

Co-option Policy & Procedures

1. Introduction

This policy is based on a Vacancies and Co-option Advice Note written by NALC in-house solicitors and last updated 8 July 2022.

Parish and Parish Councils are permitted to exercise the power to co-opt a person onto the Council to fill a casual vacancy when the requirements to hold an election have not been met (i.e. the vacancy has been the subject of a public notice and fewer than 10 registered electors have requested an election by a deadline date specified by the Wiltshire Council Returning Officer).

Although seeking 'expressions of interest' is not a legal requirement, NALC recommends that councils always give public notice of vacancies because this makes the process of co-option open and transparent and should attract more potential candidates. Whenever the need for co-option arises, St Paul Malmesbury Without Parish Council will seek and encourage applications from anyone in the parish who is eligible to stand as a parish councillor. Councillors or parishioners can legally approach individuals to suggest that they might wish to consider putting their names forward for co-option.

The notice to co-opt will include: the method by which applications can be made; the closing date for all applications; a contact point to obtain more information and where information can be sourced electronically.

The co-option policy will be reviewed at the beginning of each new council term (usually four years)

2. Co-option

Stage 1

According to section 87 of the 1972 Act, a casual vacancy occurs when:

- A councillor fails to deliver their declaration of acceptance of office at the proper time.
- A councillor resigns.
- A councillor dies.
- In the case of a councillor who is disqualified by virtue of a criminal conviction, under section 79 of the Local Government Act 2000 (Wales) or under section 34 of the Localism Act 2011 (England), the expiry of the period for making an application or appeal or, if an appeal or application has been made, the date that any such application or appeal process comes to an end.
- On the date of a report or certificate of an election court that declares an election void.

- A person ceases to be qualified to be a councillor for a reason not mentioned above.
- A councillor fails to attend meetings for six consecutive months.

St Paul Malmesbury Without Parish Council will notify Wiltshire Council of a casual vacancy and then give public notice of the vacancy to give electors the opportunity to request an election. This occurs when ten electors write to Wiltshire Council stating that an election is requested.

If a by-election is called, a polling station will be organised by Wiltshire Council and polling cards sent to residents. St Paul Malmesbury Without Parish Council will be expected to pay the costs incurred with a by-election. If more than one candidate is nominated, a by-election will take place. When there is only one candidate they are duly elected without a ballot. If ten residents do not request a ballot within the fourteen days of the public notice being posted, Wiltshire Council will inform St Paul Malmesbury Without Parish Council that they can proceed with co-option, as follows:

Advertise the vacancy for four weeks on the council notice boards and website and advise the council that the co-option policy has been instigated.

Stage 2

Insufficiency of candidates at an ordinary election also provides the parish council with authority to exercise its rights to co-opt any person or persons to fill any vacancies within thirty-five days following the date of the ordinary election.

3. Eligibility of Candidates

The parish council can consider any person to fill a vacancy provided that:

- they are on the parish electoral register

or

- they have resided in the parish for the past twelve months or rented/tenanted land in the parish

or

their principal place of work is in the parish

or

they live within three miles (direct) of the parish.

There are certain disqualifications for election, as follows:

- holding a paid office under the local authority.
- bankruptcy
- having been sentenced to a term of imprisonment (whether suspended or not) of not less than three months, without the option of a fine, during the five years preceding the election.
- being disqualified under any enactment in relation to corrupt or illegal practice.

Eligibility of the candidates will be confirmed at Full Council by the Clerk, as per the Local

Government Act 1972, s79 and s80. All eligible candidates will be invited to attend a meeting of the Full Council following the application deadline. If candidates are unable to attend, the meeting will not be rearranged.

4. Applications

To assist candidates, a councillor person specification has been prepared (please refer to Appendix A). This will provide candidates with guidance on areas they may wish to include on their application forms.

Candidates will be requested to:

- confirm their eligibility for the position of parish councillor within the statutory rules (please refer to Appendix B)

and

- submit information about themselves by completing an application form.

Following receipt of application(s) and at the next Full Council meeting there will be an agenda item, as follows: 'To receive and consider written applications for the office of Parish Councillor and to co-opt a candidate to fill the vacancy for the parish of St Paul Malmesbury Without.' Prior to the Full Council meeting where the applications for co-option will be considered, the applications will ideally be circulated to all councillors at least three clear days prior to the meeting. If this is not possible, then the applications will be tabled at the meeting and enough time allowed during the meeting for councillors to consider the applications.

All applications will be marked 'strictly confidential' prior to circulation.

5. Full Council – Co-option Meeting

Candidates will have five minutes to introduce themselves to members, give information on their background and experience and explain why they wish to become a member of St Paul Malmesbury Without Parish Council. After presentations have been made, members will have the opportunity to ask candidates a few questions before proceeding to vote.

Note: If a candidate is unable to attend the meeting, the application can still be considered, and voting will be based on the application only.

The process will be carried out in a public session and there must be no discussion between members prior to a vote being taken.

Note: where the council are discussing the merits of a candidate and personal attributes, this could be prejudicial, and the council should resolve to exclude members of the press and public.

If a candidate is a relative of a councillor, that councillor should declare a prejudicial interest and withdraw from the meeting.

When all candidates have finished giving their submissions, the council will proceed to vote with each candidate being proposed and seconded by the councillors in attendance and a vote by a show of hands.

A recorded vote may be requested (Local Government Act 1972, section 12, para. 39).

In order for a candidate to be elected to the council, it will be necessary for them to obtain an absolute majority of votes cast (50% plus 1 of the votes available at the meeting). If there are more than two candidates and there is no candidate with an overall majority in the first round of voting, the candidate with the least number of votes will drop out of the process. Further rounds of voting will then take place with the process repeated until a candidate has an absolute majority. Only those parish councillors present at the meeting may vote upon a person to fill the vacancy.

Councillors will have one vote per vacancy to be filled. The Chair has the casting vote. Votes cannot be made by proxy.

The Clerk will notify Electoral Services of the new councillor appointment and initiate both 'Acceptance of Office' paperwork and 'Registration of Interests' within twenty-eight days of being elected.

If insufficient candidates come forward for co-option, the process should continue whereby the vacancies are advertised again. If there is more than one vacancy and the number of candidates equals the number of vacancies, all the vacancies may be filled by a single composite resolution.

Note: if the number of candidates exceeds the number of vacancies, each vacancy must be filled by a separate vote or a series of votes. St Paul Malmesbury Without Parish Council is not obliged to fill all vacancies but must take steps to advertise for further co-options or hold an election, where applicable, to fill vacancies.

Any candidate(s) found to be offering inducements of any kind will be disqualified.

6. Elected Councillors – Co-option

Successful co-opted candidates become councillors with immediate effect and are no different to any other member.

Co-opted members will be asked to sign a Declaration of Acceptance of Office and agree to abide by the Local Government Code of Conduct introduced under the Localism Act 2011. They may take their seat at council and are then able to be appointed to a committee.

Any application can be considered in a candidate(s) absence but, if successful, members would need to agree for him/her to sign the Declaration of Office in accordance with Local Government Act 1972, section 83(3), either before or at the next Full Council meeting.

7. Applying for a Casual Vacancy

Candidates who are interested in applying for a casual vacancy need to wait until the public notice appears. Candidates can write to the parish council directly expressing their interest in the casual vacancy and request that it considers their application when it has authority to co-opt (please refer to item no. 2 - Co-option Stage 1).

8. References

Data Protection Act 1998

Employment Rights Act 1996

Equality Act 2010

Local Government Act 1972

Localism Act 2011

The Human Rights Act 1998

NALC Vacancies and Co-option Advice Note last updated 8 July 2022

Signed and dated on behalf of St Paul Malmesbury Without Parish Council Chair

Signed and dated by St Paul Malmesbury Without Parish Council Clerk

Appendix A – Councillor Person Specification

| Essential | Desirable |
|--|---|
| Able to attend meetings of the Council (on the third Wednesday evening of each month). | Willing to collaborate with other councillors on projects to improve the local area. Willing to listen to others, and to understand their views. Can bring new skills or knowledge to the Council. Interested in local issues. |

Appendix B – Councillor Eligibility Form

| | |
|--|--------|
| Are you a British citizen, an eligible Commonwealth citizen, a citizen of the Republic of Ireland, a qualifying EU citizen or an EU citizen with retained rights? | Yes/No |
| Are you at least 18 years old? | Yes/No |
| Are you registered as a local government elector for the parish of St Paul Malmesbury Without? | Yes/No |
| During the whole of the twelve months preceding the date of your co-option, have you occupied as owner or tenant, land, or other premises in the parish of St Paul Malmesbury Without? | Yes/No |
| During the whole twelve months preceding your co-option, has your principal or only place of work been in the parish of St Paul Malmesbury Without? | Yes/No |
| During the whole of the twelve months preceding your co-option, have you lived in the parish of St Paul Malmesbury Without or within three miles of St Paul Malmesbury Without? | Yes/No |
| Under the Local Government Act 1972, section 80, a person is disqualified from being elected as a local councillor or being a member of a local council if specific criteria are not met: | |
| Are you an employee of St Paul Malmesbury Without Parish Council? | Yes/No |
| Are you the subject of a bankruptcy restrictions order or interim order? | Yes/No |
| Within the last five years, have you been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine? | Yes/No |
| Are you disqualified by order of a court from being a member of a local authority? | Yes/No |
| Are you subject to the notification requirement of or under Part 2 of the Sexual Offences Act 2003? | Yes/No |
| Have you been convicted of an intimidatory criminal offence motivated by hostility towards a candidate, future candidate or campaigner or holder of a relevant elective office? | Yes/No |
| <p>Declaration</p> <p>I, < <i>insert full name</i> >, hereby confirm that I am eligible for the vacancy of St Paul Malmesbury Without Parish Councillor and the information given on this form is a true and accurate record.</p> <p>Signature: _____ Date: _____</p> | |

Appendix C – Change Log

| Date Issued | Reason for Update |
|-------------|-------------------|
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