

**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 three¹ 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 vacancies²).

- 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 it³.*

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 Order⁴, 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).

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

²Section 21(2) (a) Representation of the People Act 1985 (as amended)

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

⁴ 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] councillors⁵ - 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.

⁵ 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 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)

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	Legal Services/	N/A
Electoral	Electoral Services/	
Manager	Corporate Services	
	Directorate	