

# **DARTFORD**

## **BOROUGH COUNCIL**

Civic Centre, Home Gardens, Dartford, Kent, DA1 1DR

To: All Members of the Dartford Borough Council

A meeting of the Council will be held on:

Date: Monday 25 July 2022  
Time: 7.00 pm  
Venue: Civic Centre, Dartford

The Agenda is set out below:

### **A G E N D A**

14. **Filling Parish/Town Councillor Vacancies after Ordinary Elections and where a Parish/Town Council is Inquorate**

(Pages 1 - 14)

To consider the procedures respectively, for filling Parish/Town Councillor vacancies after an ordinary election and where a Parish/Town Council is inquorate.

Sarah Martin  
Chief Officer &  
Director of Corporate Services

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**GENERAL ASSEMBLY OF THE COUNCIL  
25 JULY 2022**

**FILLING PARISH/TOWN COUNCILLOR VACANCIES AFTER  
ORDINARY ELECTIONS AND WHERE PARISH/TOWN COUNCIL  
INQUORATE**

1. Summary

- 1.1 To consider the procedures respectively, for filling Parish/Town Councillor vacancies after an ordinary election and where a Parish/Town Council is inquorate and to recommend accordingly.

2. RECOMMENDATIONS

- 2.1 That the Chief Officer and Director of Corporate Services, in consultation with Group Leaders, be authorised to nominate and make temporary appointments to a Parish/Town Council where it is unable to act because it is inquorate, in accordance with the terms of the Order, at Appendix A to the report.
- 2.2 That the Procedure for Making Appointments to Inquorate Parish/Town Councils under Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended), at Appendix B to the report, be approved for consultation with the Parish/Town Councils and that the Chief Officer and that the Director of Corporate Services be granted delegated authority to finalise the Procedure.
- 2.3 That the Procedure for Filling Parish/Town Councillor Vacancies following an Ordinary Election, at Appendix C to the report, be approved for consultation with the Parish/Town Councils and that the Chief Officer and Director of Corporate Services be granted delegated authority to finalise the Procedure.

3. Background and Discussion

**Appointment of temporary members to inquorate Parish/Town Councils**

- 3.1 At a local level of democracy, Parish/Town Councils play an important role in communities across the Borough of Dartford.

There are occasions where due to the lack of a quorum return at an ordinary election, resignations, death, disqualification, non-attendance at meetings or lack of applications for casual vacancies, a Parish/Town Council is unable to act because it is inquorate.

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The inability to act will extend to making all decisions, including the co-option of sufficient parish/town councillors to fill vacancies.

- 3.2 A Parish/Town Council must be quorate in order to act and make decisions. A quorum is defined as being one third of the Parish/Town Council's membership, but not less than three<sup>1</sup> councillors present at a council meeting.

**Example:** If a parish/town council has six councillor 'seats' and three of these seats have been filled at the election (i.e. three councillors were elected), then, provided that all three parish/town councillors *attend* the council meeting, that meeting will have a quorum. If, however, only one 'seat' was filled at the election (i.e. only one councillor was elected), it would be impossible for the council meeting to be quorate (since 1 is both: (i) less than 3; and (ii) less than a third of six).

- 3.3 In the interests of efficient and transparent local democracy, Parish/Town councillor vacancies should be filled promptly. Provided the Parish/Town Council is quorate, vacancies can be filled by it, through co-option (without the need to advertise the vacancies<sup>2</sup>).

- 3.4 Section 39(4)(a) of the Representation of the People Act 1983 states:

*(a) "if any difficulty arises with respect to an election of parish or community councillors or of an individual parish or community councillor, or to the first meeting of a parish or community council after an ordinary election of parish or community councillors, or*

*(b) if a parish or community council is not properly constituted because an election is not held or is defective or for any other reason,*

*the ..... borough 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<sup>3</sup>.*

Therefore, where there are so many vacancies in the office of parish/town councillor that the Parish/Town Council *is unable to act*, the Borough Council may by Order<sup>4</sup>, appoint persons on a temporary basis, to fill all or any of the vacancies, until parish/town councillors are elected or co-opted and take up office. The Order is made under the common seal of the Borough Council and submitted to the Secretary of State (Appendix A).

<sup>1</sup> Paragraph 12 of Part II of Schedule 12 to the Local Government Act 1972 (as amended)

<sup>2</sup>Section 21(2) (a) Representation of the People Act 1985 (as amended)

<sup>3</sup>The Returning Officer will decide the date of the election which must fall within 60 days from the date of the notice of vacancy

<sup>4</sup> Section 91(1) Local Government Act 1972(as amended)

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- 3.5 There are no fixed procedures for how the decision to appoint persons on a temporary basis must be made by the Borough Council, other than that the decision must be taken by the GAC or as delegated.

In practice, Borough Council members in the ward in which the Parish/Town Council is located and/or County division members, will be offered the opportunity to be temporarily appointed to the Parish/Town Council, until the vacancy(ies) is/are filled by election or co-option. Where there are no Borough Council ward/County division members, the representatives from neighbouring wards/divisions, will be offered the opportunity to be appointed.

- 3.6 In the interests of efficient and transparent local democracy, it is good administrative practice to delegate the making of temporary appointments to a senior officer of the Borough Council, so the appointments can be made promptly. It is recommended that the Chief Officer and Director of Corporate Services, in consultation with Group Leaders, be granted delegated authority to nominate and make temporary appointments to a Parish/Town Council, where it is unable to act because it is inquorate, in accordance with the terms of the Order at Appendix A to the report.
- 3.7 With a view to providing ongoing support for Parish/Town Councils and in the spirit of co-operation, it is recommended that the Procedure for Making Appointments to Inquorate Parish/Town Councils under Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended), at Appendix B to the report, be approved for consultation with the Parish/Town Councils and that the Chief Officer and Director of Corporate Services be granted delegated authority to finalise the Procedure.

**Vacancies arising on parish/town councils following an ordinary election etc.**

- 3.8 Each parish/town council membership must have at least five [5] councillors<sup>5</sup> - there is no maximum number. In practice, there is a wide variation of size between parish/town councils and that variation appears to be influenced by population.
- 3.9 The general aim of the Borough Council in taking steps to fill any remaining parish/town councillor vacancies is to ensure that vacancies are filled promptly, to facilitate the proper functioning of the relevant Parish/Town Council and to reduce the possibility of the Parish/Town Council not being able to form a quorum at some point in the future.

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<sup>5</sup> Section 16 Local Government Act 1972(as amended)

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- 3.10 It is recommended that the Procedure for Filling Parish/Town Councillor Vacancies following an Ordinary Election, at Appendix C to the report, be approved for consultation with the Parish/Town Councils and that the Chief Officer and Director of Corporate Services be granted delegated authority to finalise the Procedure.

4. Relationship to the Corporate Plan

Not applicable.

5. Financial, legal, staffing and other administrative implications and risk assessments

Financial Implications	None specifically
Legal Implications	As detailed in the body of the report
Public Sector Equality Duty	None specifically
Crime & Disorder Duty	None specifically
Climate Change	None specifically
Staffing Implications	None specifically
Administrative Implications	None specifically
Risk Assessment	A lack of a suitable set of practices by Parish/Town Councils will hinder the Councils' efficiency and effectiveness

6. Details of Exempt Information Category

Not applicable

7. Appendices

Appendix A – Order under Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended)

Appendix B - Procedure for Making Appointments to Inquire Parish/Town Councils under Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended)

Appendix C - Procedure for Filling Parish/Town Councillor Vacancies following an Ordinary Election

BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date / File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
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Head of Legal Services Electoral Manager	Services	Legal Services/ Electoral Services/ Corporate Directorate	Services	N/A
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**APPENDIX A**

**THE DARTFORD BOROUGH COUNCIL**

**ORDER UNDER SECTION 91(1) OF THE LOCAL GOVERNMENT ACT 1972 (AS AMENDED) AND SECTION 39(4) OF THE REPRESENTATION OF THE PEOPLE ACT 1983 (AS AMENDED)**

**THIS ORDER** is made on **[insert date]** by The Dartford Borough Council (**Borough Council**)

**WHEREAS** following the establishment of **[insert name of Parish/Town Council]**, in accordance with section 21 of the Representation of the People Act 1985 (as amended), a minimum of three councillors are required to provide a quorum.

The **[insert name of Parish/Town Council]** is unable to act because it is inquorate.

Under section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended), where there are so many vacancies in the office of parish/town councillor that a parish/town council is unable to act, the Borough Council may, by order, appoint persons to fill all or any of the vacancies until other parish/town councillors are elected or co-opted to take office.

In pursuance of the power conferred upon it by Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended) the Borough Council hereby appoints the following **[person] [persons]** to act as **[a member] [members]** of **[insert name of Parish/Town Council]** until an election has been held or co-option agreed to fill such vacancies as shall constitute and establish a quorum in the said **[insert name of Parish/Town Council]**, whereupon such **[appointment] [appointments]** shall cease.

**Insert name of [appointee] [appointees]**

**THE COMMON SEAL OF THE** )  
**DARTFORD BOROUGH** )  
**COUNCIL** was hereunto affixed )  
in the presence of

Head of Legal Services



**DARTFORD BOROUGH COUNCIL****PROCEDURE FOR MAKING TEMPORARY APPOINTMENTS TO INQUORATE PARISH/TOWN COUNCILS**

1. There are occasions where due to resignations, death, disqualification, non-attendance at meetings or lack of applications for casual vacancies, a Parish/Town Council is unable to act because it is inquorate.

The inability to act will extend to making all decisions, including the co-option of sufficient Parish/Town Councillors to fill vacancies.

2. A Parish/Town Council must be quorate in order to act and make decisions. A quorum is defined as being one third of the Parish/Town Council's membership, but not less than three<sup>1</sup> councillors present at a meeting.
3. Where there are so many vacancies in the office of Parish/Town Councillor that the Parish/Town Council is unable to act, the Proper Officer is authorised by section 39(4)(b)(i) of the Representation of the People Act 1983 (as amended), to make temporary appointments to fill all or any of the vacancies until Parish/Town councillors are elected or co-opted and take up office. This will ensure that the Parish/Town Council is quorate and can progress business and operate lawfully.

The process of appointment is by Order<sup>2</sup>, under the common seal of the Borough Council and submitted to the Secretary of State.

4. The Proper Officer for any decisions of the Borough Council arising from this Procedure will be the Chief Officer and Director of Corporate Services.
5. **The process:**
  - (a) The Clerk to the Parish/Town Council notifies the Proper Officer that the Parish/Town Council is unable to act, due to being inquorate.
  - (b) The Borough Council's Electoral Services Manager verifies the number of seats on the Parish/Town Council and confirms that it is inquorate.
  - (c) The Electoral Services Manager identifies the number of appointments required in order for the Parish/Town Council to be quorate.
  - (d) Borough Council members in the ward in which the Parish/Town Council is located, and/or County division members, will be offered the opportunity to be temporarily appointed to the Parish/Town Council, until the vacancy(ies) is/are filled by election or co-option. Where there are no Borough Council ward/County division members, the representatives from neighbouring wards/divisions, will be offered the opportunity to be appointed.
  - (e) The Proper Officer is authorised to nominate and make temporary appointments, following consultation with Group Leaders.
  - (f) Temporary appointments will end once sufficient Parish/Town Councillors are elected or co-opted to the Parish/Town Council. Given that temporary appointees do not accept office and therefore cannot resign, the Proper Officer will, after an election or co-option, confirm in writing to the Clerk to the Parish/Town Council, that the temporary

<sup>1</sup> Paragraph 12 of Part II of Schedule 12 to the Local Government Act 1972 (as amended)

<sup>2</sup> Section 91(1) Local Government Act 1972(as amended)

appointments have ceased.

- (g) In accordance with section 91(3) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended), the Proper Officer will send two sealed copies of the Order to the Secretary of State, under copy to the Parish/Town Clerk.

**6. VACANCIES AND NO QUORUM RETURN AT AN ORDINARY ELECTION**

The process detailed in section 7 of the Procedure for Filling Parish/Town Councillor Vacancies Following an Ordinary Election will apply.

**7. VACANCIES WITHIN SIX [6] MONTHS OF THE NEXT ORDINARY ELECTION (PARISH/TOWN COUNCIL QUORATE)**

If a parish/town casual vacancies occur within six [6] months of the next ordinary election, when parish/town councillors would have retired, and the Parish/Town Council is quorate, the process detailed in section 8 of the Procedure for Filling Parish/Town Councillor Vacancies Following an Ordinary Election will apply.

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**8. VACANCIES WITHIN SIX [6] MONTHS OF THE NEXT ORDINARY ELECTION (PARISH/TOWN COUNCIL INQUORATE)**

If a parish/town casual vacancies occur within six [6] months of the next ordinary election, when parish/town councillors would have retired, and the Parish/Town Council is inquorate, the process in section 9 of the Procedure for Filling Parish/Town Councillor Vacancies Following an Ordinary Election will apply.

## DARTFORD BOROUGH COUNCIL

### PROCEDURE FOR FILLING PARISH/TOWN COUNCILLOR VACANCIES FOLLOWING AN ORDINARY ELECTION

1. This Procedure deals with situations where parish/town councillor vacancies remain unfilled following an ordinary election of parish/town councillors.
2. The general aim of the Borough Council in taking steps to fill any remaining parish/town councillor vacancies is to ensure that vacancies are filled promptly, to facilitate the proper functioning of the relevant Parish/Town Council and to reduce the possibility of the Parish/Town Council not being able to form a quorum at some point in the future.
3. Parish/Town Council membership must comprise at least five [5] parish/town councillors<sup>1</sup> - there is no maximum number. A quorum for meetings of the Parish/Town Council is one third of the Parish/Town Council's membership, but not less than three councillors<sup>2</sup> present at a meeting.
4. The Proper Officer for any decisions of the Borough Council arising from this Procedure will be the Chief Officer and Director of Corporate Services.
5. If a Parish/Town Council considers that parish/town councillor vacancies are (or are likely to) cause difficulties in the Parish/Town Council's proper functioning and decision making processes, then the Proper Officer may, on request, consider other steps or measures to deal with such situations<sup>3</sup>, which may include:
  - (i) directing that an election should be held on a date which it sees fit<sup>4</sup>; or
  - (ii) by Order<sup>5</sup>, appointing persons on a temporary basis to fill all or any of the vacancies, until Parish/Town Councillors are elected and take up office.

#### 6. VACANCIES WITH A QUORUM RETURNED AT AN ORDINARY ELECTION

##### 6.1 Co-option within six [6] calendar months of the date of the ordinary election

- (a) Providing a quorum has been returned, the Parish/Town Council will make reasonable attempts to fill remaining parish/town councillor vacancies by co-option (without the need to advertise the vacancies<sup>6</sup>), within a period of six [6] calendar months from the date of the ordinary election.
- (b) The Parish/Town Clerk will promptly notify the Proper Officer of vacancies filled or not filled as the case may be.
- (c) The Proper Officer will not take steps to fill parish/town councillor vacancies for a period of six [6] calendar months from the date of the ordinary election, unless asked to do so by the Parish/Town Council.

<sup>1</sup> Section 16 Local Government Act 1972 (as amended)

<sup>2</sup> Paragraph 12 of Part II of Schedule 12 to the Local Government Act 1972 (as amended)

<sup>3</sup> Section 39(4) Representation of the People Act 1985 (as amended)

<sup>4</sup>The Returning Officer will decide the date of the election which must fall within 60 days from the date of the notice of vacancy

<sup>5</sup> Section 91(1) Local Government Act 1972 (as amended)

<sup>6</sup> Section 39(4) Representation of the People Act 1985 (as amended)

## 6.2 Unfilled vacancies six [6] calendar months after the date of the ordinary election

(a) Section 89(6) of the Local Government Act 1972 (as amended), states that a casual vacancy (i.e. a vacancy requiring a by-election) among parish councillors is to be filled by election or by the parish council in accordance with rules under section 36 of the Representation of the People Act 1983.

Section 87(2) Local Government Act 1972 (as amended) does not include any provision to combine several vacancies in a single notice. Therefore, each resignation, death, etc., that occurs, will need its own notice relating to that particular circumstance.

**Action:** The Parish/Town Clerk will publish an individual notice of vacancy for each unfilled seat on the Parish/Town Council, under copy to the Electoral Services Manager.

(b) A by-election to fill each vacant seat will only held if it is requested by ten [10] eligible local electors. This request must be made to the Proper Officer, within 14 days of the Parish/Town Council giving public notice of each vacancy. The by-election will be held within sixty [60] days of the public notice of vacancy for each unfilled seat.

**Action:** If a valid election request to fill each vacant seat is made to the Proper Officer, a by-election will be conducted by the Returning Officer for the unfilled seats.

(c) If no request is received by the Proper Officer for a by-election in accordance with section 6.2(b) above:

**Action:** The Parish/Town Council must, as soon as practicable after the expiry of the period of 14 days from the date of the notice, co-opt persons to fill the vacancies and notify the Proper Officer of the vacancies filled or not filled as the case may be.

(d) In the event the Parish/Town Council becomes inquorate, the Procedure for Making Appointments to Inquorate Parish/Town Councils, under Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended), will apply.

## 7. VACANCIES AND NO QUORUM RETURNED AT AN ORDINARY ELECTION

### 7.1 Following the close of nominations for an ordinary election, insufficient nominations received to make the Parish/Town Council quorate

(a) Validly nominated candidates are declared elected at the close of withdrawals<sup>7</sup> and take office four [4] days after the date set for the ordinary election.

(b) If sufficient nominations are received to fill the vacancies, the Returning Officer will declare the election uncontested or hold an election, if the number of nominations received exceeds the vacancies.

(c) If the Returning Officer fails to receive a sufficient number of nominations, he/she will order a new election to be held within 35 days (excluding dies non<sup>8</sup>), beginning with the day fixed as the original day of the election.

(d) If after two election re-runs, in-sufficient nominations are received, the Proper Officer in consultation with Group Leaders, will make temporary appointments to the Parish/Town Council in accordance with the Procedure for Making Appointments to Inquorate

<sup>7</sup> Vacancies exceed nominations and the election becomes uncontested

<sup>8</sup> A day on which no legal business can be done, or which does not count for legal purposes

Parish/Town Councils, under Section 91(1) of the Local Government Act 1972 (as amended) and Section 39(4) of the Representation of the People Act 1983 (as amended).

8. **VACANCIES WITHIN SIX [6] MONTHS OF THE NEXT ORDINARY ELECTION (PARISH/TOWN COUNCIL QUORATE)**

If a parish/town casual vacancies occur within six [6] months of the next ordinary election, when parish/town councillors would have retired, and the Parish/Town Council is quorate, no election is required to be held. Casual vacancies occurring within six months of an ordinary election can remain unfilled. The Parish/Town Council may co-opt to fill the vacancies.

9. **VACANCIES WITHIN SIX [6] MONTHS OF THE NEXT ORDINARY ELECTION (PARISH/TOWN COUNCIL INQUORATE)**

If a parish/town casual vacancies occur within six [6] months of the next ordinary election, when parish/town councillors would have retired, and the Parish/Town Council is inquorate, the process in section 6.2 will apply.

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