

**EAST RIDING AND NORTHERN LINCOLNSHIRE
LOCAL COUNCILS ASSOCIATION**

Advisory Note	008
Subject	Co-option Procedure
Date of last review	May 2013

A Casual Vacancy can be created:

- When a Councillor fails to sign his/her Declaration of Acceptance of Office within the prescribed time-scale
- when a notice of resignation is received
- on the day of the death of a Councillor
- on disqualification under Part VIII of the 1972 Local Government Act
- in the case of an election being declared void
- through the non-attendance of an Elected Member for a period of six months.

The most likely case for Clerks to deal with is the latter. The Clerk has to assure him/herself that a vacancy has actually arisen. Attendance at any meeting of the Council, its committees (provided they have been properly convened) or any meeting where a Councillor has been previously asked to represent the Council, counts as attendance. For example, if a Councillor did not attend any Council meetings for five months and then attended an ERNLLCA District Committee meeting (to which he or she was an agreed Council delegate) then the six-month rule can only apply from the date of the ERNLLCA meeting. Such a ruling could apply to Joint Burial Boards, Village Hall Committees or any body to which the Council nominates delegates to attend.

A notice of resignation can be acted on when it is in the Clerk's hands or has been handed to the Chairman. If a Councillor fails to attend any council or committee meeting (or any meeting of an approved body where he or she would have represented the Council) in a six-month period, then he or she **automatically ceases to be a member** of your Council. The six-month period is measured from the date of the last meeting attended. There are mitigating circumstances such as absence because of approved duties (e.g. military service) or where non-attendance has been approved by Council (e.g. illness, working away from home). However this cannot be done retrospectively if the six months has already been exceeded. The Clerk is not under any duty to remind a Councillor that a period of absence is approaching six months, but in a well-run Council a Clerk will presumably contact a Councillor who has not been to meetings for some time.

Once the Clerk is satisfied that a vacancy exists they should contact Electoral Services at your respective Unitary Authority and that Office will arrange for a public notice to be posted, within the parish, advertising the vacancy. (See Advisory Note 004 – Procedure for filling a council vacancy and Electoral Criteria). If ten electors call for a poll then an election will be held within 60 days of the notice of the vacancy. This will all be handled by Returning Officer. If no poll is claimed the Council will be informed that the vacancy may be filled by co-option. It is for the Council to decide how it will manage this process although it is recommended that local councils always give public notice of vacancies as this makes the co-option process open and transparent. It is also likely that such an approach will attract more potential candidates.

The law does not specify how members of the public should apply. A council could ask for written applications or verbal applications to the Clerk could be accepted. It would be advisable for a written application to be made as a record then exists. All candidates should have to apply in the same way.

Following public notice of any vacancies, a local council may co-opt onto their council any person provided that person is qualified to be a councillor pursuant to s. 79 Local Government Act 1972 ("the 1972 Act") and is not disqualified pursuant to s.80 of the 1972 Act.

A local council should be satisfied by its own investigation or, if this is not possible, by evidence provided by the proposed candidate that:-

- A person meets the criteria for eligibility to be a member of the council (criteria is set out in s.79 of the 1972 Act).

and

- A person is not disqualified to be a member of the council (criteria is set out in s.80 of the 1972 Act).

Once a local council is satisfied that a candidate is eligible to be co-opted onto a council it should employ a fair and transparent process to assess the suitability of a proposed candidate who wishes to be co-opted. A local council should assess if a proposed candidate has the skills expected and or has any additional expertise or areas of interest which will assist the council exercise their various functions. All candidates should be assessed in the same way.

However there are complications to consider if there is more than one applicant. The Local Government Act 1972, Schedule 12, paragraph 39 states that a successful candidate (i.e. the person who is co-opted) must receive an absolute majority vote of those present and voting i.e. if a council has 14 members, a candidate must have 8 votes (14/2 plus 1) to be successful. If votes are spread amongst candidates and there is no absolute winner, then the candidate with the lowest votes must drop out and further ballots undertaken until the required number of votes (i.e. an absolute majority) is reached. Each councillor only has one vote for each vacancy in each ballot.

The Council has to predetermine how it will deal with a situation where more than one candidate receives the same number of least votes. In such a position the Council could have a specific vote between those candidates or it is possible that one such candidate may withdraw thus easing the selection of others or negotiations may take place between candidates for one to step aside. But if all of this does not transpire the Council must strike one off by means of vote.

If there is only one applicant the Council is free to co-opt or otherwise, as it thinks fit. The Council is not obliged to give any preferential treatment to an unsuccessful candidate from a previous election.

The Council is free to choose its own system of assessing candidates. That can be by inviting each of them to address the meeting, asking for a written submission or inviting them to a meeting at which all could be asked the same questions (in the same way that the council would conduct an interview). All candidates **must** be treated the same way. The co-

option process should be transparent and treating it as an exempt item and excluding the press and public is not one that ERNLLCA recommends. Transparency in the co-option process **is in the public interest**. Voting for candidates is by show of hands, the law does not allow for secret ballots.

All of the above may seem unnecessarily complicated however, in an ideal world, ten electors will call for a poll and the democratic process will make the decision but, of course, democracy has a cost!

If any clarification or other information is required, please contact ERNLLCA on the number below.

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