

Co-option Procedure Policy

Filling vacancies in the office of Parish Councillor

Status	Adopted
Replaces	Co-option Procedure Policy adopted 7 October 2024, minute ref 24/124vi
Reason for revision	Scheduled review falling due May 2026, together with corrections required to bring the Policy into line with statute
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Author	Mrs Angie Hurren BEM, Clerk and Responsible Financial Officer
Next review	September 2030, or earlier if legislation or Standing Orders change

1. Introduction and scope

1.1 This Policy sets out the procedure Broadclyst Parish Council will follow when filling a vacancy in the office of Parish Councillor by co-option. It applies both to a casual vacancy arising during a term of office and to a seat left unfilled for want of candidates at an ordinary election.

1.2 The Policy is intended to secure a process that is lawful, consistent, transparent and open to all eligible residents, and to record that process in a form that can properly be disclosed under the Freedom of Information Act 2000.

1.3 This Policy does not, and cannot, restrict the discretion of any individual councillor in casting their vote. Co-option is a decision of the Council taken by vote at a meeting, and each member votes according to their own judgement.

1.4 The Council is not obliged to co-opt any particular applicant, and is not obliged to select anyone from those who apply. Where the Council is not content to co-opt any of the applicants, the vacancy remains and paragraph 6.18 applies.

1.5 Councillors may draw a vacancy and this Policy to the attention of any person who may be qualified, and the Council will actively seek and encourage applications from those eligible to serve.

1.6 Where a person offers an inducement of any kind in connection with co-option, the Council will not co-opt that person and the matter will be recorded in the minutes. The Council has no power to disqualify a person from office; disqualification is a matter of statute alone.

2. Legal framework and timeline

Casual vacancy arising during a term of office

2.1 A casual vacancy arises where a councillor resigns, dies, becomes disqualified, fails to deliver a declaration of acceptance of office within the statutory period, or ceases to be a member by reason of failure to attend for six consecutive months without the Council's approval. Section 87 of the Local Government Act 1972 governs the date on which the vacancy is treated as occurring.

2.2 On a casual vacancy arising, the Clerk as Proper Officer will notify East Devon District Council's Electoral Services team¹ and will give public notice of the vacancy in accordance with section 87(2) of the Local Government Act 1972. The duty to give public notice rests with the Council, not with the District Council. The notice will be displayed on the Council's noticeboards and published on its website.

2.3 Under rule 5(2) of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006, an election to fill the vacancy may be requested in writing by ten persons registered as local government electors for the electoral area in which the vacancy has occurred. Any such request must be made to the Proper Officer of East Devon District Council within fourteen days after public notice of the vacancy has been given, that period being computed in accordance with rule 2 of the elections rules in Schedule 2 to those Rules.

2.4 Where a valid request is made, and the vacancy has not occurred within six months before the day on which the councillor concerned would regularly have retired, a by-election must be held (rule 5(3)). The Council has no discretion in the matter, and the costs of the poll fall to the Council.

2.5 Where no valid request is made, the Council must co-opt a person to fill the vacancy as soon as practicable after expiry of the fourteen day period (rule 5(5)). On receipt of written confirmation from East Devon District Council's Electoral Services team that the vacancy may be filled by co-option, the Clerk will advise the Council that this Policy has been instigated and will initiate the advertisement process.

2.6 Where the vacancy occurs within six months before the day on which the councillor would regularly have retired, the Council may co-opt but is not obliged to do so (rule 5(6)). In that case the Council will resolve at its next meeting whether to co-opt. Any vacancy not so filled is filled at the next ordinary election.

Seat unfilled at an ordinary election

2.7 Where fewer candidates are validly nominated at an ordinary election than there are seats to be filled, those validly nominated are elected without a contest under section 21 of the Representation of the People Act 1985.

2.8 Where the members so elected constitute a quorum, being three members or one third of the total number of seats, whichever is the greater, the Council may co-opt to fill the remaining seats. Where they do not constitute a quorum the Council cannot co-opt, and the Clerk will seek the direction of East Devon District Council.

2.9 There is no statutory requirement to advertise a vacancy arising in this way, but the Council will do so, following the process at section 3 of this Policy.

2.10 Where the power of co-option is not exercised within thirty-five days of the day that would have been the polling day, that period being computed by excluding Saturdays, Sundays, Christmas Eve, Christmas Day, Good Friday, bank holidays and days appointed for public thanksgiving or mourning, the principal authority has reserve powers to do what is necessary to constitute the Council properly, including making direct appointments or directing a further election.

Term of office and timing

2.11 A person co-opted under this Policy holds office only until the next ordinary elections of parish councillors, and not for a fresh four-year term.

¹ Or the Unitary equivalent

2.12 The duty at paragraph 2.5 is qualified by the words “as soon as practicable”. The Council may therefore defer co-option to a later meeting where there is a proper reason for doing so, including the need to adopt or revise the procedure to be applied. Where co-option is deferred, the Council will record in the minutes the date on which the fourteen day period expired, the confirmation received from East Devon District Council, the reason for the deferral, and the date fixed for co-option.

3. Advertisement

3.1 The Clerk will publish an advert within one calendar month of receipt of the written notification from East Devon District Council.

3.2 The advertisement will be published on the Council's noticeboards and website and through its social media channels. Where the timing of publication allows it will also appear in Broadsheet, and it may be shared with local partners and community groups.

3.3 The advertisement will state the number of vacancies, the eligibility criteria, how to apply and where the application form and supporting information may be obtained, a contact point for further information, the closing date for applications, the date of the meeting at which co-option will be considered, and that the meeting will be open to the public.

3.4 The closing date will fall between fourteen and thirty days after the date of the advertisement, and will normally be at least five working days before the meeting at which co-option is to be considered. That deadline is administrative rather than statutory. The Council may accept a late application where it is satisfied that doing so will not unfairly prejudice other applicants and that all members will have adequate time to consider it; any decision to do so will be recorded in the minutes.

3.5 A vacancy gives the Council an opportunity to consider the range of skills, experience and local knowledge among its members, and the advertisement may say what the Council would find useful. The absence of any particular skill or experience is not a bar to co-option. No criterion other than the statutory requirements at paragraphs 4.3 to 4.5 may operate as a requirement, and Appendix A is not to be treated as a set of criteria against which applicants are assessed.

3.6 Candidates are encouraged to contact the Clerk before applying for further information about the Council, its current priorities and its working arrangements.

3.7 Where the Council defers co-option to a later meeting under paragraph 2.12, it is not necessary to re-advertise the vacancy or to invite fresh applications. Applications already received stand, subject to the applicant confirming that they still wish to be considered and completing any supplementary declaration the Clerk requires in order to complete the eligibility check as at the date of co-option.

4. Eligibility and the application process

4.1 The Council will make available on its website, and in hard copy on request, information about the role of Parish Councillor, an overview of the Council and other relevant guidance. Appendix A to this Policy describes what the role involves.

4.2 Applications must be made on the Council's Councillor Application Form, which is published alongside this Policy, and returned to the Clerk by the published closing date.

Qualification

4.3 Under section 79(1) of the Local Government Act 1972, a person is qualified to be a member of the Council if, on the relevant day, they are aged eighteen or over, are a qualifying Commonwealth citizen, a

citizen of the Republic of Ireland, or a qualifying citizen of the European Union, and satisfy at least one of the following:

- they are registered as a local government elector for the parish;
- they have during the whole of the preceding twelve months occupied as owner or tenant any land or other premises in the parish;
- their principal or only place of work during the whole of the preceding twelve months has been in the parish; or
- they have during the whole of the preceding twelve months resided in the parish or within three miles of it.

For co-option, the relevant day is the day on which the Council co-opts, and the twelve month qualifying periods run to that day rather than to the date of application.

Note. The rights of European Union citizens to stand for local office were amended by the Elections Act 2022 and now depend on the citizen's individual circumstances and country of nationality. Where a candidate's qualification turns on European Union citizenship, the Clerk will seek confirmation from East Devon District Council's Electoral Services team before reporting on eligibility.

Disqualification

4.4 Under section 80 of the Local Government Act 1972, a person is disqualified from being elected to or being a member of the Council if they:

- hold any paid office or employment under the Council, or under any joint committee or board on which the Council is represented;
- are the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order, a debt relief restrictions order or an interim debt relief restrictions order;
- have, within the five years preceding the day of co-option, been convicted of an offence and sentenced to a term of imprisonment of three months or more, whether suspended or not, without the option of a fine; or
- are disqualified under Part III of the Representation of the People Act 1983 in connection with corrupt or illegal practices.

A person is also disqualified under section 81A of the Local Government Act 1972, inserted by the Local Government (Disqualification) Act 2022, if they are subject to a relevant sexual offences notification requirement or a relevant order. That disqualification applies only in respect of requirements or orders made on or after 28 June 2022.

4.5 Qualification and disqualification are matters of objective law. They are not within the Council's discretion, and the Council cannot co-opt a person who is not qualified or who is disqualified.

Role of the Clerk

4.6 The Clerk's role in the co-option process is confined to administration and to an objective check of eligibility. The Clerk does not assess, rank, shortlist or comment upon the relative merits of applicants, and does not advise members on how to vote.

4.7 On receipt of each application the Clerk will complete the Council's Clerk's Eligibility Check Proforma and will record one of three determinations: eligible, not eligible, or unable to determine. Where the determination is that the applicant is not eligible, or that eligibility cannot be determined, the Clerk will

record the reason, notify the applicant, and give the applicant a reasonable opportunity to provide clarification before the report to Council is finalised.

4.8 The Clerk will report to Full Council the name of each applicant and the eligibility determination only.

Circulation and invitation

4.9 The Clerk will circulate the applications of all eligible applicants to all members, in full, in the same form and at the same time, and in any event at least three clear days before the meeting.

4.10 Members will use applications only for the purpose of the co-option decision and will not circulate them further. The Council cannot, however, treat applications as confidential in a manner that overrides its obligations under the Freedom of Information Act 2000; the position is set out at section 10 of this Policy, and applicants are informed of it before they apply.

4.11 All eligible applicants will be invited by email to attend the meeting, and will be sent the agenda for that meeting together with the Council's adopted Code of Conduct, Standing Orders and Financial Regulations. They will be told that they will be invited to speak in support of their application.

4.12 Where an applicant is unable to attend, their application will still be considered in their absence unless it has been withdrawn, and they will be considered on the same basis as an applicant who attends. No alternative date or time for the meeting will be arranged.

5. Consideration by Full Council

5.1 Co-option will be considered by Full Council in open session, under a specific agenda item. The Council will not exclude the press and public from this item. Exclusion under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 requires a resolution stating the reason, and the Council does not consider that the confidential nature of the business, or any other special reason, can properly be relied upon in relation to a decision as to who should join the Council as an elected member.

5.2 Each applicant present will be invited, in an order determined by lot, to address the Council for a period not exceeding three minutes. Where the number of applicants is such that three minutes each would be disproportionate, the Council may resolve at the start of the item to reduce that period, provided the reduced period is applied equally to every applicant. Applicants may remain in the room throughout the item.

5.3 Where members wish to put questions, the same questions will be put to each applicant, and the Chairman will ensure that each applicant has an equal opportunity to respond. Questions must relate to the applicant's interest in and suitability for the office and must not touch upon any protected characteristic under the Equality Act 2010, nor upon an applicant's personal circumstances save so far as the applicant has volunteered them.

5.4 Once all applicants have been heard, members will consider the applications and what they have heard, and the Council will proceed to nomination and voting in accordance with section 6.

5.5 The Council will not use a scoring matrix, weighted criteria, a person specification or any other numerical or graded assessment of applicants. Co-option is not an appointment to employment. It is an election by the members of the Council, in which each member exercises an individual discretion that cannot lawfully be fettered by a scheme of marking adopted in advance. A member who wishes to make notes to assist their own consideration may do so; such notes are the member's own, are not to be submitted to the Clerk, do not form part of the Council's records, and should be destroyed at the conclusion of the item.

6. Nomination and voting

Meaning of absolute majority

6.1 In this Policy, an absolute majority means a majority of the members present and voting. That construction follows paragraph 39(1) of Schedule 12 to the Local Government Act 1972, under which all questions coming or arising before a local authority are decided by a majority of the members of the authority present and voting (rounded up).

Preliminary motion

6.2 Before nominations are taken, a motion that the Council proceed to co-opt to the vacancy will be moved, seconded and put to the vote. Where that motion is not carried, no applicant is co-opted and paragraph 6.18 applies. Members should have in mind that the Council is under a duty to co-opt as soon as practicable, and that a decision not to proceed should be taken only where the Council is not content to co-opt any of the applicants. The reason will be recorded in the minutes.

Order of business where there is more than one vacancy

6.3 Each vacancy will be dealt with by a separate sequence of nomination and voting, taken in turn. The Council will not take a single composite vote to fill two or more seats, and members do not have one vote per vacancy.

Nomination

6.4 For each vacancy the Chairman will invite nominations. A person becomes a candidate for that vacancy only where a motion that they be co-opted to it has been moved by one member present and seconded by another. This reflects the general rule in Standing Order 4(b) that a motion shall not be progressed unless it has been moved and seconded, and it gives effect to Standing Order 8, which operates by reference to the persons nominated.

6.5 A member may move or second the nomination of any number of applicants. Moving or seconding a nomination is not a vote for that applicant and does not commit the member to vote for them.

6.6 Nominations are taken after all applicants who wish to speak have been heard, so that members nominate with the benefit of everything said at the meeting.

6.7 The names of those nominated, and of the proposer and seconder of each nomination, will be recorded in the minutes.

6.8 An eligible applicant who is not nominated is not a candidate for that vacancy and does not go forward to the vote. Nominations are taken afresh for each vacancy, so that an applicant not nominated for one vacancy may be nominated for another, as may an applicant struck off during the voting for an earlier vacancy. Any person already co-opted at that meeting is excluded.

6.9 Applicants are informed before they apply that nomination operates in this way and that the nominations are recorded in the published minutes.

Where no candidate, or only one candidate, is nominated

6.10 Where no applicant is nominated for a vacancy, no applicant is co-opted to it and paragraph 6.18 applies.

6.11 Where only one applicant is nominated, that applicant is not co-opted automatically. The motion that the applicant be co-opted is put to the vote and is carried only if it receives an absolute majority.

Where more than one candidate is nominated

6.12 Where more than one applicant is nominated, the Council determines between them by successive votes. Voting will be by show of hands and will proceed in rounds. In each round every member present may cast one vote. The vote will be taken candidate by candidate in an order determined by lot, and the number of votes cast for each candidate will be recorded.

6.13 Any member may require the voting on any question to be recorded, in which case the names of those voting for and against, and those abstaining, will be recorded in the minutes. The Council will not conduct a secret ballot; voting at a meeting of the Council is a public act for which members are accountable to their electors.

6.14 Where a candidate receives an absolute majority in a round, the motion that the candidate be co-opted is carried and that candidate is co-opted to the vacancy.

6.15 Where no candidate receives an absolute majority, every candidate tied on the lowest number of votes cast in that round is struck off, and a further round is held between the remaining candidates. That process continues until a candidate receives an absolute majority or until the position at paragraph 6.16 or 6.17 is reached.

6.16 Paragraph 6.15 applies the second limb of Standing Order 8 (Voting on Appointments). The reference in that Standing Order to the person having the least number of votes is read as including the persons having the least number of votes, so that where two or more candidates are tied at the foot of a round they are struck off together. That reading is necessary to give the Standing Order practical effect where the field is large: with a single vote per member and a substantial number of candidates, several candidates may receive no votes at all, and a rule permitting only one name to be struck off in each round would require an impracticable number of rounds and would give no answer at all where candidates are tied.

6.17 Where striking off every candidate tied on the lowest number of votes would leave fewer than two candidates, no candidate is struck off. A further round is held between the same candidates, and if the result is unchanged the candidate to be struck off is determined by lot drawn by the Clerk in the presence of the meeting. Where only two candidates remain and the votes cast for them are equal, the Chairman may exercise the second or casting vote conferred by paragraph 39(2) of Schedule 12 to the Local Government Act 1972; the Chairman is entitled but not obliged to exercise it.

Failure to fill a vacancy

6.18 Where no candidate is co-opted, or where fewer candidates are co-opted than there are vacancies, the vacancy remains and the item stands referred to the next meeting of Full Council, remaining on the agenda until it is filled or until the Council is within six months of the end of the term of office. The Council may resolve to invite further applications and to re-advertise.

7. Following co-option

7.1 A person co-opted must make a declaration of acceptance of office in accordance with section 83 of the Local Government Act 1972 before acting in the office. The declaration will be signed at the meeting, in the presence of the Clerk as Proper Officer, whereupon the new member may take their seat and participate in the remainder of the meeting.

7.2 A co-opted member is a member of the Council in their own right, and may be appointed to committees and working groups.

7.3 The new member must register their disclosable pecuniary interests, and any other interests required to be registered under the Council's adopted Code of Conduct, within twenty-eight days of taking office (section 30(1), Localism Act 2011). The Clerk will forward a copy to the Monitoring Officer of East Devon District Council.

7.4 The Clerk will notify East Devon District Council's Electoral Services team and update the Council's website. The new member will be provided with a welcome pack and invited to an induction session with the Clerk, to take place where possible before the next meeting of Full Council. Induction will cover the Council's Standing Orders, Financial Regulations, Code of Conduct, current work programme and committee structure, and will include an offer of training through the Devon Association of Local Councils.

8. Equality and accessibility

8.1 The Council is subject to section 29 of the Equality Act 2010 in the exercise of its public functions and to the public sector equality duty at section 149 of that Act, and will have due regard to that duty in the conduct of the co-option process.

8.2 The Council will make reasonable adjustments to enable any applicant to participate. An applicant who requires an adjustment, including an alternative format of the application form, assistance in completing it, or an adjustment to the arrangements for addressing the Council, should contact the Clerk, who will make the necessary arrangements without disclosing the reason for the adjustment to members unless the applicant wishes it to be disclosed.

9. Conflicts of interest

9.1 A member who is related to, or has a close personal or business association with, an applicant should declare that association at the start of the item.

9.2 Where the association gives rise to an interest which under the Council's adopted Code of Conduct prevents the member from speaking or voting, a dispensation may be sought in accordance with section 33 of the Localism Act 2011 and the Council's Standing Orders. A request should be made to the Clerk not less than three clear days before the meeting. Where a dispensation is required and is not granted, the member must withdraw for the duration of the item.

9.3 Separately from the Code, and whether or not any interest under the Code arises, a member should consider whether their participation would give a fair-minded and informed observer cause to doubt the fairness of the decision. That is a matter of judgement for the member, and a dispensation does not answer it.

9.4 Where the Clerk is related to, or has a close personal association with, an applicant, the Clerk will disclose that fact to the Chairman at the earliest opportunity and the eligibility check will be undertaken by the Assistant Clerk or referred to the Chairman of the Staffing Committee for alternative arrangements to be made.

10. Data protection, transparency and records

10.1 The Council processes applicants' personal data for the purpose of filling a vacancy. The lawful basis for processing is Article 6(1)(e) of the UK General Data Protection Regulation, the performance of a task

carried out in the public interest and in the exercise of official authority vested in the Council. Processing is not based on consent.

10.2 Applicants will be informed, before they apply, that their completed form will be circulated in full to all members of the Council, that co-option will be considered at a meeting open to the public, that voting takes place in public and the number of votes cast for each applicant in each round is recorded and published, and that the Council is a public authority for the purposes of the Freedom of Information Act 2000.

10.3 The Council will not publish applications in full and will withhold personal data so far as the Freedom of Information Act 2000 permits, applying section 40(2) where disclosure would breach the data protection principles. The Council cannot guarantee that no information will be disclosed, and will not give applicants an assurance of confidentiality that it is unable to honour.

10.4 The application form is designed so that applicants are not invited to volunteer information about criminal convictions. Where an applicant nonetheless volunteers such information, the Clerk will not circulate it to members and will hold it separately, disclosing to members only the eligibility determination.

10.5 The applications of unsuccessful applicants, and the associated eligibility proformas, will be retained for six months from the date of the co-option decision and then securely destroyed. The application of a person co-opted will be retained as part of the member's record in accordance with the Council's retention schedule.

10.6 The minutes will record the applications received, the eligibility determinations reported, the procedure followed, the number of votes cast for each candidate in each round, the candidates struck off at the end of each round, and the resolutions taken.

11. Complaints

11.1 An applicant who considers that this Policy has not been followed may complain in writing to the Clerk under the Council's Complaints Procedure. A complaint about the conduct of an individual member falls to be made to the Monitoring Officer of East Devon District Council under the Code of Conduct arrangements.

11.2 The Local Government and Social Care Ombudsman has no jurisdiction over parish councils and cannot investigate a complaint about the Council's co-option process.

12. Review

12.1 This Policy will be reviewed every four years, or earlier where legislation, the Council's Standing Orders or its adopted Code of Conduct change in a way that affects it.

Signed Chairman of the Council

Date of adoption

Minute reference

Appendix A — The role of a Parish Councillor

This Appendix is a description of the role, provided to help you decide whether you would like to apply. It is not a person specification and it is not a set of criteria against which applications are assessed. There is no requirement to hold any of the experience or interests described below, and the Council does not score or grade applicants. The only requirements for office are the statutory qualification and disqualification rules at paragraphs 4.3 to 4.5 of this Policy.

What the Council does

Broadclyst Parish Council serves the communities of Broadclyst village, Tithebarn, Westclyst and many smaller hamlets across the parish. Its work includes responding as a consultee on planning applications, implementing the made Broadclyst Neighbourhood Plan, managing the Council's land and buildings, setting an annual precept and budget, making community grants, running and supporting community events, working with Devon County Council on highways and transport matters, and representing the parish to East Devon District Council and other partners.

What being a councillor involves

- Attending meetings of Full Council, and of any committee or working group to which you are appointed.
- Reading agenda papers in advance and coming to meetings prepared to take decisions.
- Taking decisions collectively with other members, and accepting decisions of the majority even where you voted against them.
- Representing the whole parish rather than any one interest, and being willing to listen to views you may not share.
- Observing the Council's adopted Code of Conduct and the Seven Principles of Public Life, and registering your interests with the Monitoring Officer.
- Working constructively with other members and with the Council's staff.

The time commitment

Full Council meets monthly, and committees meet less frequently. Meetings are currently held in the evening and typically last around two hours. Members should allow additional time for reading papers, and some members take on further commitments such as site visits, outside body representation or community events, which may fall at weekends. The Council recognises that members have work, caring and other responsibilities, and does not expect every member to attend every event. If you would like to discuss what the commitment would mean in your circumstances, please contact the Clerk before applying.

Things members often find useful

The list below is offered only as an illustration of the range of backgrounds that contribute to the Council's work. No prior experience of local government is needed, and the Council welcomes applications from people who have never held public office.

- An interest in the local area and its communities.
- Experience of committee work, or of another public body, charity, community group or business.
- Knowledge of a field the Council works in, such as planning, finance, highways, the environment, events or communications.

- Confidence in speaking at meetings, or a willingness to develop it. Training is available through the Devon Association of Local Councils.
- Comfort with email and basic online tools, which the Council uses to circulate papers.

Appendix B — Illustrative application of paragraph 6.15

This Appendix is included to assist the Chairman and the Clerk. It forms part of the Policy but does not add to or vary it. The figures are illustrative only.

Thirteen members present and voting; an absolute majority is therefore seven. Twelve eligible applicants, of whom eight have been nominated under paragraph 6.4 and are therefore candidates.

Round	Result	Effect
1	A 4, B 3, C 3, D 2, E 1, F 0, G 0, H 0	No absolute majority. F, G and H are tied on the lowest number of votes and are struck off together.
2	A 5, B 4, C 3, D 1, E 0	No absolute majority. E is struck off.
3	A 5, B 4, C 3, D 1	No absolute majority. D is struck off.
4	A 6, B 4, C 3	No absolute majority. C is struck off.
5	A 8, B 5	A has an absolute majority. A motion that A be co-opted is put.

Two variants should be noted. First, if in round 5 the votes had been A 6, B 6 with one abstention, neither candidate would have an absolute majority and striking off the candidate with the lowest number of votes would leave fewer than two candidates; paragraph 6.17 would apply, a further round would be held, and if the result were unchanged the Chairman could exercise the casting vote. Second, if the Chairman declined to exercise the casting vote, no candidate would be co-opted and the vacancy would stand referred to the next meeting under paragraph 6.18.

Where a second vacancy is then to be filled, fresh nominations are taken under paragraph 6.8. Every eligible applicant other than A may be nominated, including the four who were not nominated for the first vacancy and those struck off during the voting for it. The field for the second vacancy is therefore whatever the nominations produce, and is not confined to B to H.