

APRIL 2018

LTN 2 | THE CHAIRMAN OF LOCAL COUNCILS

Introduction

1. Legislation concerning the election of a chairman of a local council provides that:
 - there is always someone to preside over a council meeting; and
 - the person presiding has a casting vote which must be used.
2. The relevant legislation is the Local Government Act 1972 (“the 1972 Act”). All references to sections and schedules in this Note are to the 1972 Act. NALC’s model standing orders 5e-i incorporate these statutory provisions.

The legislation

3. The first business of the annual meeting is to elect a chairman (England: ss.15(1) and (2); Wales: ss.34(1) and (2)).
4. The chairman of a council remains in office until his successor is elected, even when he has himself not been elected to the new council (England: s.15(4); Wales: s.34(4)). The chairman, if present, must preside at the meeting. If the chairman is absent from the meeting and the council has a vice-chairman who is present, he must preside at the meeting. If both the chairman and vice-chairman (if there is one) are absent from the meeting, a councillor chosen by council members present at the meeting presides. (England: paragraph 11 of schedule 12; Wales: paragraph 27 of schedule 12). 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.
5. The retiring chairman’s duties include noting the members who are present or absent, receiving nominations and counting votes in the election of the new chairman.
6. If the retiring chairman has been elected as a councillor and is present at the council meeting, then he must preside over the election of the new chairman:
 - the retiring chairman has an original vote but is not under a duty to cast it (paragraph 39(1) of schedule 12);

- if there is a tie, the retiring chairman has a casting vote (paragraph 39(2) of schedule 12) which he must use to break the deadlock (England:s.15(3); Wales s.34(3));
 - there is no legal prohibition against a retiring chairman using either his original or his casting vote to vote for himself.
7. If the retiring chairman has not been elected as a councillor for the new council then he must preside over the election of the new chairman:
- he does not have an original vote (England: s.15(2); Wales s.34(2));
 - if there is a tie then he has a casting vote which he must use to break the deadlock.(England:s.15(3); Wales s.34(3)).
8. It is sometimes claimed that it is unethical for a chairman standing for re-election to vote for himself. A council could decide that no candidate for chairman should vote for himself. However, such arrangements are unlawful and could not prevent a chairman (or any other councillor) from casting an original vote for himself or prevent a chairman from using the casting vote for himself.
9. Whilst a council may make standing orders to regulate its proceedings, they cannot override statutory provisions (paragraph 42 of schedule 12). A standing order which is inconsistent with the policy and objects of the 1972 Act is unlawful and since it clearly gives chairmen the power to exercise votes as they think fit, a council is not permitted to restrict those rights.

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 meeting
8	Elections	Explains the requirement for the chairman of a council to sign and deliver the acceptance of office form.