

# Payhembury Parish Council

## Councillor Vacancy & Co-option policy & procedure

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#### 1. Introduction

- 1.1. Payhembury Parish Council has 7 Councillors.
- 1.2. The number of councillors that a parish has is decided by a Community Governance Review and is covered by the Local Government and Public Involvement in Health Act 2007. Any request for a review of the number of councillors should be submitted to East Devon District Council (EDDC), who are the principal authority and are therefore responsible for carrying out the review.
- 1.3. Ordinary elections of Parish Councillors take place every 4 years and the councillors are elected for a 4-year term. If there are insufficient candidates to fill all the available seats at the time of the ordinary election, then these ‘formal’ vacancies are addressed by co-option at that time (section 4).
- 1.4. By-elections may be called during the 4-year term in order to fill casual vacancies, provided sufficient numbers of the electorate request an election. If a by-election is not called, then the casual vacancies are filled by co-option (sections 7 & 8).

#### 2. Qualifications for holding office as a councillor (LGA 1972, s.79)

- 2.1. The Local Government Act 1972, s.79 says that, to be eligible to be a councillor, a person:

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Adopted: 19<sup>th</sup> August 2020

Reviewed:

Next review date: July 2024

[www.payhemburyparishcouncil.org.uk](http://www.payhemburyparishcouncil.org.uk)

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- must be a British or Commonwealth citizen or a citizen of a European Union country
- must be 18 years of age or over on the relevant date (date of election or co-option)
- must be able to answer yes to at least one of the following:
  - are on the current electoral register for the parish (on-going requirement; the councillor is required to remain on the register throughout their term of office); or
  - have resided in the parish, or within 3 miles (4.8km) of it, during the whole of twelve months prior to the relevant date; or
  - have occupied as owner or tenant, land or other premises in the parish during the whole of the twelve months prior to the relevant date; or
  - that their principal or only place of work has been in the parish during those preceding twelve months.

### 3. Disqualifications for holding office as a councillor (LGA 1972, s.80)

3.1. The Local Government Act 1972, s.80 says that a person shall be disqualified from being elected or holding the office of councillor if they:

- hold any paid office or employment of the Parish Council (other than the office of Chairman) or of a joint committee on which the Council is represented; or
- are a person who has been adjudged bankrupt or has made a composition or arrangement with their creditors (but see note 1 below); or
- have within five years before the day of election or co-option, or since their election or co-option, been convicted in the UK, Channel Islands or Isle of Man of any offence and have been sentenced to imprisonment (whether suspended or not) for not less than three months without the option of a fine; or
- are otherwise disqualified under Part III of the Representation of the People Act 1983 for corrupt or illegal practices.

Note 1:

This disqualification for bankruptcy ceases in the following circumstances:

- i) if the bankruptcy is annulled on the grounds that either the person ought not to have been adjudged bankrupt or that their debts have been fully discharged;
- ii) if the person is discharged with a certificate that the bankruptcy was caused by misfortune without misconduct on their part;
- iii) if the person is discharged without such a certificate.

In (i) and (ii) above, the disqualification ceases on the date of the annulment and discharge respectively. In (iii), it ceases on the expiry of five years from the date of discharge.

### 4. Insufficient candidates to fill seats after an ordinary election

4.1. The relevant legislation for this situation is the Representation of the People Act 1983, s.39, the Representation of the People Act 1986, s.21 and the Local Government Act 1972, S.89 & s.91.

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- 4.2. Where there are not enough validly nominated candidates at the ordinary election of a Parish Council, those candidates who are validly nominated are deemed 'elected'. In these circumstances, EDDC has a wide range of reserve powers to do anything necessary to constitute a council properly.
- 4.3. The 'new council' comes into being four days after the date on which the contested poll would otherwise have taken place. Providing the Parish Council is quorate (3 or one third of the total no. of council seats, whichever is the greater) the newly elected councillors may then co-opt other councillors to fill the remaining seats as soon as possible into the new council term (sections 7 & 8).
- 4.4. The council does not have to give public notice of the 'formal' vacancy or vacancies - as it must do for casual vacancies at other periods during the four-year term - but may wish to do so. In practice, it is a sensible way in which to attract potential candidates for co-option.
- 4.5. If, however, after a period of 35 working days from the date that would have been the polling day if the election had been contested, the council has not filled all its 'formal' vacancies by co-option, EDDC may:
- *by order make direct appointments of people as Parish Councillors;*
  - *do anything necessary or expedient for the proper holding of the Parish Council and properly constituting the council;*
  - *direct that a new election is held to fill the remaining vacancies and fix the date of that election.*
- 4.6. EDDC **must not** exercise this power within 35 working days of the ordinary date of election if the Parish Council is quorate, and **may** allow a Parish Council a period longer than 35 working days to fill vacancies by co-option if it wishes.
- 4.7. EDDC may also use the powers listed in 4.5, without waiting for a period of 35 working days, if the Parish Council is not quorate after the ordinary election and therefore may not proceed with co-option (or indeed carry out any other business at all). In practice, EDDC may therefore often appoint temporary councillors (often an EDDC member or members) to form a quorum in the short-term, in order that the Annual Meeting may take place, a Chairman can be elected, and others may be co-opted. The temporary councillors will then stand down.
- 4.8. The Parish Council should talk to EDDC election officers at the earliest opportunity about the options available should this situation arise.

### 5. Casual Vacancies, their causes and the effective date of the vacancy

- 5.1. Casual vacancies occur during the 4-year term when the number of councillors is less than the number of seats on the Council. There are a number of possible reasons why casual vacancies may occur (LGA 1972, s.87, which also states the effective date of the vacancy):
- i) Failure to complete a declaration of acceptance of office form within the proper time: This must be done before or at the first meeting of the Parish Council after an election or at the

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meeting when the Councillor is co-opted, unless the council permits otherwise (LGA 1972, s.83). The effective date of the vacancy is the closing date for making declarations of acceptance of office.

- ii) Resignation: A councillor may at any time resign their office by written notice delivered to the chairman of the Parish Council (LGA 1972, s.84). If the chairman resigns as a councillor the written notice of resignation should be delivered to the Proper Officer (usually the Clerk). There is no special form for the notice. There is no procedure for withdrawing a notice of resignation once it is made. There is no need to report the resignation to the council for it to take effect. The resignation takes effect upon receipt, and this is the effective date of the vacancy.
  - iii) Death: The vacancy is deemed to have occurred on the date of the death although advertising the vacancy should not take place until after the funeral.
  - iv) Ceasing to be qualified (see section 2 above): This would normally only occur where a councillor had used their registration as an elector as their only qualification for nomination and election and where that qualification had been lost because they had ceased to be on the register of electors. All of the other qualifications for nomination and election continue for the full term of office. The council must declare the vacancy forthwith, and the vacancy is deemed to have occurred on the date of this declaration.
  - v) Becoming disqualified (see section 3 above): Through bankruptcy, office holding, surcharge, conviction, court order or being found guilty of corrupt or illegal practices in election law. The effective date of the vacancy is the date that the relevant disqualification took effect.
  - vi) Failure to Attend Meetings: If a councillor fails throughout a period of six consecutive months from the date of their last attendance to attend any meeting of the council (including committees, sub-committees or as a representative of the council), they shall, unless the failure was due to some reason approved by the council before the expiry of that period, cease to be a member of the council (LGA 1972, s.85). The effective date of the vacancy is the date declared by the council.
- 5.2. If at any point after an ordinary election, and during the 4-year term of office, the Parish Council has so many casual vacancies that it is inquorate (ie the number of Councillors is less than 3 or one third of the total no. of council seats, whichever is the greater) the Parish Council should inform EDDC. If a by-election is not held (for example, because a number of councillors have resigned but there have not been enough requests received for an election to be held to replace them) the Parish Council will be unable to co-opt new councillors. EDDC may invoke powers under the Local Government Act 1972, s.91 (see also 4.7 above) to appoint temporary councillors (often an EDDC member or members) to form a quorum in the short-term, in order that others may be co-opted. The temporary councillors will then stand down.

### 6. Notice of Casual Vacancy

- 6.1. All casual vacancies should be declared and publicly notified. The notice informs the electorate that they may call for a by-election and the process for doing that. Notices should be placed on

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noticeboards, the Parish Council website and may be advertised elsewhere as appropriate (eg Parish Paper). Appendix A – template of a ‘Notice of Casual Vacancy’.

- 6.2. The Clerk should notify the Returning Officer of EDDC who will acknowledge the notification, giving confirmation of the dates that the Notice of Casual Vacancy covers. Appendix B – template of the form for the ‘Notification of Casual Vacancy to EDDC’.
- 6.3. If a by-election is requested in writing by at least ten electors within 14 days of the publication of the Notice of Casual Vacancy (excluding weekends and certain public holidays), then one must be held within 60 days of the notice. EDDC Electoral Services organise and run the by-election, but the cost of the by-election falls to the Parish Council.
- 6.4. A by-election cannot be claimed if the vacancy arose within six months of the day when the councillor whose office is declared vacant would ordinarily have retired, eg within 6 months of an ordinary election.
- 6.5. If no by-election is claimed the Parish Council **must** try to fill the vacancy by co-option. If a by-election cannot be claimed (6.4), then the Parish Council **may** try to fill the vacancy by co-option but the vacancy can be left open until the next ordinary election. If the vacancy causes the Parish Council to become inquorate see 5.2.

### 7. Co-option

- 7.1. Although the process for co-option to vacancies on Parish Councils is not prescribed in law, NALC’s Legal Topic Note LTN 8 - Elections and Co-option (June 2020) and Legal Briefing L15-08 – Co-Option (Original date of issue: 23 July 2008 Re- issued: 7 May 2015) provide guidance.
- 7.2. Of paramount importance is that all candidates are treated alike so that arrangements are seen to be open, fair and transparent.
- 7.3. Whenever the need for co-option arises, Payhembury Parish Council will seek and encourage applications from anyone who is eligible to stand as a Parish Councillor (see section 3). Councillors and parishioners can legally approach individuals to suggest they might wish to consider putting their names forward for co-option and encourage them to register their expression of interest.
- 7.4. Any candidate(s) found to be offering inducements or any kind of undue pressure will be disqualified.
- 7.5. Councillors elected by co-option are full members of the Parish Council for the remaining period of the 4-year term.

### 8. Co-option Process

- 8.1. It is not a legal requirement to advertise that a vacancy is to be filled by co-option, but it is sensible and good practice to make the vacancy as widely known as possible.

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- 8.2. After an ordinary election where there were insufficient candidates for the number of seats available, or after receiving confirmation from EDDC that a by-election has not been called, the Clerk should advertise the Parish Council's intention to fill the vacant seat(s) by co-option on the noticeboards, the Parish Council's website, via the Parish Paper and elsewhere as appropriate.
- 8.3. The 'Notice of Co-option' should include:
- Contact details for further information.
  - How and where to obtain a copy of the 'Casual Vacancy Co-option Application Form'.
  - How and where to return completed application forms.
  - If appropriate, a closing date for applications and details of the date and time of the meeting when the co-option will take place
- 8.4. Completed copies of the application form should be returned (via hard copy or via email) to the Clerk who will check the forms to ensure that the individual(s) meets the qualification requirements.
- 8.5. Copies of the completed application forms will be circulated to all Parish Councillors prior to a full meeting of the Council where the co-option is to be considered. All such documents will be treated by the Clerk and Councillors as strictly private and confidential.
- 8.6. Notice of the Intention to Co-opt should be given in the agenda for the meeting of the Parish Council.
- 8.7. Candidates may be invited to the meeting to introduce themselves and to provide Councillors with the opportunity to ask questions of them, or the Council may decide to rely on the written submissions alone. If candidates are not invited to speak at the co-option meeting, they are welcome (but are not required) to attend as members of the public.
- 8.8. Only Councillors present at the meeting may vote upon a person to fill the vacancy. Councillors will have one vote per vacancy to be filled.
- 8.9. If a Councillor is a relative of a candidate or has connections with any candidate which may be perceived as prejudicial, that Councillor should declare an interest and withdraw from the meeting. Under any of these circumstances a vote by the Councillor concerned is not allowed.
- 8.10. Candidates may remain, if they wish, whilst the Parish Council discuss the applications and vote for the co-option.
- 8.11. The Parish Council will appoint co-opted members by voting according to Standing Orders, unless an alternative method of voting has been agreed.
- 8.12. If there are exactly as many as, or fewer candidates than vacancies, the Parish Council may vote on a composite motion, duly proposed and seconded, that all candidates be co-opted. If there are more candidates than vacancies, it will be necessary for existing Councillors present at the meeting to vote.

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8.13.If there are more candidates than vacancies, Arnold Baker’s “Local Council Administration” recommends that:

- i) Where more than two persons have been nominated for a position to be filled by the Council and none of those persons has received an absolute majority of votes in their favour, the name of the person having the least number of votes shall be struck off the list and a fresh vote taken. This process shall continue until a majority of votes is given in favour of one person. A tie in votes may be settled by the casting vote exercisable by the chairman of the meeting.
- ii) If there is a tie for the number of people with the least votes then a separate vote shall be taken to establish which of these names shall be struck off the list.

8.14.After the vote:

- i) Any candidates that are not present at the meeting, will be notified of the results by the Clerk, as soon as is reasonably possible (usually within 24 hours).
- ii) Successful candidates must:
  - sign the Declaration of Acceptance of Office form in the presence of the Clerk or a nominated Councillor before they can take up their position as a Councillor. This should be at the first opportunity, unless a later date is agreed by the Council.
  - complete their Register of Interest form (as required by the Localism Act 2011, s.30(1)) at the first meeting or within 28 days, whichever is sooner, and return the completed form to the Clerk.
- iii) The successful candidate’s term of office runs until the next quadrennial elections for the Parish Council.
- iv) The Clerk will provide the successful candidate(s) with a copy of the Parish Council’s Code of Conduct and Standing orders. The successful candidate(s) will also confirm that they will comply with and abide by the Parish Council’s Code of Conduct, as they had previously indicated on their Casual Vacancy Co-Option Application Form. Should the new Councillor not comply with or breach the Code of Conduct, then the Monitoring Officer at EDDC will be advised, who will then deal with the matter.
- v) The Clerk will inform EDDC Democratic Services who the new Councillor(s) is(are) and forward their Register of Interest form(s).
- vi) All copies of the Casual Vacancy Co-option Form for unsuccessful candidate(s) will be disposed of in line with GDPR legislation.

### NOTES:

*This document is based upon a study of legislation, guidelines and practices of other Parish & Town Councils. It is intended as a summary of the most relevant points of procedure and legislation, rather than a definitive exposition.*

*Legislation covering casual vacancies can be found at The Local Elections (Parishes and Communities) (England and Wales) Rules 2006:*

*<http://www.legislation.gov.uk/ukSI/2006/3305/article/5/made?view+plain>*

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### Appendix A – Notice of Casual Vacancy

#### PARISH OF PAYHEMBURY

#### LOCAL GOVERNMENT ACT, 1972

#### THE LOCAL ELECTIONS (PARISHES AND COMMUNITIES)

#### (ENGLAND AND WALES) RULES 2006

1. I HEREBY GIVE NOTICE that a casual vacancy exists in the office of Parish Councillor on the Parish Council of Payhembury.
2. I FURTHER GIVE NOTICE that, subject to the provisions of the above Rules, any ten electors for the electoral area may give notice requesting that an election be held to fill such vacancy. Such notice must be in writing and must be given to:-

The Returning Officer  
East Devon District Council  
Council Offices  
Blackdown House  
Heathpark Industrial Estate  
Honiton  
EX14 1EJ

within fourteen days (computed in accordance with Rule 2 of the said Rules) of the date of publication of this notice.



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3. If no such notice as is referred to in Paragraph 2 above is given the Parish Council will fill the vacancy as soon as practicable thereafter.

DATED this ..... day of .....

SIGNED .....

Clerk of the Parish Council

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### Appendix B – Notification of Casual Vacancy to EDDC

FROM: Clerk of the Payhembury Parish Council

TO: Returning Officer, East Devon District Council,  
Council Offices, Blackdown House, Heathpark Industrial Estate, Border Road, Honiton,  
Devon EX14 1EJ

1. I HEREBY GIVE YOU NOTICE that a casual vacancy exists in the office of Parish Councillor on the  
Parish Council of the Parish of Payhembury

On the resignation/death/etc of (Name).....

2. Public Notice of the said vacancy was published by me on the  
day of

3. The casual vacancy occurred on the day of

DATED this day of

SIGNED .....

Name .....

Address .....

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Clerk of the Payhembury Parish Council

NOTE: This form must be sent to the District Council as soon as the public notice is published.

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### Appendix C – Casual Vacancy process flowchart

