



Report 04.81
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Committee Council
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Extraordinary Vacancy

1. Purpose

To consider the action to be taken as a result of the extraordinary vacancy created by the resignation of Councillor Yardley.

2. Background

The resignation of Councillor Yardley, which I received on 19 February 2004, has created an extraordinary vacancy in terms of the Local Government and Local Electoral Acts (2002 and 2001 respectively).

The Council now has a statutory obligation to decide whether to fill that vacancy.

3. Comment

Schedule 7 of the Local Government Act 2002 (LGA 2002), provides, *inter alia*, that every member may resign from office by notice in writing addressed and delivered to the Chief Executive. The notice takes effect on the day on which it is delivered to the Chief Executive.

Where a member resigns in the manner described, an extraordinary vacancy is created and sections 117 to 120 of the Local Electoral Act 2001 (LEA) apply.

The requirements of the LEA in this regard are straightforward. If the vacancy occurs more than 12 months before the next triennial general election, the vacancy must be filled by an election under the Act.

However, if the vacancy occurs less than 12 months before the next triennial election – as is the case here – the Council must determine by resolution:

- (a) that the vacancy will be filled by the appointment of a person named in the resolution who is qualified to be elected as a member; or
- (b) that the vacancy is not to be filled.

4. If the vacancy is to be filled by appointment

If the Council resolves that the vacancy is to be filled by appointment, it is implicit in the LEA that the Council will determine a process or criteria by which it will identify an appropriate person to fill the vacancy.

Having identified an appropriate person, and resolved that they will fill the vacancy, the Council must give public notice of:

- (a) its resolution;
- (b) the process or criteria by which the person named in the resolution was selected for appointment

At a separate meeting, held not less than 30 days after the date of notification, the Council must then confirm the appointment of the person selected, after which, the appointee is treated as having been elected to fill the vacancy on the date on which the resolution confirming appointment is made.

5. Process or criteria for selecting an appointee

The LEA gives no guidance as to the criteria which might be applied or the processes which might be used to select a person to fill a vacancy. In this context, any number of processes might potentially be adopted by the Council for selecting a person to be appointed, including selecting the next highest polling candidate at the previous election. The only relevant statutory requirement being that the person is qualified to be elected as a member.

It is therefore recommended that, if the Council wishes to fill the vacancy, it appoint a subcommittee with delegated authority:

- to determine an appropriate process or criteria for selecting a person to fill the vacancy and
- to undertake the process or apply the criteria to select a person for recommendation to the Council to fill the vacancy

The subcommittee would report to Council at its meeting on 20 April 2004.

If Council resolved not to follow the recommendation of the subcommittee it would have to either determine criteria or a process by which to select a replacement itself and appoint someone, or resolve not to appoint a replacement.

6. If the vacancy is to be left unfilled

If the Council resolves that the vacancy is not to be filled, it must immediately give public notice of its decision.

It should be noted that schedule 7 of the LGA 2002 provides that an act or proceeding of the Council or of a committee is not invalidated by a vacancy in the membership of the Council at the time of that act or proceeding.

7. Deputy Chairperson, Environment Committee

Councillor Yardley was Deputy Chairperson of the Environment Committee. It is recommended that a new Deputy Chairperson be appointed by the Environment Committee.

8. Communication

As indicated above, the Council must give public notice of its decision whether it chooses to appoint someone to fill the vacancy or not. If the Council chooses to appoint a replacement, the notice must describe the process or criteria by which the person was selected for appointment.

Officers will make media releases recording the Council's decisions and brief the media as appropriate.

9. Recommendations

That the Council:

- (1) **receive** the report
- (2) **decide** whether to appoint a person to fill the vacancy created by the resignation of Councillor Irvine Yardley
- (3) if the vacancy is not to be filled, **resolve** that the vacancy not be filled and **instruct** officers to give public notice of that resolution
- (4) if the vacancy is to be filled, **resolve** to appoint a subcommittee comprising the Chairperson, Deputy Chairperson and two other councillors and delegate them authority to:
 - (i) determine an appropriate process or criteria for selecting a person to fill the vacancy; and
 - (ii) to undertake the process or apply the criteria to select a person for recommendation to the Council to fill the vacancy; and
 - (iii) to make a recommendation to the 20 April 2004 council meeting that the person selected be appointed to fill the vacancy
- (5) **resolve** that a Deputy Committee Chairperson be appointed by the Environment Committee..

Report prepared by:

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Chief Executive