

August 2012

NON-COUNCILLOR MEMBERS OF COMMITTEES

Introduction

1. This Legal Topic Note outlines the circumstances in which local councils may invite non-councillors to sit on council committees. Non-councillors may be invited to sit on two different types of committee:
 - Committees set up to discharge the functions of a council are obliged to include at least one councillor (pursuant to section 102(3) of the Local Government Act 1972) ('the 1972 Act'); and
 - Advisory committees (pursuant to s. 102(4) of the 1972 Act) known sometimes as working parties/groups/panels may be set up to advise a council in any matter relating to the discharge of their functions. Such committees may be wholly comprised of persons who are not members of the council. In practice and dependent on their terms of reference, advisory committees are usually comprised of both councillors and those who are not members of the council.
2. The topic of working parties/groups/panels is further documented in Legal Topic Note 1 (Councils' Powers to Discharge their Functions).

What is the power?

3. s.102(3) of the 1972 Act provides that a local council can appoint persons who are not its members to committees and sub-committees (including joint committees and sub-committees) .

Does the power apply to all committees?

4. The power is drafted very broadly and applies to a council's committees and sub-committees (including joint committees and sub-committees) **other than:**

'A committee for regulating and controlling the finance of the local authority or of their area.'

Disqualification

5. S.102 (3) of the 1972 Act provides that a person can be appointed as a non-councillor member of a committee unless they have been disqualified pursuant to s.104 of the 1972 Act. S.104 confirms that a person is disqualified if he would be disqualified from being elected or being a member of a local authority pursuant to Part V of the Act. S. 80 of the 1972 Act sets out the circumstances in which a person is disqualified from being a member of a council. In summary, a non-councillor cannot sit on a committee if he or she:
- holds any paid office or employment (other than the office of chair, vice chair or deputy chair) to which he has been appointed by the council or any committee or sub-committee of the council, or by a paid officer of the council, or by any joint committee on which the council is represented; or
 - is the subject of a bankruptcy restrictions order or interim bankruptcy order; or
 - has within five years before the day of election, or since his election, been convicted in the UK, Channel Islands or Isle of Man of any offence and has had passed on him a sentence of imprisonment of at least three months (whether suspended or not) without the option of a fine; or
 - has been found guilty of corrupt or illegal practices or was responsible for incurring unlawful expenditure and the court orders his disqualification.
6. Further details in respect of the disqualification of persons who can be elected as councillors (and, by virtue of s. 102(3), non-members) are set out in Legal Topic Note 8 (Elections).

Qualification

7. Persons wishing to become councillors may only do so if they meet the qualification requirements set out in s. 79 of the 1972 Act (also set out in detail in Legal Topic Note 8 (Elections)). These qualification provisions, however, do **not** apply to non-councillor members of committees.

Voting Rights

8. By virtue of s. 13 of the Local Government and Housing Act 1989, non-councillor members of committees and sub-committees do not have voting rights except in respect of 4 council functions. By virtue of Article 3 of The Parish and Community Councils (Committees) Regulations 1990 (SI 1990/2476), non-councillor members of committees have voting rights in respect of:
- the management of land owned or occupied by the council;
 - the functions of the council as a harbour authority (as defined in s. 57(1) of the Harbours Act 1964);

- any function under s. 144 of the 1972 Act relating to the promotion of tourism; and
- any function under s. 145 of the 1972 Act relating to the management of a festival.

Code of Conduct

9. In England a local council has a duty, under s. 27(2) of the Localism Act 2011 ('the 2011 Act'), to adopt a code of conduct. In Wales a council has a duty, under s. 51 of the Local Government Act 2000 ('the 2000 Act'), to adopt a code of conduct. Non-councillor members of a committee are subject to the code of conduct that has been adopted by the local council. Non-councillors are referred to in both the 2000 Act and 2011 Acts as 'co-opted members' if they are entitled to vote on any question which falls to be decided at any meeting of the committee or sub-committee.
10. Legal Topic Note 80 (Members' conduct and the registration and disclosure of their interests (England)) provides guidance about the obligations of councillors and non-councillors in England.

Other Provisions

11. Non-councillor members of committees will be required to comply with the council's standing orders and will have the same rights as members of the public to attend meetings of the council or other committees of which they are not members. This applies to all non-councillor members of committees – even where they are councillors of other authorities.

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

LTN	Title	Relevance
1	Councils' Powers to Discharge their Functions	Explains the different ways councils can discharge their functions – including the use of committees, sub committees, advisory committees (otherwise known as working groups and panels).
5	Parish, Town and Community Council meetings	Explains law and procedure of committee meetings.
8	Elections	Sets out the power to co-opt persons onto a local council and explains the circumstances in which non-councillors will be unable to sit on committees.

80	Members' conduct and the registration and disclosure of their interests (England)	Details councillor and non-councillor obligations under the Localism Act 2011
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