

Milly Southworth

From: Torpoint Town Council <admin@torpointtowncouncil.gov.uk>
Sent: 15 August 2022 13:06
To: 'Milly Southworth'
Subject: FW: NALC Legal Update – August 2022

Kind regards,

Danielle

Danielle Argrave
Torpoint Town Council Support Officer

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From: Isabelle Risner <Isabelle.Risner@cornwall.gov.uk> **On Behalf Of** CornwallALC Enquiries
Sent: 12 August 2022 15:42
To: CornwallALC Enquiries <enquiries@cornwallalc.org.uk>; Sarah Mason <Sarah.Mason@cornwall.gov.uk>
Subject: FW: NALC Legal Update – August 2022

Information Classification: CONTROLLED

Dear All -

Please find below a Legal Update issued by the NALC Legal Team today -

Kind regards

Isabelle Risner

From: Legal Team at NALC. <legal@nalc.gov.uk>
Sent: 12 August 2022 15:29
To: Legal Team at NALC. <legal@nalc.gov.uk>
Subject: NALC Legal Update – August 2022

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To county associations
To One Voice Wales

NALC Legal Update – August 2022

We hope you have managed to endure the recent heatwaves and you have found or will be finding time for well-earned holidays. Within the legal team we will at lower capacity this month because of holidays. This may mean we will not be able to turn around urgent requests for advice as quickly.

40C heat – cancellation of council meetings?

We were asked last month on the afternoon of the hottest day of the year (so far) if a council meeting had to go ahead later that evening, with the likely temperature to still be well into the 30s. Councillors were keen to postpone because of the heat and the anticipated conditions in the room. The clerk believed that a council meeting must go ahead once the summons has been sent/ notice requirements complied with.

We confirmed that the clerk's view was correct; once a council meeting has been called it cannot be cancelled. There are no exceptions. Our practical suggestion was that members did not attend but for the chair who would then declare the meeting inquorate and adjourn it. A new date could be set at a future date.

Resignation by email – copying in the chair?

We were recently asked about the validity of a councillor's resignation. The councillor concerned had emailed his resignation to the clerk, copying in the chair to his email. S.84 (1) (c) of the Local Government Act 1972 provides that a person elected to any office under the 1972 Act may at any time resign their office by written notice delivered in the case of a parish or community councillor, to the chairman of the parish or community council.

Our view was that this was a resignation, even given the potential grey area. The email (the written notice for the purpose of s.84) went to the chair even though it also went to the clerk.

Co-opting non-councillors to committees - qualification criteria

The question came up recently of whether the residency councillor qualification criterion under s.79 of the 1972 Act applies to non-councillor members of committees. The answer is contained within Legal Topic Note 7 (reissued last month). The qualification provisions in s.79 do not apply to non-councillor members of committees.

Transfer of allotments

In a question posed to us recently, a new parish council had acquired assets previously belonging to another authority. An order set out the assets that transferred to the new parish council. Allotments were not listed but were in the council's area. Had they passed and was the new parish council liable? The answer is that the allotments transferred to the parish council upon its creation despite the fact they were not mentioned in the order. Under Regulation 10 of the Local Government (Parishes and Parish Councils) Regulations 1999, where immediately before the order date land in an area constituted as a parish by an order (a) is held by a district council for any purpose of the Allotments Acts 1908 to 19501 or (b) is vested in a district council and used for those purposes, it shall on the order date transfer to and be vested in the parish council for that parish or, if there is no such council, the parish meeting for that parish.

Co-opting councillors

We have had a couple of queries after reissuing LTN 8 on the position of co-opting candidates where there are an equal number of candidates and vacancies. Essentially it is our longstanding view and position as set out in LTN 8 that a council cannot decide not to co-opt a person where there are the same number of vacancies as candidates and the persons are not disqualified from being councillors. Rule 5 of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 also states that the parish council must, as soon as practicable after the expiry of the period of 14 days for seeking an election, co-opt a person to fill the vacancy. The definition of practicable is "able to be done" and therefore it is practicable to fill a vacancy as soon as there is a qualified candidate.

Recent activity

Since June's legal update we updated and reissued LTN 8 and LTN 7 to take account of the new disqualifications for specific sexual offences. Last week we refreshed and reissued LTN 40. We have also drafted updates to LTNs 5 and 8 for Wales only, which will be called LTN 5W and 8W.

LTN user survey

We would like to gain more of an understanding of council/ county association LTN use. We can measure website hits, but we are conscious that will not tell us the whole picture. With that in mind, we will be sending out a member survey after summer. The purpose of the survey is not to seek comments or views on content, but rather to help us understand which LTNs are more useful and popular, and those that are rarely being read. Watch this space and we hope as many of you as possible will respond.

With best regards,

NALC Legal

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