

GUIDE TO FILLING A CASUAL VACANCY IN THE OFFICE OF LOCAL COUNCILLOR

June 2023



North Kesteven
DISTRICT COUNCIL

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1.0 INTRODUCTION

This guidance has been compiled to assist Parish Council Clerks where a casual vacancy occurs in a parish/town council within the district of North Kesteven. Throughout this guide the text will refer to parish councils, but the procedure for parish and town councils is identical.

2.0 QUALIFICATIONS TO BE A PARISH COUNCILLOR AND TERM OF OFFICE

It is the responsibility of the person putting themselves forward as a candidate to ensure they know and understand both the qualifications and disqualifications that apply to becoming a parish councillor. The Electoral Commission provides general guidance to candidates: [Parish council elections in England | Electoral Commission](#)

Qualifications

A person is qualified to be elected/co-opted if they meet the requirements under the Representation of the People Regulations on the day of their nomination/co-option, namely being:

- at least 18 years of age
- a British citizen, a qualifying Commonwealth citizen, or national of an EU member state

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;
- 2) during the whole of the 12 months before that day they have occupied as owner or tenant land or other premises in the parish;
- 3) during the whole of the 12 months before that day and the day of the election their main or only place of work has been in the parish;
- 4) during the whole of the 12 months before that day and the day of the election they have resided in the parish or within 3 miles/4.8 kilometres of the boundary.

Except for qualification (1), these qualifications then continue for the full term of office, until the next ordinary elections.

Disqualifications

There are several disqualifications which apply that can prevent someone standing for election/co-option. It is the responsibility of the candidate putting themselves forward to check whether they are disqualified or seek their own separate legal advice. Please see the Electoral Commission guidance [Parish council elections in England | Electoral Commission](#) for further information.

Term of Office

Councillors hold office for a period of four years (or if elected part way through the cycle, for the remainder of that period only) and retire on the fourth day after the ordinary day of election. The Chair of a town/parish council continues in office until their successor becomes entitled to act in that capacity.

3.0 CAUSES OF A VACANCY

Casual vacancies may arise for several reasons as listed below.

Casual vacancies will be filled either by means of holding a by-election or by co-opting a new councillor to fill the vacancy.

Co-option is only permitted once the vacancy has been formally advertised to allow local electors the opportunity to call a by-election if so desired.

Reasons that a vacancy may occur and the effective date of the vacancy:

- 1. Failure to complete a declaration of acceptance of office within the proper time** – this must be done before or at the first meeting of the parish council after their election/co-option unless the parish council otherwise permits, eg by making a formal decision to that effect at a meeting. The effective date of the vacancy is the closing date for making the declaration of acceptance of office.
- 2. Death** – the vacancy occurs on the date of the death.
- 3. Resignation** – a councillor may resign at any time by written notice delivered to the chairman of the parish council. There is no special form for the notice. It is considered that an e-mail amounts to a ‘written notice’. There is no procedure for withdrawing a notice of resignation once it is made and no need to report the resignation to the parish council for it to take effect. The resignation takes effect immediately upon receipt by the chairman, and this is the effective date of the vacancy.
- 4. Ceasing to be qualified** – this can only occur where registration as an elector was the **sole qualification** of a councillor for nomination and election/co-option, and where that qualification was subsequently lost because they had ceased to be on the register of electors. All other qualifications continue for the full term of office irrespective of whether they cease to apply during the term of office. The parish council must declare the vacancy forthwith, and the vacancy is deemed to have occurred on the date of this declaration.
- 5. Becoming disqualified** – eg being subject to a bankruptcy restrictions order or interim order. More details can be found in [Part 1 of 6 of the Electoral Commission's Guidance for Candidates](#). The vacancy is effective from the date of the occurrence.
- 6. Failure to attend meetings** – if a 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 council to an outside body), they shall cease to be a member of the council, unless the failure was due to some reason approved by the council before the expiry of that period. The parish council must declare the seat to be vacant by resolution and the effective date of the vacancy is the date it is declared.

4.0 CASUAL VACANCY PROCESS

Regardless of why the vacancy has occurred the same process must be followed, with a 'Notice of Vacancy' displayed in the parish **'as soon as practicable' after the vacancy has occurred**, to allow local electors the opportunity to call a by-election if so desired. Co-option is only permitted to fill a vacancy once the notice relating to this has been displayed for 14 working days. A parish council is acting illegally and may be subject to legal action if this process is not followed. Each Notice of Vacancy must be displayed for its own period of 14 working days, even if there have been other vacancies recently displayed, and there is no provision to combine more than one vacancy on a single notice.

5.0 NOTICE OF VACANCY – PREPARATION AND PUBLICATION

The parish clerk should contact Electoral Services to advise that there is a vacancy as soon as possible after it has arisen. This can be communicated by email to elections@n-kesteven.gov.uk.

A 'Notice of Vacancy' must be displayed for a period of 14 working days.

Electoral Services are happy to prepare a Notice of Vacancy on request or can provide a pro-forma notice for parish clerks to amend. Where Electoral Services prepare a notice, but do not date it, or if a pre-printed date is changed on a provided notice, the parish clerk must let the office know **as soon as possible** on what date it was displayed.

It is important to complete the notice correctly, paying particular attention to the dates on the notice. It must be displayed for 14 days starting on the day after the notice is dated, and when calculating the dates, **it must not include weekends nor bank holidays**.

If a vacancy occurs because of the death of a councillor, the notice is not usually displayed until after the funeral has taken place, as a mark of respect. However, Electoral Services should still be advised as soon as the vacancy has arisen.

The parish clerk may produce their own Notice of Vacancy, but in this instance a **copy must be sent to Electoral Services no later than the date on which it is displayed**.

The parish clerk must publish a Notice of Vacancy in "some conspicuous place or places within the parish area" or in any other manner that will ensure its publicity within the parish as soon as practicable. As a minimum it is recommended that the Notice of Vacancy should be posted on any parish noticeboards and the parish council's website if they have one. The date on which the notice is posted must be shown at the bottom of the notice.

Notes:

It is during the 14 days period through which the notice is displayed, that ten electors from within the parish (or relevant ward of the town/parish) can call for a by-election to be held (unless this is within 6 months of the normal 'retirement date' for the councillor). To do this, they will need to make their request in writing to *The Returning Officer at North Kesteven District Council*.

6.0 EXAMPLE OF NOTICE:

NOTICE OF VACANCY IN OFFICE OF PARISH COUNCILLOR

PARISH OF

NOTICE IS HEREBY GIVEN

pursuant to Section 87(2) of the Local Government Act 1972 and Rules 5(1) to 5(6) the Local Elections (Parish and Communities) (England and Wales) Rules 2006

that due to the resignation of **XXXXXXX**, a vacancy has arisen in the Office of Councillor for the Parish Council.

If by **17 April 2020** (14 days excluding Dies Non, after the date of this notice, in accordance with Rule 5 of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006), a request for an election to fill said vacancy is made in writing to the Returning Officer, at the address below, by TEN electors for the said Parish, then an election will be held to fill the said vacancy within sixty days (excluding Dies Non) from the date of publication of that notice.

If an election is called, it will take place not later than 23 June 2020.

If no such request is made, the vacancy will be filled through co-option by the Parish Council.

Dated 26 March 2020

Ian Fytche
Returning Officer
North Kesteven District Council
Council Offices
Kesteven Street
Sleaford
NG34 7EF

7.0 VACANCY – SIX MONTHS BEFORE ORDINARY ELECTIONS

In the case of a casual vacancy occurring **within six months before the day on which that councillor would regularly have retired**, a Notice of Vacancy must still be displayed for 14 working days, **but an election cannot be requested**, provided that the parish council remain quorate. The council may co-opt if it wishes or can leave any unfilled vacancies to be filled at the ordinary elections. Electoral Services are also happy to provide an appropriate Notice of Vacancy in this instance.

8.0 HOW CAN ELECTORS CALL AN ELECTION?

The Notice of Vacancy explains that ten electors from the parish (or parish ward) in which the vacancy has occurred may request that an election be held to fill the vacancy. To do this, they will need to make their request in writing to *The Returning Officer, North Kesteven District Council*. A request can be posted or made by e-mail

to the Returning Officer. Further information is also available on the District Council's website [Current Parish and Town Council vacancies | North Kesteven District Council \(n-kesteven.gov.uk\)](https://www.n-kesteven.gov.uk).

Section 5 (2) of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 stipulates that a request for an election be made by ten persons who are named in the register in use at the time of the request. There is no prescribed form of words for this request, which might simply be a letter headed with such words as "We the undersigned being electors for theWard ofParish, call for an election to fill the vacancy arising from the [death][resignation] of".

To determine if the request is valid, it is helpful if the ten signatures are accompanied by printed names, addresses and electoral numbers from the current electoral register. Electoral Services can provide a template request form on request if this would be of assistance.

9.0 DEADLINE TO MAKE A REQUEST FOR AN ELECTION

The request must be received within 14 days of the display of the Notice of Vacancy, computed in accordance with the election rules. The request is open to public inspection and copying. There are no means of withdrawing a signature once the request has been submitted.

In the event of a valid request being received, North Kesteven District Council will notify the clerk that a by-election will be held to fill the vacancy. The Returning Officer will decide on the date of the election, which be held within 60 working days of the date of the Notice of Vacancy.

10.0 IF AN ELECTION IS REQUESTED

The 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 Clerk for display within the parish. That notice provides information on how to obtain nomination papers, the date by which they should be delivered and the date of the poll in the event of a contest. It also gives the dates by which registration applications, applications to vote by post or proxy and Voter Authority Certificate applications must be made to be effective for the by-election.

Once a valid election request has been received, the vacancy can only be filled by election and not co-option. If no person is or remains validly nominated at the close of nominations, the Returning Officer shall decide upon a further election date to fill any vacancy which remains unfilled, to be held on a day appointed by him. That day shall be within the period of 35 days beginning with the day fixed as the day of election for the first-mentioned election.

The parish council will be re-charged for the full cost of holding the election.

11.0 POLL CARDS

At a parish or town council election which is not combined with another poll, the issue of official poll cards to the electors is at the discretion of the parish or town council. The Returning Officer is required to receive a request to issue poll cards by the close of nominations, which is **noon on the nineteenth day (excluding dies non*) before the poll** (Regulation 25 of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (no. 3305) Schedule 2). However, a much earlier request is appreciated, as it enables Electoral Services to make the necessary preparations, including liaising with the printers, at the earliest opportunity.

The advantage of issuing poll cards is that this informs the electors of the impending election, allowing them to apply for a postal or proxy vote or a Voter Authority Certificate if they need to and, hopefully, encouraging them to turn out on polling day. The printing and delivery cost is recharged to the parish council, and this will vary according to the number of the electorate. Upon request, Electoral Services will always try to provide you with an approximate cost to enable your parish council to make a final decision. However, because of the election timetable a quick decision would be required and so this may be a matter that your parish council may wish to consider separately in case of any by-elections being called.

12.0 IF NO REQUEST TO HOLD AN ELECTION IS RECEIVED

If an election is not requested within the stipulated time period (ie 14 working days since the display of the Notice of Vacancy), Electoral Services will inform the parish clerk by email that the council may co-opt a councillor to fill the vacancy as soon as practicable by following the procedures set out below.

13.0 SUGGESTED CO-OPTION PROCEDURE AND VOTING

The council may co-opt whomever it pleases to fill a casual vacancy. **However, that person must meet the same criteria requirements regarding qualifications and disqualifications as for a candidate standing for election to the parish/parish ward.**

There is nothing preventing councillors from approaching electors to ask if they wish to offer themselves for co-option or advertising for applicants. All those interested might also be invited to provide a written application or invited to speak to the council prior to any voting. If such arrangements are applied, they should be carefully drafted and provided to applicants. It is imperative that all those interested are treated alike in order that the arrangements are seen to be fair. Applicants under such arrangements must not undertake any personal lobbying.

1. Advertise the casual vacancies as widely as possible within the parish and any local press.
2. Set a date by which prospective candidates must write to the Chairman or parish clerk to the council expressing their interests in these casual vacancies.

3. Notice of the election by co-option should be given in the agenda for the meeting of the parish council.
4. When the agenda item is reached, the Chairman should call for nominations, which should be duly proposed and seconded.
5. Candidates can be either interviewed, or their letter of interest read out to those present at the parish council meeting.
6. When all the nominations have been received, a vote should be taken. It is usual for the candidates' names to be put in alphabetical order. (Voting in council on casual vacancies is recommended).
7. 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.
8. The council's debate and vote on the co-option must be conducted in the public section of its meeting, unless standing orders provide otherwise. It follows that the candidates, as members of the public, will be entitled to be present during the proceedings.
9. The successful candidate should have received a majority of the votes of those present and voting at the meeting where the co-option takes place. It follows, that if there are more than two candidates for one vacancy, and neither receives a majority over the aggregate votes given to the rest at the first count, steps should be taken to strike off the candidate with the least number of votes and the remainder should then be put to the vote again. This process should, if necessary, be repeated until an absolute majority is obtained. 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 one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Where there is not a majority of votes in favour of one person, the name of the person having the least number of votes shall be deleted from the nominations and a fresh vote taken until one person does receive a majority of the votes cast.
10. After the vote has been taken, the Chairman should declare the candidate who received the highest number of votes duly co-opted.
11. The person elected must make a declaration of acceptance of office before or at the first meeting of the parish council after their election/co-option and complete a Register of Interest Form. The declaration and register is retained in the parish records and a copy of the Register of Interest form **only** must also be sent to North Kesteven District Council (see details below).

Note:

Electoral Services cannot provide any further advice on how parish councils should co-opt a councillor. The Lincolnshire Association of Local Councils (LALC) or Society of Local Council Clerks (SLCC) may be able to offer advice to its members.

14.0 DECLARATION OF ACCEPTANCE OF OFFICE / REGISTER OF INTEREST FORM

After a new councillor has been co-opted or elected, the following must take place:

1. The name and address of the person co-opted should be sent to North Kesteven District Council's **Corporate and Civic Support Team** CorporateAndCivicSupportTeam@n-kesteven.gov.uk.
2. The person co-opted or elected must complete a '**Declaration of Acceptance of Office**' (this is a new form as set out in The Local Elections (Declaration of Acceptance of Office) Order 2012) before or at the first meeting of the council, unless the council permits otherwise in accordance with section 83(4) of the Local Government Act 1972 Act.
3. The 'Declaration of Acceptance of Office' form is retained by the Parish Clerk **and should not be sent to NKDC**.
4. The person co-opted or elected must fully complete a '**Register of Interest Form within 28 days of being elected / co-opted**'.
5. A copy of the 'Register of Interest' Form **must be sent to the District Council's Monitoring Officer**. This can be done by email to: CorporateAndCivicSupportTeam@n-kesteven.gov.uk or post to Corporate and Civic Support Team, North Kesteven District Council Offices, Sleaford NG34 7EF as soon as possible.
6. As clerk, ensure that you also retain a copy of the '**Register of Interest Form**' and that the parish councillor also keeps a copy for their records. It is essential that all parish councillors regularly review their Register of Interests to ensure they remain up to date, in compliance with the Localism Act 2011. Copies of the Register of Interest and Acceptance of Office documents must be made available to members of the public on request, so please ensure they are retained and stored properly.
7. In accordance with the Localism Act 2011, where a parish council has a website, then it is required to publish a copy of the Register of Interest Forms for all of its councillors on the website. North Kesteven District Council is also required to publish these forms on its website and so the parish council could provide a link to the District Council's website.

15.0 INQUORATE COUNCIL

If the number of casual vacancies leaves the parish council without a quorum, North Kesteven District Council may use a legal order to appoint people to fill all or any of the vacancies until other councillors are elected/co-opted and take up office. If your council becomes inquorate, please contact the Monitoring Officer as a matter of urgency at NK-Monitoring@n-kesteven.gov.uk

MAIN SOURCES OF REFERENCE ARE LISTED BELOW:

Local Government Act 1972
Representation of the People Act 1983
Representation of the People Act 1985
Representation of the People Regulations 1986
Representation of the People Act Local Elections (Parish and Communities Rules) 1986
Parish and Community Meetings (Polls) Rules 1987
Local Government and Rating Act 1997
Representation of the People Act 2000
The Political Parties and Referendum Act 2000
Local Government Act 2000
The Local Authorities (Model Code of Conduct) Order 2001 superseded by Local Government Act 2000
The Political Parties and Referendum Act 2001
The Representation of the People (England and Wales) Regulations 2001
Electoral Administration Act 2006
The Local Elections (Parishes and Communities) (England and Wales) Rules 2006
The Local Authorities (Model Code of Conduct) Order 2007
The Localism Act 2011
The Local Elections (Declaration of Acceptance of Office) Order 2012