

Guide to Standing Orders

August
2016



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Equip

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Preface p3

Acknowledgements p4

Process for adopting standing orders p4

Part 1: General matters p5

Mayoral appointments under s.41A Local Government Act 2002 (LGA) p5

The Mayor's leadership role p5

Ensuring decisions meet requirements of Part 6 LGA (SO 26.2) p5

Part 2: Pre-Meeting p6

Giving notice p6

Process for raising matters for a decision p6

Information tabled at meetings p6

Part 3: Meeting procedures p7

Starting your meeting p7

Voting systems p7

The Chairperson's Casting Vote (SO 18.1) p7

Joining meetings by audio and audio visual means (SO 12.7 – 12.16) p7

Public Forums: good practice p7

Revoking a decision made under delegated authority (SO 23) p8

Process for release of public excluded information p8

Conflicts of interest (SO 19.7 – 19.8) p8

How should confidential information in an agenda be managed? p9

What happens to a quorum when a member is 'not at the table'? p9

Members attending meetings of which they are not members p9

Attendance at hearings p9

Divisions p10

Where a motion is lost (SO 22.9) p10

What happens to items left on the table (SO 24.2) p10

Options for speaking and moving motions (SO 21) p10

Taking minutes for hearings held under 'other' statutes p10

Keeping Minutes - additional guidance p11

Training in the use of Standing Orders p11

For chairpersons p11

Appendix: Process for implementing s.41A p12

Feedback p13



Preface

Lawrence Yule President LGNZ

Good local governance requires us to ensure that the way in which we undertake public decision-making is open, transparent and fair. This is one of the reasons why standing orders are important. They provide a framework of rules for making decisions that gives effect to these principles; principles which are fundamental to a well-functioning democracy.

Whether councils apply standing orders every time they meet, or refer to them only when faced with a complex or controversial issue, standing orders contribute to public confidence in local government and decision-making. It is important, therefore, that our standing orders are not only fully compliant with legislation and best practice in the conduct of meetings, but that they are also easy to use.

That's why LGNZ, in partnership with Equip our centre of excellence, has published this new set of standing orders for the use of local authorities. Amongst the differences from other standing orders are:

- the incorporation of legislative changes made since 2002;
- the introduction of a new structure to make it easier to find items;
- greater use of 'plain English' to increase readability;
- special versions for regional councils, territorial authorities and community boards (with a local board version planned);
- training modules designed to assist chairs, members and officials to apply the new standing orders.

These standing orders are designed to meet the needs of territorial authorities, regional councils and community boards. We are committed to ensuring the template is kept up to date and provides easy to use guidance of all local government meetings.

< Good local governance requires us to ensure that the way in which we undertake public decision-making is open, transparent and fair. >

Acknowledgements

LGNZ/Equip would like to acknowledge the work and commitment of the working party responsible for preparing this updated suite of standing orders and this Guide.

- Coral Hair, Administration Officer – Policy, Whakatane District Council;
- Fleur Sweeney, Democracy Management Advisor, Western Bay of Plenty District Council;
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- Jonathan Salter - Simpson Grierson Law;
- Dr Mike Reid – Principal Advisor, LGNZ.

Process for adopting standing orders

Local authorities, local boards and community boards must adopt standing orders for orderly conduct of their meetings. The approval of at least 75% of members present at a meeting is required to adopt (and amend) standing orders.

Please note: the LGNZ/Equip standing orders contain three optional provisions and members need to be given the option of whether to include all or any of the options prior to adoption. They are:

- a provision for a casting vote by a Chairperson (SO 18.3);
- the option to join meetings by audio and audio-visual link (SO 12.7-12.16);
- the choice of three different ways of dealing with motions and amendments (SO 21).

For any council wishing to adopt these standing orders a report should be prepared for consideration at the first meeting of the governing body of the local authority (the council meeting).

One way of undertaking this is to table the full LGNZ Equip draft and questions on whether or not to retain each of the three options (and any other changes the council may wish to make). A brief description of the pros and cons of each option should be provided.

Once decisions have been made on whether or not to incorporate each option then a resolution to adopt the original or amended standing orders can be put.

The same process can be applied to community boards.



Part 1: General matters

Mayoral appointments under s.41A Local Government Act 2002 (LGA)

Included in the standing orders are provisions dealing with the ability of Mayors to establish committees, appoint deputy Mayors, committee chairs and members of committees (see standing orders 5.1 – 5.5).

Where a Mayor chooses to use these powers a council must make provision for ensuring the results of the Mayor's decisions are communicated as soon as practicable to members of the governing body. We recommend that either the Mayor or chief executive provide the information at the first meeting of the governing body that follows the Mayor's appointments.

It is critical that the chief executive of a territorial authority advise their Mayor about s. 41A LGA as soon as possible after election results have been confirmed, so as to ascertain whether or not they wish to make use of those powers. Appendix 3 in the standing orders, sets out a possible process for this.

Please note that these standing orders interpret s.41A LGA as allowing Mayors to also appoint the members of a committee. This issue has been a matter of some debate amongst councils since the amendment was enacted in 2012. LGNZ has taken legal advice on the matter and concluded that the provision extends to the membership of committees.

The Mayor's leadership role

Under s.41A LGA Mayors are responsible for the leadership of the "other members of the territorial authority" and the "people in the district of the territorial authority". They are also responsible for leading the development of the territorial authority's plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority.

Section 41A can have implications for the way these standing orders work, depending on how a Mayor wishes to approach their leadership role, particularly in regard to plans, policies and budgets. Some Mayors have chosen to put all plans, policies and budgets under their own names so as to give effect to their leadership responsibilities. The standing orders provide for a Chairperson to stand down from the chair but still contribute to a debate, should they feel strongly about an issue, in order to ensure the objectivity of the chair.

Ensuring decisions meet requirements of Part 6 LGA (SO 26.2)

The standing orders highlight the importance of recommendations, whether made in a Chairperson's report or a Notice of Motion, complying with the decision-making requirements of Part 6 LGA.

Section 76 LGA specifies that every decision made by a local authority must be made in accordance with such provision of sections 77, 78, 80, 81 and 82 (LGA) as are applicable. This requirement applies to all decisions to the degree appropriate.

In some cases the impact of these provisions will require that a decision can only be made after consideration of options and related matters has taken place while in other cases, especially if the decision is a minor decision, no further analysis is required.

What is required is some evidence that consideration has been given to the degree to which a decision is or should be subject to the matters specified in the relevant sections of Part 6.

These standing orders make provision within SO 26.2 for a Chairperson to refuse to accept a Notice of Motion that fails to include sufficient information to satisfy the requirements of sections 77 – 82 of the LGA.

Part 2: Pre-meeting

Giving notice

A number of the statutes which prescribe the processes under which a council works were enacted before the internet existed and as a result make no mention of new technology. Publicly notified, for example, requires “notice contained in a newspaper” (see definitions in the standing orders). Where notification occurs in these standing orders we have made it as clear as we can that in addition to any statutory requirement councils should also make use of digital media, such as websites.

Please note: Parliament will shortly be considering an Omnibus Bill which will amend the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 to include a mandatory requirement for councils to publish public notices on their council’s website, until any opportunity of review or appeal has lapsed. This is in addition to the existing requirement to publish notices in a newspaper.

Process for raising matters for a decision

An issue for many elected members, particularly those newly elected, is how to get matters on to the agenda of a meeting in order to achieve a decision. This issue is addressed in standing order 9.1 and Appendix 11. The provision applies to councils, subordinate decision-making bodies (these include committees and subcommittees), local and community boards. In short, a matter may be placed on the agenda as a result of any of the following:

- through a direct request to the chief executive or an officer with the relevant delegated responsibility;
- from the Chairperson through their chairperson’s report, although depending upon the nature of the item and decision suggested, a staff report may be required;
- through the report of a committee. Committee meetings are generally less formal than a meeting of the governing body and a committee can make recommendations to the governing body. Please note that any request should fall within the committee’s terms of reference;
- through a report of a local or community board. A councillor could, for example, ask a local or community board to support a matter and even recommend a course of action to the governing body;
- members may apply to place an item on the agenda through a notice of motion (see SO 26.2), however, a notice of motion must comply with the decision-making provisions of Part 6 LGA 2002 before it can be considered. If the mover of the notice of motion is unable to provide this information or the decision is likely to be deemed a significant decision, the notice of motion should provide that the proposal be referred to the chief executive for consideration and report.

Though any and all of these means may be used it is important to remember that until presented to members (i.e. published), an agenda is ultimately the responsibility of the chief executive and the collation of the agenda and its contents must remain under the chief executive’s control.

Where a matter is urgent and has not been placed on an agenda it may be brought before a meeting as “extraordinary business” as a result of a report by the chief executive or a report by the Chairperson. This process gives effect to Section 46A (7) and (7A) of LGOIMA.

Please Note: the content or topic of any request must fall within the terms of reference of the specific body or meeting, so, for example, a request made to a community board should be for an item that falls within the decision-making authority of the board.

Information tabled at meetings

Any extra information tabled after the reports and agendas have been distributed should be specified and noted in the minutes, with copies made available in all places that the original material was distributed to. A copy must also be filed with the agenda papers for archival purposes (and future research if necessary).

Part 3: Meeting procedures

Starting your meeting

Questions are sometimes asked whether or not council meetings should begin with some form of reflection to acknowledge the importance of our democratic processes.

There is no obligation on a local authority to start its meetings with a reflection or ceremony, however if a council wishes to begin its meetings with a formal procedure to recognise the civic importance of council meetings we have made a few suggestions which can be found immediately under the heading Meeting Procedures. This now includes procedures to allow for tangata whenua processes which should alleviate any awkwardness around introducing such processes.

Voting systems

One of the issues that arose during preparation of the new standing orders concerned the performance of some of the electronic voting systems that are in use and whether or not the way in which they operate is consistent with what we understand as 'open voting'.

We have taken the view that open voting means that members should be able to see how each other votes 'as they vote' (i.e. simultaneously) as opposed to a system which votes are tallied (in a manner that does not show how individuals voted) and then a result is released.

It is also important to note that under these standing orders electronic systems should allow a member to abstain from voting, see standing order 18.7.

The Chairperson's Casting Vote (SO 18.1)

Standing order 18.1 allows the Chairperson to exercise a casting vote where there is an equality of votes. Incorporating a casting vote in a council's standing orders is optional under cl. 24 (2) Schedule 7, LGA 2002.

Councils, local or community boards that do not wish their Chairpersons to have a casting vote must remove or amend standing order 18.1 before adopting the standing orders.

The casting vote option has been included in the template to enable a meeting to conduct and conclude important business without the risk that a vote might be tied and as a result a significant statutory timeframe might be exceeded. For example:

Councils must adopt a long term plan and an annual plan within defined statutory timeframes. If the vote is tied a casting vote may be the only way that the council can avoid possible sanction for lateness.

In cases where a vote is tied individual members may choose to act strategically so as to extract concessions for the price of their vote.

Joining meetings by audio and audio visual means (SO 12.7 – 12.16)

The Local Government Act 2002 Amendment Act 2014 gave local authorities the option to include in their standing orders a provision to enable members to join meetings by audio or audio visual means.

These standing orders include this provision and if a council wishes not to make that option available to its members the specific standing orders should be removed before the standing orders are adopted. The relevant standing orders are 12.7 – 12.16.

A number of members have found the audio and audio visual provisions prescribing quorums and voting confusing. We have worked on the standing order to make it as clear as possible that while a member can take part in discussions and vote while joining a meeting electronically they are **not part of the quorum**.

Public Forums: good practice

These standing orders state that a period of up to 30 minutes is set aside for a public forum. Members of the public may attend to address the meeting for up to 3 minutes on items that fall within the delegations of the meeting provided the matters are not subject to legal proceedings, or to a process providing for the hearing of submissions. Speakers may be questioned through the Chairperson by members, but questions must be confined to obtaining information or clarification on matters raised by the speaker. The Chairperson has discretion in regard to time extensions.

Such presentations do not form part of the formal business of the meeting i.e. consideration of business items listed on the agenda. We recommend that a brief record be kept of matters raised during any public forum section of the meeting with matters for action to be referred to the chief executive or other person as requested by the meeting.

Revoking a decision made under delegated authority (SO 23)

A council cannot directly revoke a decision made and implemented by a subordinate decision-making body which has the delegation to make the decision, assuming that the subordinate decision-making body, or local or community board, has exercised its decision-making powers in a lawful manner.

Where a decision of a subordinate body or a local or community board has been made under delegated authority but has not been implemented, a council can remove the specific delegation from that body and resolve to implement an alternative course of action.

Process for release of public excluded information

Different councils have different processes for releasing the reports, minutes and decisions from public excluded meetings (material considered confidential under section 6 or section 7 of LGOIMA). The reason that information is withheld from the public does not necessarily endure. For example, information that was confidential due to negotiations may not need to remain confidential when negotiations have concluded. Equally documents may be released in part, with only some parts withheld.

Generally information may only be publicly released by a decision of the meeting, or a decision of the chief executive. Each council will have a system and policy for controlling the release of information.

When a report is deemed to be 'In Confidence' information can be provided on whether or not it will be publicly released and when. With regard to items under negotiation, such as contracts, land purchase or disposal, resource consents and district plan matters, there is often an end point when confidentiality is no longer necessary. If no release clause is provided a further report may be needed to release the information creating double handling and report writing.

The following clause can be included in report templates to address this issue:

(If in confidence) That the Report/Recommendation be transferred into the Open section of the meeting on {state when the report and /or recommendation can be released as an item of open business and include this clause in the recommendation}.

Conflicts of interest (SO 19.7 – 19.8)

Questions from elected members about when a conflict of interest may exist and how it should be managed are amongst the most common faced by governance staff. The rules are clear that a member of a local authority may not participate in discussion or voting on any matter before an authority in which they have a financial or non-financial conflict of interest. However, determining whether a conflict exists or not is not always so clear.

Financial conflicts of interest:

It is an offence under the Local Authorities Members' Interests Act 1968 to participate in any matter in which a member has a financial interest. These are defined by the Auditor General as:

whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member involved (p. 25 Conflicts of Interest OAG 2004).

The Auditor General can, in certain situations, grant exemptions from the rule which makes it an offence for an elected member with a financial conflict of interest discussing and voting on a matter, for example, where an interest is in common with the public.

In such cases the Auditor General can grant an exemption or a declaration to allow a member to participate. Members should be referred to the Auditor General if there is a possibility that their case would qualify for an exemption or declaration (see OAG's guide on Conflicts of Interest published in 2004).

Non-financial conflicts of interest:

The Auditor General defines a non financial conflict of interest or 'bias' as

Is there, to a reasonable, fair minded and informed observer, a real danger of bias on the part of a member of the decision-making body, in the sense that he or she might unfairly regard (with favour or disfavour) the case of a party to the issue under consideration.

Bias involves not just actual bias but also the perception of bias. A claim of bias can be made on the basis of predetermination. A member who believes they may have a non financial conflict of interest should:

- declare they have a conflict of interest when the matter comes up at a meeting;
- ensure that their declaration is recorded in the minutes;
- refrain from discussing or voting on the matter.

In such cases the member should leave the table and not take part in any discussion or voting on the matter. In determining the level of conflict members should discuss the matter with the meeting Chairperson and/or chief executive or their nominee. However, the decision whether to participate or not must be made by the member themselves.

The Auditor General cannot provide an exemption or declaration with regard to non financial conflicts of interest.

How should confidential information in an agenda be managed?

Occasionally councils have to address the issue of how confidential agenda items should be handled where there is a possibility, should it become public, that the information in the agenda could benefit a member or individuals. Some councils address this risk by tabling confidential papers at the meeting on the day and ensuring those papers are returned before members leave.

What happens to a quorum when a member is ‘not at the table’?

Whether or not members must be ‘at the table’ to constitute a quorum is a frequently asked question, usually in response to a member standing aside from the table due to a perceived or actual conflict of interest.

Standing order 10.4 covers this situation when it states “a meeting is constituted where a quorum of members is present, whether or not they are all voting or entitled to vote”. ‘Present’ in the context of these standing orders is to be in the room, not necessarily around the table.

Members attending meetings of which they are not members

A common question involves the role of elected members who attend meetings of which they are not members and what their status at these meetings should be. The legislation and these standing orders are clear (cl. 19(2) Schedule 7, LGA 2002) that members can attend any meetings unless they are “lawfully excluded” (see definition of lawfully excluded in the standing orders).

Elected members attending a meeting of which they are not a member have the same rights as the public. They may be granted additional speaking rights if permitted by the Chairperson. To remove the possibility of confusion about membership and speaking rights for both the public and the members concerned many councils require non-members to sit away from the meeting table i.e. in the public gallery.

Attendance at hearings

There is often confusion as to whether or not elected members must be present throughout a hearing or submission process in order to be able to vote on the outcomes of the hearing. This is a case where the rules vary according to the legislation under which the hearing or submission process is occurring.

Hearings under the LGA 2002, such as Annual Plan or Long Term Plan hearings, do not require all elected members to have participated in the submission process in order to take part and vote on the outcomes of that process. Elected members who cannot participate at all or who miss part of a hearing should review all submissions and the analysis provided by officials of the written and oral submissions before taking part in any debate and vote on the plan or policy under consideration. It is good practice to remove doubt in this matter. There should be a record in the minutes stating that the members who were absent have been provided with, prior to deliberations, all records of submissions made both orally and in written form.

Please note that the Auditor General recommends that members should be present for the whole of a hearing “to show a willingness to consider all points of view” (Conflicts of Interest August 2004 p. 43). The guidance suggests that lengthy periods of non attendance at a hearing could suggest an element of pre-determination.

Divisions

Under standing order 18.1 a member can call for a 'division' for any reason. If a division is called the standing orders require the chief executive to record the names of the members voting for and against the motion, as well as abstentions, and provide the names to the Chairperson to declare the result. It is important to remember to record the names of members in the minutes and the way in which they voted.

There are different approaches taken to ascertaining how people voted. For example:

- When asking each individual member how they voted vary the order in which elected members are asked e.g. alternate between clockwise and anti clockwise.
- To get a clear picture ask people to stand in turn to indicate whether they voted for, against or abstained. The committee secretary must record the way in which each member voted.

Where a motion is lost (SO 22.9)

A new provision has been added to make it clear that when a motion is lost it is possible to move an additional motion if it is necessary to provide guidance or direction. For example, if a motion "that the council's social housing stock be sold" was defeated, the organisation might be left without direction with regard to the question of how the stock should be managed in the future.

Standing order 22.9 enables a meeting to submit a new motion if required to provide direction to management where this might be required following the defeat of a motion.

What happens to items left on the table (SO. 24.2)

Standing order 24.2 "Procedural motions to close or adjourn a debate" provides five procedural motions to close or adjourn a debate. A question was posed during submissions on the draft standing orders with regard to how long an item of business should "lie on the table" (24.2). We recommend that any matters left to lie on the table should cease to lie on the table and are withdrawn at the end of the triennium and prior to a general election of members.

It is however good practice wherever possible to state (when an item is left to lie on the table) what action is required to finalise it and when it will be reconsidered. For example, "that the report on the sale of the land lie on the table until further information on land values is received and that on receipt of such information the item be reported to the next scheduled meeting of the Property Committee".

Options for speaking and moving motions (SO 21)

One of the new features in these standing orders is the ability to use different rules for speaking to and moving motions so as to give greater flexibility when dealing with different situations.

Standing orders (21.1 – 21.5) provide for three options. Option 1 repeats the provisions in the Model Standing Orders which limit the ability of members to move amendments if they have previously spoken. Option 2 provides more flexibility by allowing any member, regardless of whether they have spoken before, to move or second an amendment, while Option 3 allows further flexibility.

When considering how these options were to be applied the working group agreed that the default approach will be Option A and that the Chairperson may recommend to a meeting that option B or C apply, either for the full meeting or for specified items on the agenda. In other words all meetings will operate under Option A unless it is agreed at the start of a meeting to use either Option B or C.

Reasons why a committee may consider using options B or C could be to enable more discussion on an item or to avoid a meeting choosing to suspend standing orders altogether.

An alternative approach is that a council could adopt options B or C as their default position.

Taking minutes for hearings held under 'other' statutes

The LGNZ Equip standing orders are designed to comply with the LGA 2002 and LGOIMA 1987. Other statutes under which councils may have meetings and hearings can have specific requirements that are different to the general requirements of the LGA 2002. For example:

1. Minutes of hearings under the RMA, Dog Control Act 1996 and Sale and Supply of Alcohol Act 2012 include additional items, namely:
 - (a) Record of oral evidence
 - (b) Questions put by panel members and the speaker's response
 - (c) Reference to tabled written evidence
 - (d) Right of reply

2. Information required in minutes of hearings of submissions under a special consultative procedure, such as long term plan hearings, include:

- (a) Records of oral submission
- (b) Questions put by elected members and the speaker's response to them
- (c) Reference to tabled written submission

In cases where a council resolves a course of action in response to submissions which is contrary to advice provided by officials the reasons for the Council's decision not to follow official advice should be recorded.

Keeping Minutes - additional guidance

Archives New Zealand (Public Records Act 2005) requires that councils continue to keep paper copies of all minute records. It is common practice that each page of minutes is individually signed by the chair.

Where a meeting resolves to act in a manner contrary to a staff recommendation the reasons why the staff recommendation was not followed should be recorded if possible.

Training in the use of standing orders

Elected Members need to find out what the new standing orders are, and how to use them effectively in a meeting. They want to practice using standing orders to achieve successful meeting outcomes. To support this Equip will run a series of workshops.

Using standing orders for effective meetings

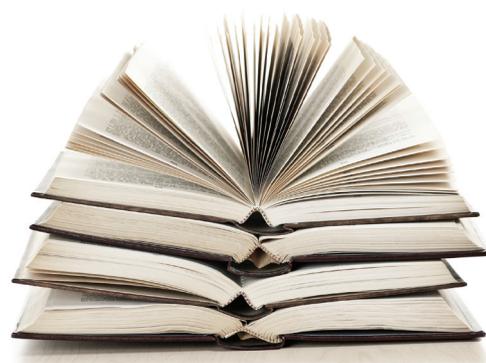
By the end of this workshop you will be able to:

- Reiterate the purpose and legislation of standing orders
- Apply standing orders in a practical meeting environment
- Plan how to use standing orders to make meetings an effective support of achievement of political outcomes.

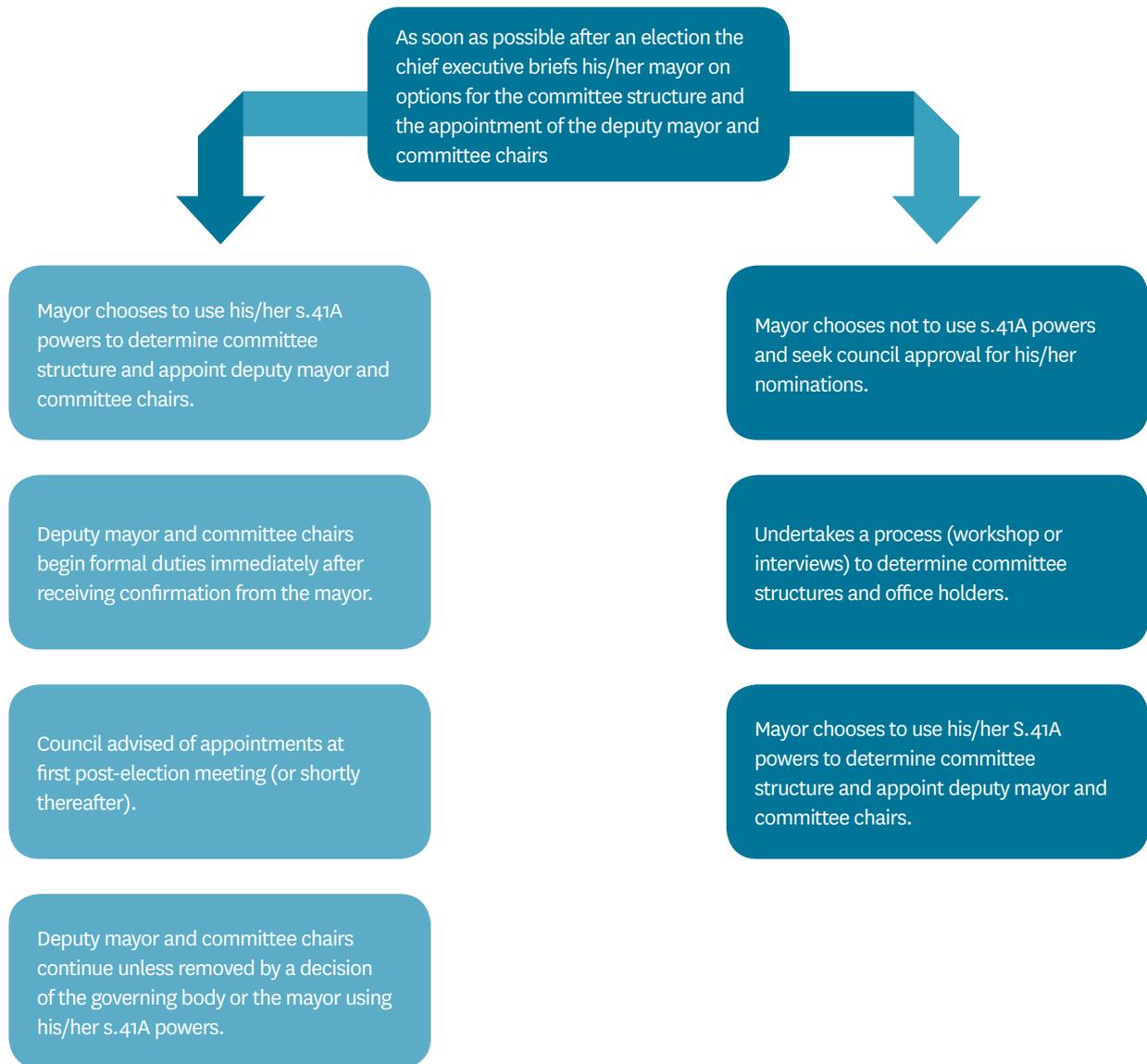
For chairpersons

Equip is currently reviewing and updating the Professional Development offering. This will include support for chairpersons. Please check our website for current learning solutions to suit your needs.

Please visit the Equip website: <http://www.lgnz.co.nz/home/equip-and-knowhow/>



Appendix: Process for implementing s.41A



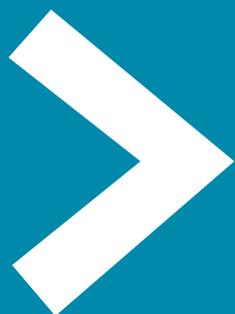
Feedback

The LGNZ standing orders incorporate relevant legislative provisions up to August 2016. To keep standing orders up to date and ensure they reflect legislative and regulatory changes we will update them as necessary and any necessary amendments will be sent to all councils that have purchased the templates.

We are also keen to ensure that the standing orders continue to help councils run effective meetings so we appreciate any feedback users might like to make. For example, comments on the following would be appreciated:

- the layout and structure of the standing orders;
- standing orders that are ambiguous or simply unclear;
- jargon that could be replaced;
- information that is missing;
- good practice ideas.

Please forward any comments or suggestions to admin@lgnz.co.nz.



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