

Decision under Delegated Powers

Officer Making the Decision

Chief Executive

Recommendation

That the appended policy for dealing with councillor vacancies remaining unfilled after parish and town council elections be adopted by Order (ie. under seal).

Reason

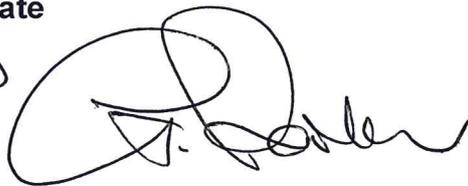
To ensure that standard arrangements exist to fill such vacancies within a reasonable time frame to ensure the effective operation of town and parish councils and in the interests of transparent local democracy.

Authority for Decision

Section 8.2 of the Constitution gives delegated authority to the Chief Executive to undertake other election duties not reserved to the Council. The legislative powers open to the Borough Council in this situation are election functions which are not reserved to the Council.

Decision and Date

APPROVED



17 JUNE 2016

Background

The Borough Council has become aware that a small number of parish and town councils still had councillor vacancies remaining unfilled following the full elections in May 2015.

Under best practice and in the interests of efficient and transparent local democracy, councillor vacancies should be filled promptly, and under electoral legislation the Borough Council can by Order, take such actions as it sees fit to deal with any remaining such vacancies after a period of 35 working days from the date of a full election.

The appended policy is designed to set out the process which the Borough Council will require to be followed in future. It has been subject to consultation with all of the parish and town councils within the Borough, and legal advice has been sought which confirms that it is in accordance with the relevant electoral legislation.

The following responses were received as part of the consultation process:

Sileby Parish Council: agreed with the draft policy.

Mountsorrel Parish Council: resolved to take no action.

Queniborough Parish Council: had no comments to make on the proposals as they were acceptable to the Council.

Birstall Parish Council: queried what statutory powers the Borough Council were relying on in imposing the policy onto Parish and Town Councils (Note: this is set out in the policy under 'relevant legislation'). Suggested including some additional wording in the status and aim of the policy section (policy amended). Raised some questions about the policy in relation to vacancies remaining after 6 months and after 9 months (detailed response provided to the Parish Council).

Comments from HR

N/A

Financial Implications

There are no financial implications arising for this Council – the costs of any by elections which may arise as a result of the policy would be met by the relevant parish or town council.

Risk Management

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Legal challenge to the policy	Possible	Minor	The policy has been subject to consultation with parish and town councils, and appropriate independent legal advice has been sought.

Key Decision:

No

Background Papers:

Representation of the People Acts 1983 and 1985

POLICY RELATING TO VACANCIES REMAINING AFTER UNCONTESTED FULL PARISH AND TOWN COUNCIL ELECTIONS

Relevant Legislation

Representation of the People Act 1985:

Section 21 Ordinary elections of parish and community councillors: insufficient nominations.

(1) This section applies where, at an ordinary election of parish or community councillors in England and Wales, an insufficient number of persons are or remain validly nominated to fill the vacancies in respect of which the election is held.

(2) Unless the number of newly elected members of the council in question is less than the number that constitutes a quorum for meetings of the council—

(a) those members may co-opt any person or persons to fill the vacancy or vacancies remaining unfilled,

(b) the district council may exercise the powers conferred by section 39(4) of the principal Act (ie. Representation of the People Act 1983), and

(c) section 39(1) of that Act (duty of returning officer to order an election) shall not apply;

but the powers mentioned in paragraph (b) above shall not be exercised before the expiry of the period of 35 days (computed according to section 40 of that Act) beginning with the day on which the election was held.

Representation of the People Act 1983, section 39(4):

the district council —

(i) may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of such an election or meeting and properly constituting the council and

(ii) may, if it appears to them necessary, direct the holding of an election or meeting and fix the date for it.

Status and Aim of this Policy

This Policy, which has been adopted by Order, represents Charnwood Borough Council's policy for dealing with situations where councillor vacancies remain unfilled following full elections for the parish and town councilors within the Borough of Charnwood and where at least a quorum has been returned.

The general aim of the Borough Council in adopting this policy is to ensure that any parish or town councillor vacancies remaining after a full election are filled promptly, to facilitate the proper functioning of the relevant parish and

town councils, and to reduce the possibility of them not being able to form a quorum at some point in the future.

Initial Period for Co-option

As set out above, the relevant legislation allows parish and town councils to co-opt councillors to fill any vacancies remaining after full elections, and specifies that the Borough Council may take steps to fill any remaining vacancies after a period of 35 days from the date of the full elections (excluding weekends and bank holidays etc).

The Borough Council will not take any steps in respect of such vacancies for a period of 6 calendar months from the date of the full elections, unless asked to do so by a parish or town council.

This is considered a sufficient time period to allow for parish and town councils to make reasonable attempts to fill such vacancies by co-option.

Vacancies Still Remaining 6 Months After a Full Election

If any councillor vacancies still remain unfilled 6 calendar months after a full election, the Borough Council will require the relevant parish or town council to issue a notice of vacancy for all such cases; to inform local electors that the vacancies still remain and to provide them with an opportunity to call for an election if they so wish in the normal way.

If no election is requested by local electors, then the Borough Council will allow the relevant parish or town council a further period of 3 calendar months within which to co-opt to the vacancies.

Vacancies Still Remaining 9 Months After a Full Election

If only one councillor vacancy remains unfilled 9 calendar months after a full election within any individual parish or town council, the Borough Council will require the relevant parish or town council to issue a further notice of vacancy; to inform local electors again that the vacancies still remain and to provide them with an opportunity to call for an election if they so wish in the normal way.

If no election is requested by local electors, then the Borough Council will expect the relevant parish or town council to continue to take appropriate steps to fill the vacancy by co-option as promptly as possible.

If more than one councillor vacancy still remains unfilled 9 calendar months after a full election within any individual parish or town council, the Borough Council will direct that an election should be held on a date which it sees fit.

If any councillor vacancies still remain unfilled following the receipt of an insufficient number of valid nominations for the election, then the Borough Council will expect the relevant parish or town council to continue to take appropriate steps to fill such vacancies by co-option as promptly as possible.

Requests from Parish and Town Councils for the Borough to Take Other Steps or Measures

If a parish or town council considers that any councillor vacancies which it has following a full election are (or are likely to) cause difficulties in its proper functioning and decision making processes, then the Borough Council will, on request, consider other steps or measures to deal with such situations, which may include, but will not be limited to:

- directing that an election should be held on a date which it sees fit
- appointing temporary parish councillors by order until such time as the relevant problems can be rectified.

However, the Borough Council will not take any such steps or measures until 35 days after the date of the relevant full elections (calculated in accordance with the relevant legislation).

Proper Officer for the Application of this Policy

The proper officer for any decisions of the Borough Council arising from this Policy shall be the officer designated by the Borough Council to act as the Returning Officer for elections.

ADOPTED BY ORDER OF CHARNWOOD BOROUGH COUNCIL

Date:

