

March 2003

LOCAL COUNCIL ELECTIONS IN ENGLAND AND WALES

Qualification to Vote

1. A person is entitled to vote in a local council election provided that he:
 - a. is resident in the parish or community on the qualifying date (11th March) or is an absent elector so registered in the register of electors; and
 - b. is of voting age (18 or over on polling day); and
 - c. on the qualifying date and on polling day is:
 - i. not subject to any legal incapacity to vote, and
 - ii. is a British Citizen or a citizen of the Commonwealth or a citizen of a member state of the European Union (a "Euronational") and
 - d. is registered in the register of local government electors for the electoral area comprising or including the parish or community.

2. A person is legally incapacitated from voting if he:
 - a. is a convicted person detained in prison; or
 - b. has been convicted of corrupt or illegal practices (see paragraph 11 and 12 below)(the disqualification lasting for five years from the date of conviction); or
 - c. is suffering from severe mental illness.

The Register of Electors

3. The register of local government electors is published annually not later than 1st December or such later date as provided for by regulation and any person on the register is entitled to vote at all elections in the 12 months until the next register is published. Changes to the register used to be made annually. Alterations can now be made at any time to add or remove a name from the register. The register is therefore often now referred to as a "rolling register". The new process should allow changes to be made more quickly although the qualifying date will always apply.

4. A person may be on more than one register if resident in more than one parish or community. One may vote in each parish or community where one is on the register, but not in more than one ward within a parish or community.

Qualifications for election and holding office as a Councillor

5. A person (unless disqualified see paragraph 6 below) is qualified to be elected and to be a councillor if he is a British subject, a Commonwealth citizen or a Euronational, if on the relevant day (i.e. the day on which he is nominated and, if there is a poll, the day of the election) is 21 years of age or over and
 - a. on the relevant day is, and continues to be, a local government elector for the parish or community, or
 - b. has during the whole of the 12 months preceding that day occupied as owner or tenant any land or other premises in the parish or community, or
 - c. his principal or only place of work during those 12 months has been in the parish or community,
 - d. or has during the whole of those 12 months resided in the parish or community or within three miles of it.

The courts have previously held that carrying out duties as a councillor qualifies as work (see below)

6. A person is disqualified from being elected or being a councillor if he
 - a. holds any paid office or employment (other than the office of chair, vice chair or deputy chair) to which he has been appointed by the council or any committee or sub-committee of the council, or by a paid officer of the council, or by any joint committee on which the council is represented; or
 - b. has been judged bankrupt or made a composition or arrangement with his creditors; or
 - c. has within five years before the day of election or since his election been convicted of any offence and has had passed on him a sentence of imprisonment of at least three months (whether suspended or not) without the option of a fine; or
 - d. has been found guilty of corrupt or illegal practices (see paragraphs 11 and 12 below), or was responsible for incurring unlawful expenditure and the court orders his disqualification;

In relation to (a), where dealing with an office of profit, it is irrelevant that no profit was actually received. In relation to (b), the bankruptcy disqualification ends when the bankruptcy order is annulled or discharged; the composition disqualification ends when the debts are fully paid or, if they are not fully paid, after five years from the date on which the terms of the composition or arrangement are fulfilled.

7. A person is qualified under paragraph 5 (c) above for re-election if he is already a councillor. The Court of Appeal held in *Parker v Yeo* (1992) that being a councillor was "work" and that the work was carried on in the area where the councillor was an elected member.

The Election Procedure

8. Ordinary elections of local councillors take place on the first Thursday in May every four years, but are postponed for 3 weeks if the polling day coincides with that for a parliamentary general election or a European Assembly election. For most local councils election year is 2003, 2007 etc. but where the principal authority councillor is elected in some other year that is also the year of the local council election. Reorganisation of local government may cause alteration of the election day and election year in some cases.

The election timetable is as follows:

- **Publication of notice of election**
Not later than the twenty-fifth day before the day of election.
- **Delivery of Nominations papers**
Not later than noon on the nineteenth day before the day of election.
- **Publication of list of candidates**
Not later than noon on the seventeenth day before the day of election.
- **Delivery of notices of withdrawals of candidature**
Not later than noon on the sixteenth day before the day of election.
- **Notice of Poll**
Not later than the sixth day before the day of election.
- **Polling**
Between the hours of 8 in the morning and 9 at night on the day of election.

In calculating the timetable the following days are disregarded; Saturday, Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday, a Bank Holiday and a day appointed for public thanksgiving or mourning.

Nomination

9.
 - a. A prospective candidate must deliver or send by post to the Returning Officer a valid Nomination Paper. This form is obtained from the Officer. The candidate's surname, forenames, residence and description (if required) must be entered and his or her number and prefix letter from the current register of Electors. The Returning Officer has a copy of this register, and the clerk of the local council normally has one.
 - b. The nomination paper must also contain similar particulars of a proposer and a seconder. They must be electors for the area for which the candidate seeks election (i.e. the parish, community or town or the ward if it is divided into wards): they must sign it.
 - c. The nomination is invalid if the candidate does not sign a Consent to Nomination in the presence of a witness. This consent must state that the candidate wants to

stand for election and meets the necessary qualifications. The formula is usually printed at the foot or on the back of the nomination paper.

- d. A returning officer can be required to make out a nomination paper for signature. If this is desired, there should be a specific request with particulars of the candidate, and the proposer and seconder, sent to the Returning Officer when applying for the nomination paper. This saves time and trouble and may prevent papers from being adjudicated void for a purely formal defect.
- e. It is the responsibility of the candidate or his supporters to vet the signed nomination paper back to the Returning Officer in time, even where he has prepared papers for signature. He cannot accept any nomination which, whatever the reason, reaches him too late.

It is not the responsibility of the clerk (or the Returning Officer) to see that candidates comply with the nomination rules.

Expenditure by Candidates

10. Expenditure by a candidate on an election is currently limited to £242 plus 4.7p for every entry in the Register of Electors used at the election, but this amount is reduced by one fourth for two joint candidates and by one third for three or more joint candidates. The limit is regularly revised upwards and candidates should check the up to date figure with The Returning Officer.

Corrupt and Illegal Practices

11. Various corrupt or illegal practices in relation to legal elections are criminal offences. Corrupt practices include bribery, impersonation, treating and false declaration of election expenses. Illegal practices include illegal payments (e.g. for paid canvassers and for payments for the conveyance of voters to or from the poll), illegal broadcasting and improper conduct (i.e. the publication of false statements about the conduct or character of a candidate).
12. It is also an illegal practice to print or publish an election document (e.g. a poster or a manifesto) which does not bear on its face the words "Printed and Published by" together with the name and address of both the printer and publisher. The "publisher" is the person who is responsible for issuing the document. Printing includes any form of reproduction other than copying by hand. This requirement is sometimes overlooked by candidates at local council elections.

Voting

13. The normal method of voting is by personal attendance at the appropriate polling station. However, a person may be allowed to vote by post, or by proxy, for an indefinite period or for a particular election if the person can show that he cannot reasonably be expected to vote in person. The rules governing absent voting are somewhat complex and are outside the scope of this Note. Detailed information, and an application form, can be obtained from the electoral registration officer. The voting system is currently subject to nationwide review in order to try and increase public participation and turn outs at elections. In the 2003 elections, some principal

authorities have been charged with the use of innovative schemes such as postal only voting or voting by electronic means.

Poll Cards

14. At ordinary local council elections (i.e. those held every four years) there is no requirement that poll cards be issued. However, it is now common for details of local council elections to be included on the mandatory poll cards issued for ordinary principal council elections which are held on the same day.
15. At local council bye-elections poll cards may be issued (see below, paragraph 24).

Term of Office

16. A local councillor elected at an ordinary election serves for four years unless before the end of that period he resigns, becomes disqualified or otherwise vacates office. A councillor elected at a bye-election or by co-option to a casual vacancy serves until the next ordinary election.
17. As indicated in paragraph 9 (c) above, a candidate for election must specify on his nomination form the nature of his qualification to be elected a councillor. It is not unknown for a candidate to specify only one qualification when he has more. In such a case, if he loses that qualification he does not cease to be qualified to be a councillor provided that he retains at least one other. A person who is qualified by residence, by occupation of property or by place of work does not lose his qualification by moving away after election.

Insufficiency of Candidates at Ordinary Election

18. Where an insufficient number of candidates is validly nominated at an ordinary local council election to fill the vacancies on the council, those who have been validly nominated are automatically elected a councillors. Provided that those elected constitute at least a quorum (three or one third of the total number of councillors, whichever is the greater), the council (i.e. those elected unopposed) may co-opt any person or persons to fill the vacancies. If the power of co-option is not exercised within 35 days (in calculating which the days specified in paragraph 8 above are excluded), the principal authority may then exercise its powers to hold a further election or to take other appropriate action to fill the vacancies. A principal authority has wide reserve powers to do anything necessary to constitute a council properly, including the temporary appointment of councillors pending a further election.
19. Before exercising the power of co-option, the council does not have to give public notice of the vacancy or vacancies (as is necessary in the case of casual vacancies see paragraph 25 below), although it may do so if it wishes. In practice, the giving of public notice is a sensible way to attract possible candidates for co-option.

Return of Election Expenses

20. Within 28 days (in calculating which the days specified in paragraph 8 above are excluded) after the election, each candidate must make a declaration as to election expenses in statutory form and send it to the clerk. (A form is obtainable from the County Associations). Failure to send in the declaration is an illegal practice (see paragraphs 11 and 12 above).

Costs of Holding Elections

21. The cost of holding a local council election is paid by the local council if the principal authority so requires. Where a local council election is combined with a principal council election the cost of the combined polls (excluding the costs attributable solely to one election) is apportioned equally between the elections.

Bye-Elections

22. A bye-election of a whole council takes place:

- a. where a new council comes into existence in a year other than that in which the principal authority councillor for the parish or community is elected;
- b. where an election is declared void following an election petition;
- c. where a principal authority orders a new election under reserve powers (see paragraph 18 above).

23. A bye-election to fill a particular vacancy can occur when the membership of the council is increased

24. A bye-election is held the same way as an ordinary election except in relation to poll cards. At a bye-election the local council may, not later than noon on the 19th day (calculate by excluding the days specified in paragraph 8 above), require the returning officer to issue official poll cards. The cost of providing the cards is payable by the parish or community council in question (see paragraph 21 above).

Casual Vacancies

25. A casual vacancy occurs when:

- a. a councillor fails to make his declaration of acceptance of office at proper time (see paragraph 31 below); or
- b. a councillor resigns; or
- c. a councillor dies; or
- d. a councillor becomes disqualified (see paragraph 6 above for circumstances in which this may occur); or
- e. a councillor fails to attend meetings for six consecutive months (see paragraphs 29 and 30 below); or
- f. a councillor is disqualified under legislation relating to the code of conduct i.e. upon being found guilty of a serious breach of the code or upon failing to sign the undertaking as required.

In cases (a) to (c) and (f) the council must immediately and in cases (d) and (e) as soon as practicable, give public notice of the vacancy by posting the notice in some conspicuous place or places within the parish or community (a form of notice is obtainable from County Associations).

26. If within 14 days (calculated by excluding those specified in paragraph 8 above) after public notice has been given at least ten electors give written notice to the proper officer of the principal authority of a request for an election to fill the vacancy, then a bye-election must be held except where the vacancy occurs within six months before the date when the councillor in question would have regularly retired (i.e. four days after the next ordinary election). If a bye-election is called, and an insufficient number of candidates are nominated those nominated are elected and the district council must call a further bye-election to fill the remaining vacancy or vacancies.
27. If no bye-election is called the council must as soon as practicable after the expiry of the 14 day period fill the vacancy by co-option. If the vacancy falls within the six month period the council may but need not, fill the vacancy. It must, however, in the latter case give public notice of the vacancy;
28. The council may co-opt whom it pleases to fill vacancy, provided that the person is qualified to be a councillor (see paragraphs 5 and 6 above). The person co-opted must receive a majority of the votes of those councillors present and voting at the meeting where the co-option takes place. Where there are more than two candidates for one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Thus where candidate A receives four votes, and candidates B and C each receive two, A is not elected because he has the same number of votes as B and C put together and does not have a majority over their combined votes. Where there are more than two candidates it is desirable to eliminate the candidate with the least number of votes, so that the final vote is between two candidates only. Model Standing Order 37 in Standing Orders and Chairmanship (recently revised and obtainable from the County Association) so provides. If the council has no adopted standing orders, it may resolve to adopt No.37 simply for the purpose of filling a casual vacancy.

Failure to Attend Meetings

29. A councillor vacates office if he fails to attend any meeting of his council for six consecutive months after his last attendance, unless before the expiry of that period the council approves a reason for his absence.
Attendance as a member of the council at:
 - a. a meeting of a council committee or sub-committee; or
 - b. a meeting of a joint committee or similar body by which any of the council's functions are for the time being discharge (e.g. a joint burial committee); or
 - c. a meeting of an advisory committee appointed by the council; or attendance as a representative of the council at a meeting of any body of persons (e.g. the annual meeting of the County Association) counts as attendance at a council meeting.
30. A council cannot approve a reason for absence if no reason is given. Simply to record in the minutes of a meeting that a councillor was absent does not amount to approval. Councils are therefore recommended to adopt a practice whereby a councillor always

gives a reason when he proposes to be absent from a meeting and the minutes of that meeting record both the reason and whether or not the council approves it.

Declaration of Acceptance of Office

31. On being elected to office, a councillor must before or at the first meeting of the council after election sign a declaration of acceptance of office in the prescribed form (obtainable from the County Association) in the presence of another councillor or the clerk. The council may at the meeting permit the declaration to be signed before or at a later meeting fixed by the council. If a councillor fails to sign the declaration at the due time, he thereupon vacates office and a casual vacancy arises. There is no provision allowing a declaration to be signed retrospectively. (For Chairs, see paragraph 32 below). The declaration of acceptance of office also includes an undertaking to abide by the code of conduct. Following the introduction of the code of conduct in May 2002, newly elected, re-elected or co-opted councillors will have to undertake to abide by the code before they can take office. The code includes the requirement to complete the Register of Members Interests within 28 days of election or co-option.

Election of Chairman

32. The Chairman of a local council must be elected from among the councillors as the first business of the statutory annual council meeting in May. He remains in office until his successor is elected (at the following meeting unless in the interim he resigns, dies or otherwise vacates office).

33. Since the chairman of the council must preside at all council meetings which he attends, he must if present preside at the election of his successor (who may, following re-election, be himself/herself). As chairman, he has, as well as his ordinary vote, a casting vote, in the event of a tie between candidates for his post and he must exercise the latter. Where following an ordinary election, the chair ceases to be a councillor he nevertheless remains chairman of the council until his successor takes office. If present at the annual council meeting he must preside at the election of his successor but has only a casting vote. As soon as his successor is elected, he vacates office, must leave the chair, and can no longer participate as a councillor in the meeting.

34. On being elected to office, the chairman of a local council must sign a declaration of acceptance of office at the meeting at which he is elected or, if permitted by the council, before or at a later meeting fixed by the council. Failure to sign at the due time results in automatic vacation of office. It must not be forgotten that a chairman is elected annually and therefore a declaration must be made every year by whoever is elected as chairman.

Vice-Chairman

35. A council may, but need not, elect one of their number to be a vice-chairman. If the chairman is absent from a meeting, the vice-chairman will preside if he is present.
36. A vice-chairman does not as such have to sign a declaration of acceptance of office (although as a councillor he must of course do so see paragraph 31 above).

Statutory References

37. To avoid undue complication, statutory references have not been included in the text. The main legislation covering local council elections and other related matters dealt with in this Note is the Representation of the People Act 1983 and 1985, the Local Elections (Parishes and Communities) Rules 1986 (S.I. 1986/2215, as amended by S.I. 1987/260), sections 79 to 92 of the Local Government Act 1972 and the Local Government Act 2000.
38. Wherever the masculine gender is used in this publication, this should be interpreted as also meaning the feminine gender where appropriate.
39. The word chairman, as opposed to chair, is used because this is the word used in the statutory reference i.e. the Local Government Act 1972. It is recognised that some councils do prefer to use the word chair and indeed vice-chair.