

Part 8

Proper Officer Provisions & Definitions

THE PROPER OFFICER PROVISIONS

1. The Chief Executive of the Council (or such other 'proper officer(s)' nominated by him/her in the event of him/her being absent or otherwise unable to act) is the 'proper officer' in relation to:-
 - (a) any reference in any enactment passed before, or during the 1971-72 session of Parliament, other than the Local Government Act, 1972, or in any instrument made before 26th October, 1972, to the Clerk of a Council which by virtue of any provision of the said Act is to be construed as a reference to the 'proper officer' of the Council.
 - (b) any reference in any local statutory provision to the Clerk of a specified Council, which, by virtue of any Order, is to be construed as a reference to the 'proper officer' of the Council.
 - (c) the Constitution.
2. In the Local Government Act, 1972, the following 'proper officer' provisions shall apply:-

Section of Act	Proper Officer's Functions	Proper Officer	Substitute
13(3)	Parish Trustee	Chief Executive	Corporate Director
83(1) to (4)	Witness and receipt of Declarations of Acceptance of Office	Chief Executive	Member Services Manager
84	Receipt of Declaration of Resignation of Office	Chief Executive	Member Services Manager
88(2)	Convening of Meeting of the Council to fill casual vacancy in the office of Chairman	Head of Law & Governance	Member Services Manager
89(1)(b)	Receipt of notice of casual vacancy from two local Government electors	Head of Law & Governance	Member Services Manager
96)1)	Receipt of notices of pecuniary interest	Head of Law & Governance	Member Services Manager
92(2)	Keeping records of disclosures of pecuniary interests under Section 94 and of notices under Section 96(1)	Head of Law & Governance	Member Services Manager

Section of Act	Proper Officer's Functions	Proper Officer	Substitute
115(2)	Receipt of money due from Officers	Finance Director	Accountancy Manager
146(1)(a)	Declarations and certificates with regard to securities	Finance Director	Accountancy Manager
151	Overall responsibility for the proper administration of the Council's financial affairs including the provision of a continuous internal audit	Finance Director	Accountancy Manager
191	Functions with respect to ordnance survey	Head of Law & Governance	Printing and Graphic Design Manager
204(3)	Receipt of application for Licence under Schedule 2, Licensing Act, 1964 (replaces Clerk to Rating Authority)	Corporate Director	Head of Building Services
212(1) & (2)	Proper Officer to act as Local Registrar for Land Charges Act, 1925 ('proper officer' for this section as defined by Section 19 of that Act)	Head of Law & Governance	Member Services Manager
225(1)	Deposit of documents	Head of Law & Governance	Member Services Manager
228(3)	Accounts of 'any proper officer' to be open to inspection by any member of the authority	Finance Director	Accountancy Manager
229(5)	Certification of photographic copies of documents	Head of Law & Governance	Member Services Manager
234(1) & (2)	Authentication of documents	Head of Law & Governance	Member Services Manager
236(9)	To send copies of Byelaws for Parish records	Head of Law & Governance	Member Services Manager
236(10)	To send copies of Byelaws to the County Council	Head of Law & Governance	Member Services Manager

Section of Act	Proper Officer's Functions	Proper Officer	Substitute
238	Certification of Byelaws	Head of Law & Governance	Member Services Manager
248	Keeping Roll of Freeman	Head of Law & Governance	Member Services Manager
39	Registration of Electors	Chief Executive	
Sch.6 Para. 1	Deputy to Registration Officer (amendment made in Section 41(4)(a) of the Representation of the People Act, 1949)		Democracy Manager
Sch.12 Para. 4(2)(b)	Signature of summonses to Council Meetings	Chief Executive or nominee	Corporate Director or nominee
Para.4(3)	Receipt of notices regarding address to which summonses to Meetings is to be sent	Chief Executive or nominee	Corporate Director or nominee
Sch.14 Para.13	For the purpose of Sections 152(1), 157, 158(1) and 163(1) of the Public Health Act, 1936	Corporate Director	Director of Public Health of the North Essex Health Authority
Para.25(7)	Certification of Resolutions under para. 25 of Schedule 14	Head of Law & Governance	Member Services Manager
Sch.16 Para.28	Receipt of deposit of lists of protected buildings (Section 54(4) of the Town and Country Planning Act, 1971)	Corporate Director	Development Control Manager
Sch.21 Para.66(1)	Consultation of District Council, where improvements of private street to include sewerage (Section 174(2) of the Highways Act, 1959)	Corporate Director	Head of Environment

3. Local Government (Miscellaneous Provisions) Act 1976 – Section 44 - Evidence of resolutions and minutes of proceedings, etc – proper

officer to be the Head of Law & Governance or his/her nominee.

4. Housing Act 1985 – Section 64 and Housing Act 1996 – Notices under Part VII and relevant Regulations – proper officer to be Head of Housing Services or his/her nominee.

5. For dealing with environmental and personal health matters, and the serving of appropriate statutory notices, the ‘proper officer’ shall be the Corporate Director or his/her nominee.

Section of Act	Proper Officer’s Functions	Proper Officer	Substitute
78 (Building Act 1984)	To take immediate action to remove or make safe a dangerous structure and subsequently to recover costs	Corporate Director	Head of Building Services/Senior Area Building Control Manager/Area Building Control Manager

The Local Government Finance Act 1977

Section of Act	Proper Officer’s Functions	Proper Officer	Substitute
114(2) and (3)	To take the appropriate action concerning any unlawful expenditure	Finance Director	Accountancy Manager

The Local Government and Housing Act 1989

Section of Act	Proper Officer’s Functions	Proper Officer	Substitute
4	To be the Head of Paid Service	Chief Executive	Corporate Director
5	To be the Monitoring Officer	Head of Law & Governance	Governance Lawyer

DEFINITIONS

Certain provisions of the Local Government Act 1972, the Local Government and Housing Act 1989 and the Local Government Act 2000 affect the meetings and proceedings of local authorities. Statutory references are printed in italics. It should be noted that these

paragraphs have statutory force and cannot be suspended or amended by the Council.

1. Definitions - In the Constitution unless the context demands, the following items have the meaning assigned to them:-

“Authority” – the Braintree District Council acting by means which it may lawfully adopt;

“Chief Officer” – a statutory or a non-statutory chief officer as defined in Section 2 of the Local Government and Housing Act 1989;

“Committee” - A Committee of the Authority;

“Council” – the Braintree District Council acting by the Council;

“Employee” - an employee of the Authority or the holder of a paid office under the Authority other than the Chairman, Vice-Chairman and any local Officer of dignity appointed by the Authority under powers conferred by a Royal Charter;

“Head of the Authority’s Paid Services” - the person designated as such under Section 4 of the Local Government and Housing Act 1989;

“Leader of the Council” - if there is a majority group among the Members of the Council, the Leader of that Group; otherwise, such person as the Council may so designate by resolution;

“Cabinet Member” and “Cabinet Members” – if there is a majority group among the Members of the Council the person or persons designated as such by the majority group as having a defined area of responsibility; otherwise such person or persons as the Council may so designate by resolution;

“Majority Group” - a Political Group to which belong either;

- (i) more than half of the Members of the Council; or
- (ii) exactly half of the number of Members of the Council, including the Chairman of the Council;

“Meeting” - a meeting of the Council, a Committee or a Sub-Committee, as the case may be;

“Member” - in relation to the Council, the Cabinet, a Member of the Council; in relation to the Cabinet, any Committee or Sub-Committee a person appointed as a Member of that Committee or Sub-Committee, whether or not entitled to vote;

“Monitoring Officer” - the person designated under Section 5 of the Local Government and Housing Act 1989 (designation and reports of Monitoring Officer) or, if that person is unable to act owing to absence or illness, the person nominated as his/her deputy under Sub-Section (7) of that Section;

“Person Presiding” – the person entitled, or appointed, to preside at any meeting;

"Plan" or "Strategy" - the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001

“Proper Officer” - the person designated as such by the Authority;

“Sub-Committee” - a Sub-Committee of a Committee;

“the Whole Number of Members” - in relation to the Council, the total number of persons who may become Members of the Council, disregarding any person who is a Member of the Council only by virtue of Sections 3(3) and 5(2) of the Local Government Act 1972 (Chairman and Vice-Chairman to remain Members until replaced);

“Without Comment” - in relation to the moving, seconding or putting of a motion, without any person speaking except to indicate the wording of the motion, the fact that it is being moved, seconded or put or (in the case of the person presiding) the effect of adopting the motion.

"Working Day" - any day which is not a Saturday, a Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in England or a day appointed for public thanksgiving or mourning (and "bank holiday" means a day to be observed as such under Section 1 of and Schedule 1 to the Banking and Financial Dealings Act 1971).

2. Unless the context otherwise requires, the singular includes the plural and the plural includes the singular.
3. Any reference in rules and procedures to a numbered paragraph is, unless the context otherwise requires, a reference to the paragraph of that rule/procedure bearing that number.