

21 JULY 2022

LTN 7 | NON-COUNCILLOR MEMBERS OF COMMITTEES

Introduction

1. This Legal Topic Note outlines the circumstances in which local councils may appoint non-councillors to council committees and sub-committees. Non-councillors may be appointed to different types of committees:
 - a. Committees and sub-committees are appointed to discharge the functions of a council. However, such committees and sub-committees must include at least one councillor (section 102 (3) of the Local Government Act 1972) (“the 1972 Act”); and
 - b. Advisory committees and sub-committees that are appointed advise a council in any matter relating to the discharge of their functions (pursuant to section 102 (4) of the 1972 Act). Advisory committees and sub-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. Councils often refer to advisory committees and sub-committees as working parties/groups/panels. The NALC view is that such groups still have the status of council committees or sub-committees.
2. There is additional guidance about advisory committees in Legal Topic Note 1 (Councils’ Powers to Discharge their Functions).

What is the power?

3. Section 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 in section 102 (3) 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.

Why appoint non-councillors?

5. Non-councillor members may be appointed to a committee or sub-committee because they can offer specialist knowledge or expertise in the work of the committee or sub-committee or because they represent sections of the local community that are relevant to the work of the committee or sub-committee. For example, an open spaces or recreational facilities committee may include non-councillors representing local sports clubs or schools.

What disqualifies non-councillors from being appointed as committee members?

6. Section 102 (3) of the 1972 Act provides that a person can be appointed as a non-councillor member of a committee or sub-committee unless they have been disqualified pursuant to section 104 of the 1972 Act. Section 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 1972 Act. Section 80 of the 1972 Act sets out the circumstances in which a person is disqualified from being a council member in England. In summary, a non-councillor cannot sit on a committee if they:
 - a. hold any paid office or employment (other than the office of chair, vice-chair or deputy chair) to which they have 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
 - b. are the subject of a bankruptcy restrictions order or interim bankruptcy order; or
 - c. have within five years before the day of the election, or since their 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
 - d. have been found guilty of corrupt or illegal practices or were responsible for incurring unlawful expenditure and the court orders their disqualification.
 - e. Are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (section 81A of the 1972 Act, in England) – see Legal Topic Note 8 (Elections).
7. Further details in respect of the disqualification of persons who can be elected as councillors (and, by virtue of section 102 (3), non-members) are set out in Legal Topic Note 8.

What are the qualification requirements?

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

Do non-councillor committee members have voting rights?

9. By virtue of section 13 (1) and (7) of the Local Government and Housing Act 1989 (“the 1989 Act”), non-councillor members of committees and sub-committees do not have voting rights. There are five important exceptions to this rule.
10. Sections 13 (3) and (4)(e) of the 1989 Act confirm that non-councillor members of advisory committees and sub-committees have voting rights.
11. Regulation 3 of The Parish and Community Councils (Committees) Regulations 1990 confirms that non-councillor members of committees and sub-committees have voting rights in respect of:
 - a. management of land owned or occupied by the council.
 - b. the functions of the council as a harbour authority (as defined in section 57(1) of the Harbours Act 1964).
 - c. function under section 144 of the 1972 Act relating to the promotion of tourism, and
 - d. any function under section 145 of the 1972 Act relating to the management of a festival.

The term “management” does not include making decisions about the total amount of money which may be spent by the council in a financial year in respect of land or a festival.

Are non-councillors committee members subject to the council’s code of conduct?

12. In England, a local council has a duty to adopt a code of conduct (section 27 (2) of the Localism Act 2011). In Wales, a council has the same duty (section 51 of the Local Government Act 2000). The non-councillor members of a committee or sub-committee are subject to the council’s code of conduct if they are entitled to vote on any question which falls to be decided at any committee meeting or sub-committee.
13. 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 matters

14. 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 that can discharge their functions – including the use of committees, sub-committees, advisory committees.
5	Parish and community council meetings	Explains the statutory and other requirements for committee and sub-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)	Explains the provisions of the Localism Act 2011.