



Lyneham and Bradenstoke Parish Council

Co-option of Councillors following an Election or vacancy by other means

Version 1

Adopted

14th January 2020

To be reviewed every two years

Or

On change of relevant legislation (if sooner)

April 2024 Amendments

Public Notification of a Vacancy

s.87(2) of the Local Government Act 1972 requires a local council to give public notice of casual vacancies, to ensure transparency and attract more candidates.

The public notice given by the council invites application for candidates who satisfy the eligibility for being a councillor.

Vacancies arising on the Parish Council following an election.

Following a full election of councillors to fill the eleven seats on the Lyneham and Bradenstoke Parish Council, and providing there was initially a legitimate quorum following that election, then any seats that are unfilled by election or become vacant before the next full election can be filled by either election or co-option in accordance with section 39(4) Representation of the People Act 1983 and section 21(2) RPA 1985.

If an election is called, then this policy shall not apply.

If no election has been called, once notification is received from Wiltshire Council Elections officer, then the vacant seats can be filled by Co-option, without the need to advertise the vacancy, and this policy shall apply.

The Parish Council can advertise/promote/approach individuals as they see fit, but any candidate who qualifies must be considered for co-option, i.e. be put to the vote, in the context of any agreed deadline.

This means that the parish council must, at its next meeting, consider the co- option of a person to the council. If they do not fill the vacant seat at the next meeting, it should remain a matter of business until the seat has been filled through their chosen co-option process.

If a person who is co-opted fails to either sign the Declaration of Acceptance of Office or fails to complete their Register of Interest within 28 days, then this will be deemed a void co-option. If this occurs, it will remain a matter of business until the seat has been filled through the Parish Councils chosen co-option process.

What constitutes a vacancy

Vacancies may occur due to any of the following:

- Any seats that remain unfilled following any election;
- A councillor fails to make his declaration of acceptance of office at the proper time (with 28 days);
- A councillor fails to complete his public Registration of Interests within the proper time (28 days of taking office);
- A councillor resigns (in writing);
- A councillor dies;
- A councillor becomes disqualified (under 5.80 of the Local Government Act 1972;
- A councillor fails for six (6) months to attend meetings of the Parish Council, a council committee or subcommittee or to attend as a representative of the Council a meeting of an outside body, without the absence being approved by the Parish Council (Choosing not to attend without a valid reason is not acceptable).

Eligibility to be Considered for Co-option

The Parish Council is able to consider any person to fill a vacancy provided that:

- The applicant is an elector of the parish;
- Has resided in the parish for the past twelve months or rented/tenanted land in the parish; or
- had his/her principal place of work in the parish; or
- has lived within three miles (straight line) of the parish for the past twelve months.

There are certain disqualifications for co-option, of which the main are (see 5.80 of the Local Government Act 1972 along with Section 81A as amended by the Local Government (Disqualification) Act 2022) of the :

- Holding any paid office or employment of the Parish Council.
- Are employed by a company which is under the control of the Parish Council.
- Be subject to a Bankruptcy Restriction Order or a Debt Relief Restrictions Order (note that being bankrupt alone is not a disqualifier);
- Have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, the Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
- Are disqualified under Part III of the Representation of the People Act 1983;
- being disqualified under any enactment relating to corrupt or illegal practices;
- Disqualified under Section 81A as being subject to any relevant notification requirements, or a relevant order related to a Sexual Offence as laid out by the Local Government (Disqualification) Act 2022

The Parish Council may need to investigate or obtain evidence about a candidate's eligibility to be a councillor if this is challenged.

Advertising a vacancy following notification from Wiltshire Council that an election has not been called.

Should Wiltshire Council notify that an election has not been called for any Casual Vacancy, then the Parish Clerk will arrange for a suitable notice to be placed on the Parish Council website, public notice boards, and by any other means as applicable, inviting people to offer their services to fill the vacancy(ies).

- The notice will also provide a link to this Policy.
- The notice will give a clear expiry date for applications, being one calendar month from the date of notification from Wiltshire Council.
- The notice will give clear indication on how to apply and who to apply to.
- The notice will include the "Eligibility to be Considered for Co-option" paragraph, so that people can see who are and who are not excluded from applying. (This is to remove any doubt)

This advertising action can be taken without referral to the full council as it will deem as being part of the normal course of recruitment.

Applications for Consideration for Co-option

The Council (or resident) can legally approach individuals to discuss the role as a Councillor and to suggest they may wish to consider putting their names forward for co-option.

Co-option of Councillors following an Election

Candidates will be required to:

- Submit an email or letter to the Parish Clerk or Chair explaining why they are interested in joining the Parish Council and what skills and experience they would bring.
- Meet with the Parish Clerk and Chairman of the Parish Council to discuss any questions they have about the procedure for co-option, eligibility to serve or the role and responsibilities of a Parish Councillor.

Candidates may be required to:

- Meet informally with the Parish Council to introduce themselves and explain why they are interested in joining the Parish Council and what skills and experience they would bring.

All prospective applicants will be asked to complete a Disclosure and Barring Service (DBS) Individual Check, costs for which will be refunded by the Parish Council on presentation of the results and receipt. The results of the check will remain private but the Council will be made aware of a successful completion (not of a failure to provide or failure to complete successfully) prior to the decision process commencing

Co-option Process

- The Parish Council will consider the candidates for co-option to fill any vacancy at an open Parish Council meeting.
- Shortly before the start of this meeting the Parish Clerk will report the names of the candidates to the Council at the meeting and distribute copies of any applications made by the candidates, if not already distributed.
- If they wish, each candidate may make a short statement to the Council.
- The process will be carried out in the public session and there will be no private discussions between members prior to a vote being taken. However, if there is a need for the Council to discuss the merits of candidates and inevitably their personal attributes, as this could be prejudicial, the Council must resolve to exclude the members of the press and public.
- Declarations of interest must be made by Parish Councillors as each candidate is considered, (e.g.: family ties, friendships, business relationships etc). This does not prevent Councillors from voting unless there is a declared pecuniary interest.

Voting

- This must take place in a public meeting.
- Only Councillors present at the meeting may vote; ~~Each councillor must vote (unless there is a declared pecuniary interest).~~
- ~~No councillor may abstain.~~
- Voting is normally by a show of hands, but a paper ballot may be allowed if requested. This is not a secret ballot as the paper should be signed by the councillor to ensure that one member has not voted twice. The clerk should be prepared for this possibility. Ballot papers should be destroyed at the conclusion of the meeting.
- If a member is not at the meeting the legislation does not provide for a proxy or postal vote.
- If there is only one candidate, they must still have an absolute majority vote to be co-opted (That is 50% plus 1 vote). An uncontested co-option is not permitted within the law.

Co-option of Councillors following an Election

- Even if there are fewer candidates than vacancies, each candidate must receive an absolute majority vote of those members present at the meeting; no majority, no co-option. There is no “co-opted uncontested” provision within the law. For clarity, in an absolute majority vote, a candidate must obtain over a half of the votes cast, or 50% plus 1 vote.
- If there are more candidates than vacancies, the candidate with the least number of votes should be taken off the list of candidates, and if there are still more candidates than vacancies, the vote is taken again. This procedure should be repeated until the number of candidates equals the number of vacancies and each candidate has a majority vote.
- ~~The Chairman may only use his casting vote if two successive voting rounds are stalemated.~~
- The results of the voting will be recorded in the minutes of the same meeting.

Declaration of Acceptance of Office

Those co-opted must sign a Declaration of Acceptance of office before they join any meeting of the council as a member (If the successful candidate is present at the meeting where the co-option is agreed they will sign the Declaration of Acceptance of Office and be able to participate in the meeting.)

Term of Office

A person elected by co-option to fill a casual vacancy holds office until the person in whose place they are elected or appointed would regularly have retired or until the next full election of the parish council where they will be invited to stand for election, along with all the other parish councillors.

They will hold the same legal position, rights, responsibilities and privileges as if the person has been elected at an election.

Notification of Co-option

The Clerk will notify Wiltshire Council of the new member appointment and request the new member completes a Registration of Interests form within 28 calendar days of being co-opted.

Confirming the Required Quorum for Co-option

Notwithstanding any Parish Council Standing Orders or other policy, the following applies under law.

Paragraph 12 of Part II of Schedule 12 to the Local Government Act 1972 provides that three or one-third of the total number of Parish Councillors, whichever is greater, is necessary for a meeting to have a quorum.

Notwithstanding the above, Paragraph 45 of Part II of Schedule 12 to the Local Government Act 1972 provides that where more than one-third of the Council places are unfilled at the same time, then, the quorum will be one-third of the number of filled places, subject to not being two or less, that the minimum required is three for the purpose of co-option.

Establishing a Quorum for Co-option

For the purpose of permitting any Co-option to Lyneham and Bradenstoke Parish Council, the Parish Clerk (or appointed locum) must first establish whether or not sufficient Parish Councillors are present to constitute a quorum.

This will depend upon how many Councillors there should be in Parish Council against how many seats are filled.

There are sufficient Councillors for a Quorum

Lyneham and Bradenstoke Parish Council has eleven Parish Councillor seats, providing there are eight or more seats filled the quorum will be four; if seven or less seats are filled then the quorum shall be three.

If there are **sufficient councillors** in the Parish Council for a quorum, and providing that at the Parish Council meeting sufficient Parish Councillors to constitute a quorum (i.e. provided that all the Parish Councillors needed to establish the quorum turn up to that meeting) attend, then new Parish Councillors can be co-opted at that Parish Council Meeting. (The Parish Clerk should then ensure that the requisite steps are taken in respect of this appointment.)

If there are sufficient councillors for a quorum, but fewer than the required number attend the Parish Council, then the Co-option cannot proceed and must be held over to the next meeting.

There are insufficient Councillors for a Quorum

If there are **insufficient councillors** in the Parish Council for a quorum, that is three or less filled seats, the Parish Clerk will advise Wiltshire Council's Elections Officer Services. In these circumstances, Wiltshire Council's Legal and Democratic Services may (by order) appoint persons to fill all or any of the vacancies until other councillors are elected and take up office. Wiltshire Council's Legal and Democratic Services can also advise the Parish Clerk as to the steps that will need to be taken in order to fill the vacancies.

References and Notes:

This policy is based on guidance from the NALC Legal Briefing L15-08 (Co-option) and NALC Legal Topic N^o 8 (Elections)

- Local Government Act 1972
- **Local Government (Disqualification) Act 2022**
- Representation of the People Act 1983
- Representation of the People Act 1985
- The Local Elections (Parishes and Communities) (England and Wales)
- Rules 2006 (Statutory Instrument 2006 No. 3305)
- Local Elections (Declaration of Acceptance of Office) Order 2012