

Policy and Resources Committee	
Meeting Date	8 February 2023
Report Title	Procedure for appointing persons to inquorate parish councils under s91 of the Local Government Act 1972
EMT Lead	David Clifford
Head of Service	Head of Policy, Governance and Customer Services (Monitoring Officer)
Lead Officer	
Classification	Open
Recommendations	Policy and Resources committee is asked to: 1. Adopt the procedure for appointing persons to inquorate parish councils at Appendix I.

1 Purpose of Report and Executive Summary

- 1.1 Section 91 of the Local Government Act 1972 enables the district council to appoint by order persons to fill vacant seats on inquorate town and parish councils. This report introduces a draft procedure to be followed at Swale in making use of this power, and asks Policy and Resources committee to review and adopt this.

2 Background

- 2.1 There is no requirement on the district council to make use of the power at s91 of the 1972 Act, and in fact it has historically been rare in Swale that casual vacancies have caused town and parish councils to become inquorate. However, there has recently been an example of a parish council becoming inquorate and requesting Swale to appoint persons to restore the quorum. This process has now concluded satisfactorily, but it has highlighted the lack of an agreed procedure for undertaking this work.
- 2.2 The intention behind s91 of the 1972 Act has generally always been understood to be to enable persons to be appointed to inquorate councils in order that a quorate council can co-opt new members. Once a quorum is restored without the need for the appointed members, those appointed members are then generally expected to step down.
- 2.3 Section 2.8.4 of the Swale constitution provides the chief executive with delegated authority to make s91 orders, but as with any officer delegation, while the decision on whether and how to exercise the delegation is for the chief executive alone, she would not want to do this in a way which was not generally in accordance with members' preferences.

- 2.4 While the 1972 Act does not specify any particular category of person to be appointed, it is customary for the principal council to ask people who already have a democratic mandate in or close to the town or parish in question. This generally means that the members of the principal council (or both principal councils in two-tier areas such as Swale) are invited first. Recent experience of this process has suggested that a procedure for making appointments agreed in advance of a town or parish council becoming inquorate would be beneficial.

3 Proposals

- 3.1 The draft procedure at Appendix I provides some clarity around when and how the power at s91 of the 1972 Act will be exercised in Swale. The procedure covers the need to clarify how many seats fall to be filled, and then, most significantly, the order in which categories of persons will be invited to be appointed.
- 3.2 The order set out in paragraph 4 of the procedure is as follows:
1. Borough councillors representing the ward(s) in which the town or parish is located.
 2. Borough councillors representing ward(s) neighbouring those in which the town or parish is situated.
 3. All borough councillors, and all KCC councillors representing the division in which the town or parish is located.
 4. Town and parish councillors from towns and parishes neighbouring the inquorate town or parish.
- 3.1 The procedure then discusses how situations will be handled in which more persons from a given tier express a desire to be appointed than the number of seats to be filled, or in which there are no or insufficient volunteers from any of the four tiers. Finally, the procedure sets out what will happen with completed orders so as to ensure they are compliant with the requirements of the 1972 Act.
- 3.2 Policy and Resources committee is now ***recommended*** to review and adopt the procedure at Appendix I.

4 Alternative Options Considered and Rejected

- 4.1 The law does not specify how the powers in s91 of the 1972 Act should be used, so there is flexibility in terms of whether and how to make use of them. The council has not previously had a formal procedure, so a legitimate option would be to continue to do without one. However, recent experience of needing to make appointments under s91 has demonstrated that a procedure agreed in advance would be helpful to future such situations, so this do-nothing option has been rejected.

5 Consultation Undertaken or Proposed

- 5.1 The Swale local councils liaison forum brings town/parish council member representatives and clerks together with Swale's leader and chief executive to discuss matters of common interest. The liaison forum considered and endorsed the procedure at Appendix I at its November 2022 meeting.

6 Implications

Issue	Implications
Corporate Plan	The recommendation in this report supports the council's fourth corporate priority to 'renew local democracy and make the council fit for the future'.
Financial, Resource and Property	No implications identified at this stage.
Legal, Statutory and Procurement	The legal background and implications are set out in the body of the report. Principal councils are under no duty to make use of the power at s91 of the Local Government Act 1972, or to adopt any formal procedure for doing so.
Crime and Disorder	No implications identified at this stage.
Environment and Climate/Ecological Emergency	
Health and Wellbeing	
Safeguarding of Children, Young People and Vulnerable Adults	
Risk Management and Health and Safety	
Equality and Diversity	
Privacy and Data Protection	

7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
- Appendix I: Procedure for appointing persons to inquorate town and parish councils

8 Background Papers

- 8.1 There are no background papers.

SWALE BOROUGH COUNCIL

LOCAL GOVERNMENT ACT 1972

PROCEDURE FOR APPOINTING PERSONS TO INQUORATE TOWN AND PARISH COUNCILS

When a town or parish council within the borough of Swale becomes inquorate, the borough council may under s91 of the Local Government Act 1972 appoint persons by order to fill any or all of the vacant seats. Section 2.8.4 of the Swale constitution provides the chief executive with delegated authority to make such orders.

This note sets out how this authority will generally be exercised and the procedure to be followed when a town or parish clerk advises Swale that their town or parish council has become inquorate.

1. The monitoring officer will confirm that the town or parish council is inquorate and both (i) the number of seats to be filled to restore a quorum and (ii) the total number of vacant seats.
2. Swale is not under any obligation to appoint persons to fill vacant seats on town and parish councils. The chief executive will make a decision as to whether persons should be appointed, and if so the most desirable number of persons, in consultation with the council leader and the leader of the largest opposition group. This decision will have regard to the needs of the relevant town or parish and the recent history of the town or parish council, including the reasons for the recent vacancies.
3. The chief executive will invite persons to fill the number of seats they have determined should be filled. Persons appointed to town and parish councils by order under s91 of the 1972 Act do not need to meet the usual eligibility requirements for election or co-option to the town or parish council.
4. Persons will generally be invited in the following order. No further invitations will be issued once the number of seats to be filled has been reached. Any person invited may decline to be appointed. In the event that invitations to one tier of persons do not result in a sufficient number of persons willing to be appointed, invitations to the next tier of persons will be issued.
 1. Borough councillors representing the ward(s) in which the town or parish is located.
 2. Borough councillors representing ward(s) neighbouring those in which the town or parish is situated.
 3. All borough councillors, and all KCC councillors representing the division in which the town or parish is located.
 4. Town and parish councillors from towns and parishes neighbouring the inquorate town or parish.

5. In the event that invitations to a tier of persons result in more persons willing to be appointed than the number of seats to be filled, the chief executive will negotiate with all persons willing to be appointed in order to try to reduce the number. Where the number of persons to be appointed is less than the total number of vacant seats on the council, the chief executive may decide to appoint persons to fill seats up to the total number of vacant seats. The chief executive's decision on which persons within a given tier of persons will be appointed will be final.
6. In the event that invitations have been sent to persons in all four of the tiers listed in point (4) above and the number of persons to be appointed has not been reached, the chief executive may decide to appoint fewer persons as long as this restores the town or parish council to a quorum. Otherwise, the chief executive will consult with the council leader and the leader of the largest opposition group to determine which further persons should be invited to be appointed, or whether it would be preferable for the town or parish council to remain inquorate until the next election.
7. The chief executive will determine, in consultation with the council leader and the leader of the largest opposition group, whether any order appointing persons to the town or parish council should specify a date on which the appointment shall cease. In the alternative, the order will generally state that appointment(s) shall cease once sufficient eligible persons have been co-opted or elected to form a quorum.
8. The orders appointing persons to the town or parish council will be signed by the chief executive and sealed by the legal service. One copy of the order will be forwarded to the town or parish clerk, and two copies will be forwarded to the secretary of state for levelling up, housing and communities (or their successor in the event that the name of the department changes), in accordance with s91(3) of the 1972 Act.