec 115).

Finally, any person may inspect, take copies or extracts of, nomination papers at the Returning Officers office during normal office hours, after the close of nominations up until the day before polling day. (LEPCR 2006, Sec 11).

For full guidance on completing the forms please go to

<https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/parish-and-community-council-elections-in-england-and-wales>

Withdrawals

A candidate may withdraw their candidature by notice of withdrawal, signed by them and witnessed by one other person and delivered to the Returning Officer. (LEPCR 2006, Sec 13)

A candidate who is validly nominated for more than one ward of the same parish must withdraw their candidature in all those wards except one, and if they do not so withdraw, they shall be deemed to have withdrawn from their candidature in all those wards. (LEPCR 2006, Sec 12).

After the publication of Statement of Persons nominated the Returning Officer will know if the number of candidates for an electoral area is less than, equal to or more than the number of seats to be filled, therefore whether or not a poll will be needed. In the case of the number of candidates being “less than or equal to” the number of available seats there will be an uncontested election, (and those candidates are declared to be elected), Parish Councils in this instance will either need to co-opt members to make up their full quota of councillors or run as full. Where there are too many candidates this will require the election in that area to proceed to poll.

Statement of persons nominated

The Returning Officer must publish a statement of persons nominated in accordance with the statutory timetable. This will appear on the District Council’s website and in hard copy at the office of the Returning Officer. A copy of the relevant notice will be posted to the parish clerk for display within the parish.

Uncontested Elections

In the event of an uncontested election the Returning Officer will issue a notice to the uncontested candidates to inform them of their election, (no earlier than 16 days prior to the scheduled day of poll). This notice will remind the candidates about their duties with regard to the completion of a declaration of acceptance and return of election expenses.

A notice will be issued to the parish clerk to inform them of the outcome of uncontested elections. This will provide the full names and addresses of the new parish councillor/s.

Process of Co-option (part 1)

Where an election is not called for by ten or more electors (within 14 days notice of the casual vacancy) then, upon expiry of the notice and notification by the Returning Officer, the parish council may co-opt whoever it pleases to fill a casual vacancy (provided that, that person is qualified to serve as a councillor).
(LEPCR 2006, Sch 1, Sec 5).

Process of Co-option (part 2)

Whilst some parish councils advertise for expressions of interest in being co-opted there is no legal requirement to do this, however it is generally regarded as good practice to make the vacancy as widely known as possible.

The person co-opted must receive an absolute majority vote of the councillors present and voting. For example, where there is a council of eleven members and there are nine councillors present and voting, the absolute majority is five. Where there are more than two candidates for each vacancy, it may be necessary to run a series of votes, each time removing the candidate who has the least number of votes until one candidate secures an absolute majority.

The usual rules on voting apply provided that the meeting has a quorum, the decision must be made by a majority of members who are present and voting. The person presiding over the meeting may vote, and if there is an equality of votes they may exercise their casting vote. Members must vote by show of hands unless the council has standing orders that provide otherwise.

Assuming that the council's debate and vote on the co-option must be conducted in the public section of its meeting, it follows that the candidates, as members of the public, will be entitled to be present during the proceedings.

Return of Candidates Expenses

All candidates must complete and submit, to the Proper Officer of the District Council (via the elections office) a return of candidates' expenses. This still applies in the case of submitting nil returns, and whether or not the election was contested. The necessary forms will be supplied.

Declarations of Acceptance / Interest

A declaration of “Acceptance” of office should be signed by each parish councillor and attested by the parish clerk as the proper officer of the parish council, before or at the first meeting of the parish council after their election or co-option. This declaration must be kept by the parish clerk.

In addition, all elected parish councillors must register their “interests” (within 28 days of their election) with the District Councils’ Monitoring Officer. The Monitoring Officer will ensure that those declarations of interest are recorded in the public register (which the District Council must publish), The Monitoring Officer will also forward a copy of the registrations received to the appropriate parish clerk.

Meeting the cost of an election

Once an election has been called for, irrespective of whether it is contested or not the District Council Returning Officer will require the full costs incurred to be paid by the parish council.

For further assistance: the following references may be helpful:

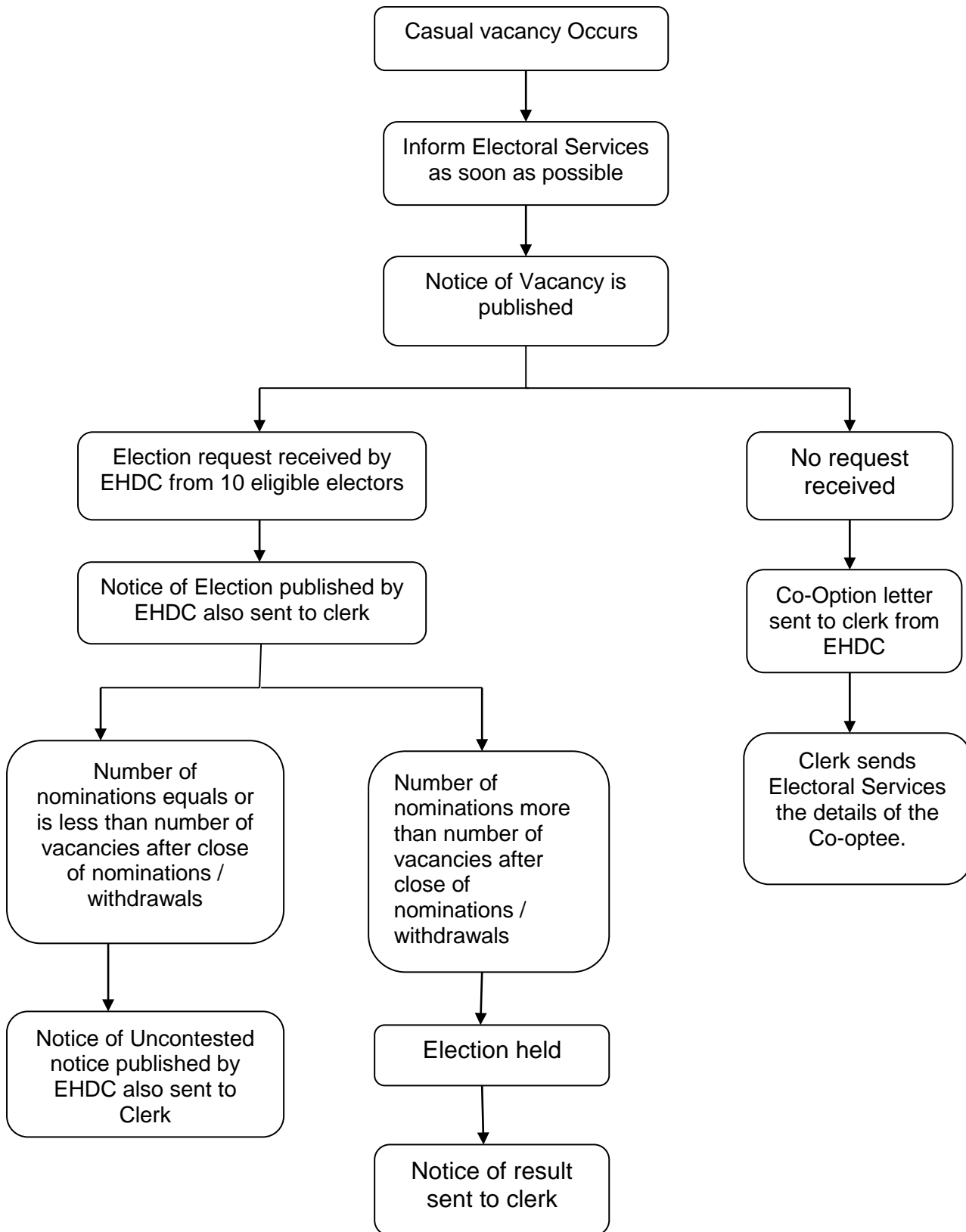
Guidance can also be found on the National Association of Local Councils website (www.nalc.gov.uk)

Electoral Commission – Guide for Candidates and agents (www.electoralcommission.org.uk)

Representation of the People: The Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (SI 2006 No.3305) LEPCR 2006.

(WWW.OPSI.GOV.UK)

Casual Vacancy Flow chart



PARISH COUNCIL OF

.....
.....WARD

**CASUAL VACANCY FOR A
COUNCILLOR**

1. There is a vacancy on the above Council caused by

.....

2. A by-election to fill the vacancy will be held if, within 14 days (not counting a Saturday or Sunday, Christmas eve, Christmas day, Good Friday, Bank holidays, any day appointed for public thanksgiving, Saturdays and Sundays) from the date below, ten electors for the Parish give notice in writing claiming such an election to the Returning Officer.

3. The address of the Returning Officer is...*EHDC, PENNS PLACE, PETERSFIELD, HANTS, GU31 4EX*.....

.....

4. If no such notice is given the Parish Council will fill the vacancy by co-option.

Dated..... Signed..... Clerk

Address.....
.....

Appendix 2 – request for election form

**FORM OF REQUEST – FOR AN ELECTION TO BE HELD
TO FILL A CASUAL VACANCY AT A PARISH [WARD] ELECTION**

WE THE UNDERSIGNED BEING ELECTORS FOR THE _____ [WARD OF]
_____ PARISH, CALL FOR AN ELECTION TO FILL THE VACANCY
ARISING FROM THE [DEATH] [RESIGNATION] OF _____.

	SIGNATURE	NAME (PRINTED)	ADDRESS	ELECTOR NUMBER
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

The signatures of ten electors for the parish [ward] in which the vacancy is held are required. However, there is no limit on the number of signatories, and you may wish to add further signatories in case it is found that one of them is not a registered elector for the parish [ward].

Clerk's checklist

Have you done the following to fill your Parish Council Vacancy?

Obtained the resignation in writing

Advised EHDC of the vacancy by emailing electoral.services@easthants.gov.uk

Advertised the vacancy within the Parish for 14 working days

Passed any requests for an election to EHDC

Advised EHDC of any co-options

Forward the Completed Register of Interest Form to
Members Services, EHDC, Penns Place, Petersfield, Hants GU31 4EX