

October 2013

THE CHAIRMAN OF LOCAL COUNCILS

Introduction

1. At the time of the annual election of the Chairman of a local council, NALC is often asked to advise whether a chairman who is standing for re-election to the chair may preside over the council whilst the election of the next chairman is taking place. When the re-election is contested the questions are:
 - does the chairman have a right to vote? and
 - if there is a tie, is the chairman able to give himself a casting vote?

The Legislation

2. The first business of a council at its annual meeting is to elect a chairman (sections 15(1) & (2) of the Local Government Act 1972) ('the 1972 Act'). If s.76 of the Local Government and Public Involvement in Health Act 2007 is ever brought into force (which at the date of publication of this Note seems unlikely), it will amend s.15 of the 1972 Act and require that the chairman (and any vice-chairman) of a council in England must be elected from amongst the elected (i.e. not co-opted or appointed) members of the council.
3. The Chairman of a council remains in office until his successor is elected, even though he has himself not been elected to the new council (s.15 (4) of the 1972 Act). The chairman of a council, if present, must preside at the meeting (paragraph 11 of schedule 12 to the 1972 Act). In practice, councillors may agree a process of nomination for the office of chairman before the annual meeting of the council. Such arrangements may be confirmed in a council's standing orders.
4. A chairman, like all other councillors, has an original vote (paragraph 39(1) of schedule 12 to the 1972 Act) but a chairman who has not been elected as a councillor in the new council does not have an original vote (s.15(2) of the 1972 Act).

5. Where there is an equality of votes in the election of a new chairman then the presiding chairman has a casting vote, whether he has an original vote or not (s.15(3) of the 1972 Act). The Chairman must use his casting vote to break an equality of votes (section 15(3) of the 1972 Act).
6. Model standing orders 5f-j on pages 184-185 in NALC's book "Local Councils Explained" (2013) incorporate the statutory provisions applicable to the election of the Chairman to a council.

Effect of the Legislation

7. If the retiring chairman is present in the council chamber, then he must take the chair. If he has been elected as a councillor for the new council then in the election of the new chairman:
 - he has an original vote but is not under a duty to cast it;
 - if there is an equality of votes the chairman has a casting vote which he must use to break the deadlock; and
 - there is no legal requirement that a chairman should use either his original or casting vote in any particular way. There is no legal prohibition against a chairman using either his original or his casting vote in his own favour.
8. If the retiring chairman has not been elected as a councillor for the new council then he must preside the meeting until the election of the new chairman is completed, and his successor appointed. The retiring chairman's duties include noting the members present/absent, receiving nominations and counting votes in the election of the new chairman but
 - he does not have an original vote; and
 - if there is an equality of votes then he has a casting vote which must use in order to break the deadlock.
9. The object of the statutory provisions is to ensure:
 - that there is always someone to preside over the council meeting; and
 - that the council can never be deadlocked since there is always a person with a casting vote which must be used.

10. It is sometimes claimed that it is unethical for a retiring chairman to use his original vote to vote for himself. Any such rule is a convention, not a rule of law and should, if followed, apply to all candidates for the chair.
11. It is also claimed, with rather more force, that it is unethical for a retiring chairman to use his casting vote to secure his own re-election. Again this is a matter of convention and not a rule of law. Various solutions have been proposed to avoid this ethical dilemma but all have the following disadvantages:
 - if the retiring chairman leaves the chamber he cannot preside at the meeting, cast his original or casting vote. Additionally, his opponents will be able to elect their supporter to preside giving them the benefit of the casting vote, if needed.
 - Both or all candidates for election leave the chamber. This can lead to deadlock in the election of someone to preside over the election.
12. Arrangements designed to influence the use of an original or a casting vote or to prevent a councillor from exercising a vote, can be agreed by a council but cannot be legally binding.
13. Whilst a council may make standing orders to regulate its proceedings these cannot over-ride statutory provisions (paragraph 42 of schedule 12 to the 1972 Act). A standing order which is inconsistent with the policy and objects of the Act is unlawful (*R v Flintshire CC ex parte Armstrong-brown* - *The Times* Feb 01). Since the Act clearly gives chairmen the power to exercise votes as they think fit, a council is not permitted to restrict those rights.

Welsh Community Councils

14. References to ss.15(1), (2), (3), and (4) of the Local Government Act 1972 and to paragraph 11 of schedule 12 should be replaced by references to ss.34(1), (2), (3), and (4) of the Local Government Act 1972 and to paragraph 27 of schedule 12 respectively. The provisions of paragraphs 39(1) and 42 of schedule 12 to the 1972 Act are applicable to local councils in both countries and make no distinctions between the position of parish councils in England and community councils in Wales. The proposed amendments to the 1972 Act by the Local Government and Public Involvement in Health Act 2007, as referenced in paragraph 2 above, do not apply to community councils in Wales.

Other Legal Topic Notes (LTNs) relevant to this subject:

| LTN | Title | Relevance |
|------------|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 1 | Councils Powers to discharge their functions | Confirms that discharge of local councils' functions cannot be by an individual councillor (including the Chairman of a council.) |
| 5 | Parish and Community Council Meetings | Refers to the role of the chairman in a meetings |

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