

CASUAL VACANCY PROCESS FOR PARISHES

Guidance notes for parish & town council clerks

This guidance has been prepared in order to assist parish clerks with the legal process of filling a casual vacancy. It covers the following subjects:

- Section 1: Overview of process
- Section 2: Reasons a vacancy can arise
- Section 3: Publishing a public notice
- Section 4: Co-option
- Section 5: Election called
- Section 6: Qualifications for becoming a councillor
- Section 7: Disqualifications for becoming a councillor

The following documents are also attached:

- Declaration of acceptance of office.
- Notice of casual vacancy.
- Request for an election.

Please note this information is for guidance only and parishes should seek their own independent advice to satisfy themselves that they are acting properly.

Please remember that the elections team **must** be notified of any vacancies as soon as they arise. You can email details to

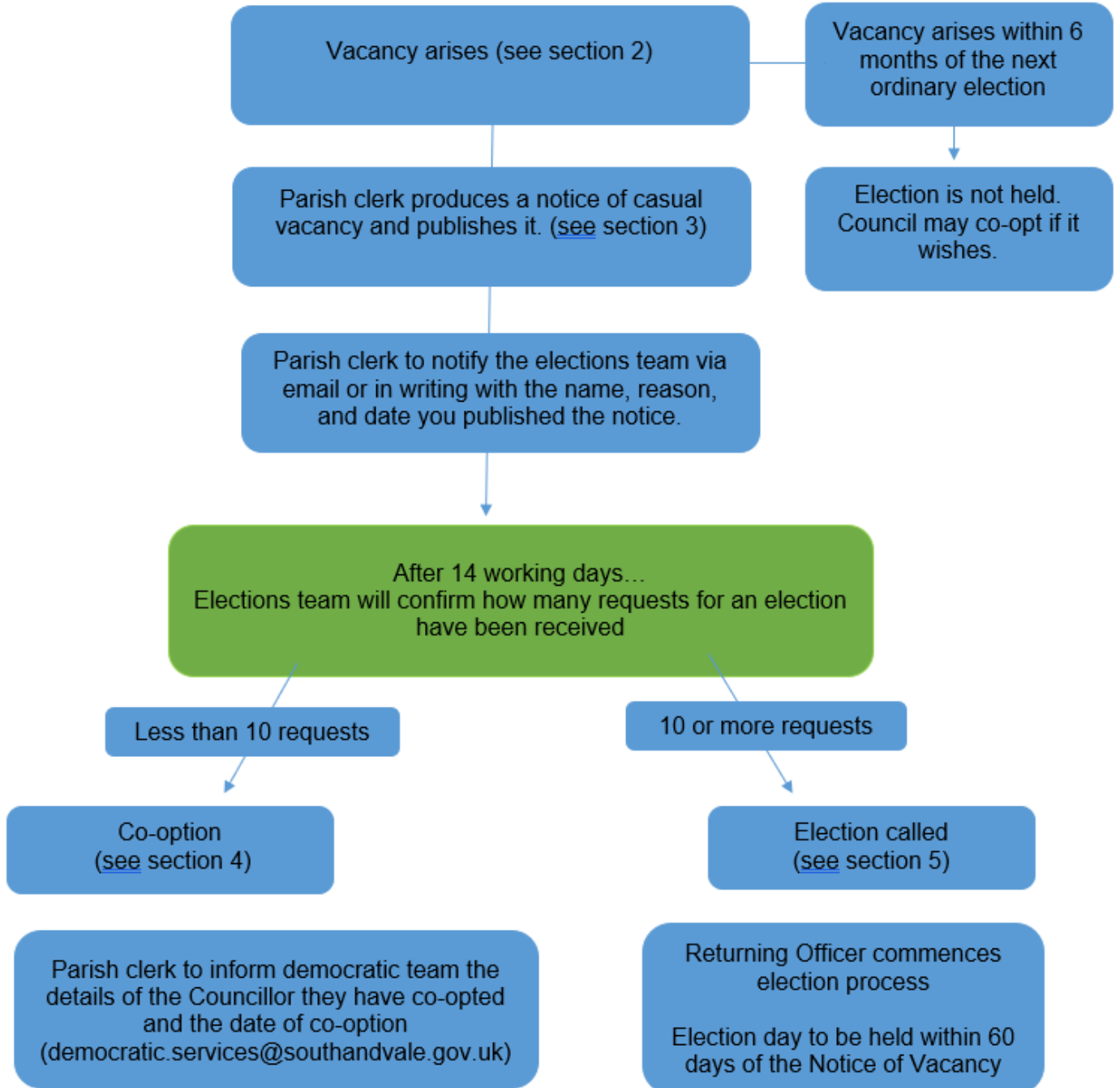
elections@southandvale.gov.uk .

Please include the name, reason, date of vacancy, and attach a copy of your Notice.

These details will be shared with Democratic Services to update the Register of Interests for the parish or town council.

SECTION 1: OVERVIEW OF PROCESS

This diagram gives an overview of the process to follow should a vacancy arise.



In the case that a casual vacancy arises within six months of the date of the next ordinary elections, an election will not be held. The parish council is required to give a notice of the casual vacancy and the council may co-opt if it wishes. Any unfilled positions will be filled at the next ordinary elections.

SECTION 2: REASONS A VACANCY CAN ARISE

Why	Explanation	Effective date
Failure to complete a declaration of acceptance to office within the proper time	This must be done before or at the first meeting of the parish council, unless the parish council permits otherwise, which cannot be retrospective.	On the closing date for completing the acceptance to office.
Resignation	<p>A councillor may at any time resign by written notice delivered to the chairman of the parish council.</p> <p>Notes:</p> <ul style="list-style-type: none"> - There is no process for retracting a resignation once it is handed to the chairman. A notice of intent to resign on a given date is not considered to be a resignation. 	On receipt of the written notice.
Death	Death of parish councillor	Vacancy is deemed to have occurred on the date of the death.
Ceasing to be qualified	This usually occurs if a parish councillor has used their entry on the electoral register as their only qualification for nomination and they cease to be on the register of electors. For more information on qualification criteria please see section 6.	Parish council must declare the vacancy. The date of the declaration is the effective date of vacancy.
Becoming disqualified	This can occur through bankruptcy, office holding, surcharge, conviction, court order or being found guilty of corrupt practise of law. For more information on disqualification criteria please see section 7.	Parish council must declare the vacancy. The date of the declaration is the effective date of vacancy.
Failure to attend meetings	<p>This occurs 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, unless the reason for failure was approved by the parish Council before the expiry of the six-month period.</p> <p>Note: The meetings for attendance can include committees, sub-committees or as a representative of the parish council.</p>	Parish council must declare the vacancy. The date of the declaration is the effective date of vacancy.

SECTION 3: PUBLISHING A PUBLIC NOTICE

The parish clerk should complete and publish a Notice of Casual Vacancy (example below). The parish clerk must display the Notice in the parish as soon as practicable after the date on which the vacancy has occurred. **A separate notice must be used for each vacancy (for example when there are more than one on the same date).**

In the case of the death of a parish councillor, it is a matter for the parish to decide the appropriate date on which to issue the Notice of Vacancy, however it has informally been common practice to wait until after the funeral service before issuing such a Notice.

The notice must be posted in some conspicuous place or places within the area of the parish (or parish ward, if applicable) and in such other manner, if any, as appears to be desirable for giving publicity to the notice. Examples include a village hall display board or a village notice board.

Other publicity may include the parish councils newsletter, website or social media.

The Notice of Vacancy should be used for this purpose only and should not be used to make reference to co-option.

Please ensure you send a copy of the notice to the elections office.

SECTION 4: CO-OPTION

Upon the expiry of the 14 days during which the Notice of Vacancy has been displayed, the parish council may co-opt to fill a casual vacancy **IF** the Returning Officer has not received ten valid requests for an election. You will need to receive confirmation from the elections team before you begin this process.

If the Returning Officer informs the parish council that an election has not been called, the parish may proceed to co-opt a member to fill the vacancy as soon as practicable.

You may be contacted by interested persons whilst the Notice of Vacancy is displayed. These electors may not wish to call an election but maybe interested in standing via co-option. However, that person must be **qualified to serve as a councillor** (see section 6) and be co-opted by a quorate parish council.

The parish council's debate and vote on the co-option must be conducted in the public section of its meeting. It follows that the candidates, as members of the public, will be entitled to be present during the proceedings.

Provided that the meeting has a quorum, the decision must be made by an absolute majority of members who are present and voting. 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 the vacancy, it may be necessary to run a series of votes, each time removing the candidate who has the least number of votes until one candidate secures an absolute majority. Members must vote by show of hands unless the council has standing orders that provide otherwise.

SECTION 5: ELECTION CALLED

If, within fourteen days from the publication of the notice, the Returning Officer receives written requests for an election signed by TEN electors within the parish (or parish ward), an election must be held to fill the vacancy.

There is no prescribed form for this written request, a suggested template is attached at the end of this guidance.

It should be noted that these requests can be written separately, an election will still be triggered if by the end of the 14-day period the Returning Officer has received ten valid signed requests from electors.

The requests for election are available for public inspection on request.

The Returning Officer will then set a date for polling day, which must be within 60 days of the date of the Notice of Vacancy (excluding dies-non), and the election process will begin with the publication of a Notice of Election, copies of which will be supplied to the parish clerk for publication.

The Notice of Election informs the electors where they may obtain nomination papers and the date by when they should be delivered. It gives the dates by which applications to vote by post or proxy must be made. It also gives the date of the election in the event of a contested election.

It is from this point that the parish council will start to incur the costs that will arise from staging an election, irrespective of whether it is contested or not, including poll cards (if requested) and postal votes.

The elections team will need the parish to confirm very quickly whether or not poll cards are required, as they must be despatched as soon as possible once the Notice of Election is published.

An estimated cost of an election and election timetable will be available from the elections team on request.

SECTION 6: QUALIFICATIONS TO BE A COUNCILLOR

A person is qualified to be elected and to be a councillor if they are a British, Commonwealth, Irish or European Union citizen and on the relevant day (that is, the day of nomination or election) they are 18 or over. 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, or
- (2) During the whole of the twelve months before that day they have owned or tenanted land or premises in the parish, or
- (3) During the whole of the twelve months before that day their principal or only place of work has been in the parish, or
- (4) During the whole of the twelve months before that day they have resided in the parish or within three miles of it. Except for qualification (1), these qualifications then continue for the

full term of office, until the next ordinary elections. Certain people are disqualified from standing, and these include paid officers (including the clerks) of the council, bankrupts and those subject to recent sentences of imprisonment.

SECTION 7: DISQUALIFICATIONS TO BE A COUNCILLOR

There are certain people who are disqualified from being elected to a parish or community council in England and Wales. You cannot be a candidate if at the time of your nomination and on polling day:

- (1) You are employed by the parish/community council or hold a paid office under the parish/community council (including joint boards or committees).
- (2) You are the subject of a bankruptcy restrictions order or interim order.
- (3) You have been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine, during the five years before polling day.
- (4) You have been disqualified under the Representation of the People Act 1983 (which covers corrupt or illegal electoral practices and offences relating to donations). The disqualification for an illegal practice begins from the date the person has been reported guilty by an election court or convicted and lasts for three years. The disqualification for a corrupt practice begins from the date a person has been reported guilty by an election court or convicted and lasts for five years.

RELEVANT LEGISLATION

Representation of the People Act 1983 (as amended)

Representation of the People Act 1985

Local Government Act 1972

The Local Government Elections (Parishes and Communities) (England and Wales) Rules 2006

FOR FURTHER ASSISTANCE

Oxfordshire Association of Local Councils should be contacted for further advice and guidance in the first instance. Their details can be found at www.oalc.org.uk

The elections team can be contacted at elections@southandvale.gov.uk or 01235 422528.

DECLARATION OF ACCEPTANCE OF OFFICE

I[1]
having been elected to the office of[2]
of[3]

declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it
according to the best of my judgment and ability.

Signed: _____ Date: _____

This declaration was made and signed before me,

Signed: _____ Date: _____

Designation: _____ (Proper officer of the council)

- (a) Under section 83(3) of the Local Government Act 1972, a declaration for members or elected mayors of a county, district or London borough council shall be made before two members of the council, its elected mayor, its proper officer, a justice of the peace or magistrate in the United Kingdom, the Channel Isles or the Isle of Man, or a commissioner appointed to administer oaths in the Supreme Court. A declaration for members of parish councils shall be made before a member or the proper officer of the council.

[1] *Insert the name of the person making the declaration*

[2] *Insert "member" or "chairman" as appropriate*

[3] *Insert the name of the authority of which the person making the declaration is a member.*

** Delete or amend as appropriate*

***please note, not all parishes are warded at parish level – delete/amend as appropriate*

..... **PARISH/TOWN* COUNCIL**

(..... **PARISH WARD)****

NOTICE OF CASUAL VACANCY

Public notice is hereby given that due to the resignation/death/disqualification* of
Councillor

A vacancy exists in the office of Parish/Town* (parish ward**) Councillor for
..... Parish/Town* Council (..... Parish Ward**)

The vacancy will be filled by election if, within fourteen working days of the date of this notice, any ten local government electors for the said parish/town*/parish ward** submit a written request to the Returning Officer, South Oxfordshire / Vale of White Horse District Council*, Abbey House, Abbey Close, Abingdon, OX14 3JE.

In computing these fourteen days mentioned above you disregard a Saturday or Sunday, Christmas Eve, Christmas Day, Good Friday or a bank holiday or a day appointed for Public Thanksgiving or Mourning.

If no such request is made the vacancy will be filled by co-option by the Parish/Town* Council.

Dated

Signed.....
(Parish/Town* Clerk)

REQUEST FOR ELECTION

We, the undersigned ten local government electors for the:

Parish/Town of.....

Parish Ward (if warded at parish level)
hereby request that an election be held to fill the casual vacancy in the office of parish/town councillor
caused by the resignation/death of
as published in the notice of vacancy dated.....

	Signature	Address on Register of Electors	Electoral number
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

DATED.....

The signatures of ten electors for the parish [or parish ward, where warded] in which the vacancy is held are required. However, there is no limit on the number of signatories, and you may wish to add further signatories in case it is found that one of your signatories is not a registered elector for the parish [or parish ward].