



Signed off by	Managing Director
Author	Alex Vine, Democratic and Electoral Services Manager
Telephone	Tel: 01737 276067
Email	alex.vine@reigate-banstead.gov.uk
To	Full Council
Date	20 February 2024
Executive Member	Deputy Leader and Portfolio Holder for Finance, Governance and Organisation

Key Decision Required	No
Wards Affected	(All Wards);

Subject	Constitution update: delegated authority to declare casual vacancies
----------------	--

Recommendation
To amend the Constitution to include a delegation within the Officer Scheme of Delegation for the Managing Director to declare a casual vacancy under Section 86 of the Local Government Act 1972.
Reasons for Recommendations
A delegation for an officer to declare casual vacancies will offer greater flexibility in commencing the electoral process on the occasion of a vacancy, which will either enable by-elections to be combined with other elections where possible; or, avoid unnecessary costs and risks associated with convening an extraordinary Council meeting to declare the vacancy or conduct a standalone by-election.
Executive Summary
In the event of a casual vacancy (for example, arising from the resignation of a councillor), the local authority must declare the office to be vacant under Section 86 of the Local Government Act 1972, following which a Notice of Vacancy must be published 'as soon as practicable'.
In the absence of a delegation to declare a vacancy, this power is currently reserved to the Full Council, however the frequency of ordinary (scheduled) Council meetings may not always align with –

- a) the occasion of a vacancy, such that it can be declared as soon as practicable; or,
- b) the period for a Notice of Election to be published, such that a by-election can be held on the same date as scheduled elections.

The effect of the current arrangement may result in an Extraordinary Meeting of the Council being required at short notice to declare a casual vacancy; or, require a by-election to be called on another date other than scheduled elections, which may be costly and disruptive to the efficient delivery of those elections.

The above recommendations are subject to approval by Full Council.

Statutory Powers

1. Section 86 of the Local Government Act 1972 requires that local authorities must declare a vacancy of office whereby a member of a local authority either ceases to be a elected member of the authority.
2. The authority to declare a vacancy of office is not currently delegated to an officer under the Council's Constitution, and therefore the responsibility for this function is reserved to the Full Council.
3. The Council may amend its Constitution to delegate this function to a Proper Officer. This may, for example, be the Managing Director of the local authority. Such a delegation is in place within the constitutions of the borough councils of Elmbridge, Woking, Mid-Sussex, Adur & Worthing, and the London Borough of Merton, to name a few. This type of delegation was also recommended by the Association of Electoral Administrators as part of a presentation at the Annual Conference in 2023.

Background

How casual vacancies occur

4. A casual vacancy occurs when an elected member ceases to be an elected member as a result of, for example, their death, resignation, becoming disqualified, or being no longer qualified to remain elected.
5. When a casual vacancy occurs, usually, but not always, it will lead to a by-election.

Resignation

6. An elected member can resign at any time by giving written notice of their resignation to the Proper Officer (the Managing Director) of the authority. The resignation takes effect as soon as the notice of resignation is received, and this is the date that the casual vacancy is deemed to have occurred. There is no provision for a resignation to be withdrawn once it is given.

Key Information

The date a casual vacancy is deemed to have occurred

7. The following table provides a summary of the reasons a casual vacancy can occur and of the date the vacancy is deemed to have occurred in each case.

Reason for Vacancy	Date the casual vacancy is deemed to have occurred
Death of an elected member	The date of death of the councillor.
Resignation	Date the written resignation is received by the Proper Officer.
Failure to accept office - Principal area council	Two months after polling day
Failure to attend meetings	Date the local authority declare the elected member has failed to attend meetings for six months.
Otherwise disqualified or no longer qualified	Date that a High Court or local authority declares that an elected member is disqualified or is no longer qualified. Or if after a conviction, when the time period for an appeal has elapsed or, if an appeal is made, when the appeal is dismissed.
Election court decision	Date of the certificate by an election court that the election was void.

Notice of Vacancy

8. The local authority is required to publish a public notice whenever there is a casual vacancy.
9. The notice of vacancy must be published immediately where the authority has declared the seat vacant because of a failure to attend meetings or because a councillor has become disqualified or ceases to be qualified.
10. In all other cases (e.g. resignation) the notice should be published as soon as practicable after the date on which the vacancy is deemed to have occurred.

Requests to hold a by-election

11. Requests to hold a by-election to fill a casual vacancy must be made in writing by two local government electors from within the local authority area.
12. There is no need for electors to wait for the notice of vacancy to be published by the relevant authority before submitting a request for a by-election. Regardless of when

the requests arrive, even if they arrive before the notice of vacancy is published, this triggers the start of the election timetable.

13. The requests must be sent to the Proper Officer of the authority and can be inspected by any person once they have been received.
14. There is no time limit for receiving the requests but, if the required number is not received, the seat will remain vacant.

Timing of by-elections

15. Returning Officers must fix the date of a by election to fill a casual vacancy, the timing of which will depend on whether the vacancy was caused by:
 - i. a declaration by the High Court or the local authority (e.g. as a result of failure to accept office or attend meetings, or becoming disqualified) or
 - ii. any other reason (e.g. as a result of death or resignation)
16. If a seat has been declared vacant by the High Court or the local authority, the by-election must, subject to the six-month rule, be held between 25 and 35 working days of the date of the declaration.
17. If the vacancy arose due to any other reason e.g. death or resignation, once requests to hold an election have been received, the Returning Officer must set the date for polling day for the by-election within 35 working days of the date of receipt of the requests (Section 89(1)(b), Local Government Act 1972).

Notice of Election

18. However, the requirement to publish a Notice of Election within 25 working days of a by-election polling day means that the timing of the declaration of vacancy must be made within a 25 – 35 working day ‘window’ of the intended by-election polling date.
19. For example, if two requests were received on Tuesday 12 March 2024 the election date could be set on 2 May 2024, so the by-election could be combined with other scheduled polls.
20. The last date for publication of a Notice of Election for polls on 2 May 2024 is no later than 26 March 2024. This is the last date the Returning Officer can publish the Notice to combine the vacancy with other polls. This means the window for election requests for a principal area by-election to be held on 2 May 2024 is between 12 - 26 March 2024.
21. The last Council meeting before the elections on 2 May 2024 is scheduled on 28 March 2024, which is after the last date for a Notice of Election to be published coinciding with polling day on 2 May 2024.
22. Therefore, if a casual vacancy arose between 12 – 26 March, an extraordinary meeting of the Council would be required to be convened to declare the vacancy; or, the current meeting on 28 March would need to be rescheduled in order for a by-election to be requested before the last date for publication of the Notice of Election (26 March 2024).

23. In either case, this is not recommended as it would be inconvenient for Members and officers and an inefficient use of Council resources, or negatively affect reporting timescales of the meeting currently scheduled on 28 March 2024.
24. A delegation to the Monitoring Officer to declare any vacancy of office flexibly is therefore recommended to provide greater flexibility and efficiency in the electoral process.

Options

25. There are two Options:

Option 1 – to amend the Constitution in line with the recommendation. This is recommended, as the proposed change enables vacancies to be declared flexibly by officers without the requirement to convene a meeting of the Full Council. This flexibility enables the Notice of Vacancy to be published ‘as soon as practicable’, in accordance with the relevant legislation; and reduces the likelihood of a by-election being unable to be called in combination with other scheduled election. This delegation was recommended by the Association of Electoral Administrators at the Annual Conference in 2023, and such delegations are already in place in other local authority constitutions.

Option 2 – not to amend the Constitution.

This is not recommended, as casual vacancies in the lead up to elections will require an extraordinary meeting of the Council to declare the vacancy; and, the time required to convene an extraordinary meeting at short notice may prevent a by-election from being combined with other (scheduled) elections.

Legal Implications

26. There are no specific legal implications arising from the recommendation within this report, however the following statutory requirements dictate the calculation of by-election dates.
27. Section 86 of the Local Government Act 1972 requires that local authorities must declare a vacancy of office whereby a member of a local authority ceases to be an elected member of the authority.
28. Section 87 requires that “Public notice of a casual vacancy in any such office shall be given by the local authority”; and the steps below shall be taken—
 - i. in a case where the local authority declare the office to be vacant, immediately after the declaration; and
 - ii. in any other case, as soon as practicable after the date on which the vacancy is deemed to have occurred.
29. Section 89 requires that an election to fill the vacancy shall be held—
 - i. in a case in which the High Court or the council have declared the office to be vacant, within thirty-five days from the date of the declaration;

- ii. in any other case, within thirty-five days after notice in writing of the vacancy has been given to the proper officer of the authority by two local government electors for the area.

30. Rule 1 of Local Elections (Principal Areas)(England and Wales) Rules 2006 requires that the Returning Officer must publish the Notice of Election not later than the twenty-fifth day before the day of the election (polling day).

Financial Implications

31. There are no financial implications arising from the approval of the recommendation within this report.

32. However, if this recommendation is not supported, the current constitutional arrangements may increase the likelihood of a by-election being held on a separate day to ordinary (scheduled) elections, with additional costs for the conduct of a standalone by-election (e.g. production of stationery, postage, rent, staffing etc).

Equalities Implications

33. There are no equalities implications arising from this recommendation.

Communication Implications

34. There are no communications implications arising from the approval of the recommendation within this report.

35. However, if this recommendation is not supported, the current constitutional arrangements may increase the likelihood of a by-election being held on a separate day to ordinary (scheduled) elections, which presents communication challenges in terms of managing voter confusion if there are two polling days close together.

Environmental Sustainability Implications

36. There are no environmental sustainability implications arising from the approval of the recommendation within this report.

37. However, if this recommendation is not supported, the current constitutional arrangements may increase the likelihood of a by-election being held on a separate day to ordinary (scheduled) elections, which will require additional stationery to be produced, thereby increasing the carbon footprint of conducting a by-election than if it were combined.

Risk Management Considerations

38. The current constitutional arrangement may increase the likelihood of a by-election being called on another date other than scheduled elections, which disruptive and presents additional risks to the efficient delivery of those elections.

Consultation

39. Group Leaders were briefed on the recommendation and implications within this report at their meeting held on 15 January 2024.

Policy Framework

40. There are no policy framework implications arising from the recommendation within this report.

Background Papers

1. Section 86 of the Local Government Act 1972.
2. Constitution plenary presentation ('Council constitutions – why do they matter?') by Matt Box, Association of Electoral Administrators, AEA Conference 2023.