



Purpose: For Decision

FULL COUNCIL REPORT

Meeting	ANNUAL COUNCIL
Date	17 MAY 2023
Title	REVIEW OF POLITICAL PROPORTIONALITY, ALTERNATIVE ARRANGEMENTS, APPOINTMENT OF COMMITTEES, ALLOCATION OF SEATS, NOMINATIONS AND APPOINTMENTS TO COMMITTEES (INCLUDING CHAIRS AND VICE-CHAIRS) AND OTHER CONSTITUTIONAL ISSUES
Report of	MONITORING OFFICER

EXECUTIVE SUMMARY

1. The review of the political proportionality arrangements is triggered by law each year at the annual meeting (under section 15(1)(b) of the Local Government and Housing Act 1989) in respect of bodies that are required to be politically proportionate.
2. The last review took place on 18 January 2023 as a result of the formation of the Liberal Democrat political group, and alternative arrangements were agreed at the meeting held on 18 January 2023 (in respect of the membership of the Pension Fund Committee and the Appeals Committee).
3. At the time of writing this revised report (16 May 2023) the proportionality figures have changed from when last calculated and reported on 18 January 2023 to Full Council. This is due to changes in the political groups, resulting in four political groups: The Alliance, Conservative, Empowering Islanders, and the Liberal Democrat.
4. Appendix 1 to this report sets out the committees, their size and their membership including substitutes (where permitted) and positions of chair and vice-chair to be appointed (subject to any subsequent changes that are to be made to that Appendix).
5. There has been no change in the number, size and terms of reference of council committees except that, in relation to the Harbour Committee, it is recommended that that Committee still comprises seven councillors, but that the present constitutional requirement to have three Cabinet portfolio members be changed from three to two. This is because it is in conflict with the current proportionality seat allocation which, in the absence of alternative arrangements being agreed with any vote in dissent, cannot be achieved.

6. A second constitutional change recommended is simply a renaming of the Audit Committee to the Audit and Governance Committee. The addition of the words 'and Governance' better demonstrates the extent of its terms of reference.
7. The Centre for Governance and Scrutiny last month issued its long awaited guidance on 'The review and redrafting of constitutions: guidance for English authorities' together with other guidance, and this will be of assistance in the current ongoing review of the local authority's constitution. In the meantime, delegated authority is being sought for the Director of Corporate Services to have power to declare a vacancy in the office of councillor for the purposes of section 86 of the Local Government Act 1972 (including where such office has been vacated due to failure to attend meetings under section 85 of that Act).
8. Members are advised to read and consider this report (together with Appendix 1 to this report as may be amended) and to decide what changes, if any, are to be made to the arrangements following the conduct of this particular review.

RECOMMENDATIONS

9. That the existing committees be reappointed with no changes to their size or terms of reference, except that the Audit Committee shall be renamed the Audit and Governance Committee.
10. That the political proportionality review and arrangements be formally approved, with the membership of the Harbour Committee being seven elected councillors, two of which should be Cabinet portfolio members (provided the Committee is politically proportionate unless alternative arrangements are agreed without dissent).
11. That the appointments set out in Appendix 1 to this report (as amended) be approved.
12. That the Director of Corporate Services be granted delegated authority to declare any vacancy in the office of councillor under section 86 of the Local Government Act 1972 as amended and that the constitution be updated accordingly.

BACKGROUND

13. Political proportionality is the system by which each 'political group' is represented on certain council bodies in proportion to the numbers of members of the political group relative to the size of the council as a whole.
14. Section 15 (1) ('duty to allocate seats to political groups') of the Local Government and Housing Act 1989 imposes a statutory duty to undertake a review of the political proportionality arrangements when certain circumstances arise after the council has divided itself into one or more political groups as defined in the Local Government (Committees and Political Groups) Regulations 1990 as amended ('the 1990 Regulations'). One of those circumstances is the holding of the annual meeting. Such a review is required under section 15(1)(b) of the Act to be carried out at each annual meeting or as soon as practicable thereafter.

15. On 18 January 2023 Full Council last agreed the reviewed political proportionality.
16. For ease of reference, the table below sets out the overall proportionality of the three existing political groups and the four unaligned councillors in relation to the total membership of the local authority (39):

		% of the whole council to nearest two decimal points
Alliance Group	13	33%
Conservative Group	16	41%
Empowering Islanders	4	10%
Liberal Democrat Group	3	8%
Ungrouped	3	8%
Total:	39	100%

17. There are, however, complex statutory rules under section 15(5) of the Local Government and Housing Act 1989 which apply to the allocation of seats proportionality to political groups on certain committees where such seats are required to be proportionate (and no alternative arrangements are in place).
18. Normally all four of the statutory principles would apply, but the second principle within section 15(5)(b) is not relevant in circumstances where there is no one political group which is a majority political group.
19. This disregarded second principle is: That ‘the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority’s membership’ i.e. the majority political group gets a majority on the body. But there is no such majority political group at the present time.
20. In performing the duty under section 15(3) of the Act (as modified by regulation 16(2) of the 1990 Regulations) to allocate seats to political groups ‘to determine the allocation to each of those groups of such of the seats which fall to be filled by appointments made from time to time by that authority or committee as bear to the total of all those seats the same proportion as is borne by the number of members of that group to the membership of the authority’, the review must, so far as is reasonably practicable, follow the statutory principles laid down in section 15(5) of the Act, namely:-

Principle 1 (section 15(5)(a) of the Act)

That ‘all the seats are not allocated to the same political group’ i.e. no council body can be exclusively the preserve of one political group.

Principle 3 (section 15(5)(c) of the Act)

That, subject to priority being given first to principle 1, ‘the number of seats on the **ordinary committees** of a relevant authority which are allocated to each political group bears the same proportion to the total number of all the seats on the **ordinary committees** of that authority as is borne by the number of members of that group to the membership of the authority’.

This requires that proper categorisation is undertaken to identify those bodies which are 'ordinary committees' and that the TOTAL number of seats on those ordinary committees allocated to political groups reflect the proportionate strength of the political groups on the whole council. This is not the same as the subordinate principle 4 below.

Principle 4 (section 15(5)(d)) of the Act)

That, subject to priority being given to the above principles in order of priority (1 & then 3), 'the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority'.

This principle seeks to ensure each body (whether or not an 'ordinary committee') is proportionate but this principle is overridden by principles 1 and then 3 which as stated above have priority in that respective order.

21. As section 15 (4) of the Act makes clear, this duty to apply these 'section 15(5) principles' imposes a requirement 'to make only such determinations as give effect, so far as reasonably practicable, to the principles...' This recognises that mathematics only takes us so far as one has to deal with whole numbers. It is recommended that so far as reasonably practicable numbers are rounded up to the nearest whole number if .5 and above, and rounded down if .4 or below. Adjustments to the allocation of seats to political groups will need to be made to reflect the principles in their respective order of priority. Hence the law recognises that it is ultimately so far as is reasonably practicable. The review reflects this.
22. Section 16 of the Act imposes a duty to give effect to allocations by making appointments in accordance with the expressed wishes of the respective political groups as regards their allocated seats on bodies required to be politically proportionate. The council cannot override the wishes of those political groups by majority vote.
23. Seat allocations between political groups are non-transferable as to do so undermines the statutory political proportionality rules and is an impermissible attempt to introduce alternative arrangements without going through due process.
24. As there are non-aligned councillor(s) (i.e. ungrouped councillor(s)), there is a duty as regards seats not allocated to political groups (i.e. those left over) 'to make appointments as to secure that the persons appointed to those seats are not members of any political group' (see section 16(2A) of the Act). This ensures that seats are available to non-grouped councillors, but no such councillor cannot demand to be appointed to any specific seat on any particular body as their collective or individual wishes as to nomination are not required to be followed. It is the proportion of seats that must be respected by the council (subject to alternative arrangements).
25. There are no changes proposed to the existing number, size or terms of reference of council committees, and the review has proceeded on this basis.
26. The council may disapply the political balance requirements in whole or in part provided no councillor votes against those alternative arrangements (see section 17(1) of the Local Government and Housing Act 1989 and regulation 20 of the Local Government (Committees and Political Groups) Regulations 1990).

27. Appendix 1 to this report sets out the ordinary committees and other bodies which are required to be politically proportionate, and the nominations so far as is known to such bodies together with nominations for appointments for chair and vice-chairs of such bodies.
28. Appendix 1 (prepared as at 16 May 2023) is subject to any revisions to reflect any changes in wishes expressed by the relevant political groups in respect of their seat allocations, and any changes in alternative arrangements agreed. Indeed, there are a number of vacancies which stand to be filled or left vacant.
29. The local authority's constitution is currently being reviewed and further engagement with councillors will take place as soon as practicable.
30. As mentioned in the summary to this report, this review will be aided by the recent publication of guidance from the Centre for Governance and Scrutiny [Practical Guidance Archives - Centre for Governance and Scrutiny \(cfgs.org.uk\)](https://www.cfgs.org.uk). A fourth publication relating to meetings of full council is expected later this year.
31. In the meantime, there are three minor constitutional changes recommended.
32. There is a recommended change to the membership of the Harbour Committee. It is suggested that it remains at seven elected councillors but that the requirement to have three elected Cabinet portfolio members be altered. The reason is that, without alternative arrangements agreed without dissent, the results of the present political proportionality review means that the Alliance Group only has two allocated seats and so cannot have three Cabinet portfolio members.
33. The second recommended change is for the name of the Audit Committee to be renamed the Audit and Governance Committee. Full Council clarified last year that the terms of reference of that Committee included review of the constitution, and the new suggested name better reflects the totality of its terms of reference.
34. Councillors are being recommended to grant delegated authority to the Director of Corporate Services to discharge the duty to declare vacancy in office in certain cases set out in section 86 of the Local Government Act 1972, including where a councillor has failed to comply with the minimum attendance requirements in section 85 of that Act. Such delegated authority would enable effective and efficient administration to take place.
35. Guidance jointly published by the Association of Electoral Administrators, Lawyers in Local Government and the Association of Democratic Services Officers urges local authorities to grant such delegated authority where a councillor has ceased to be a member of the local authority where there has been a breach of section 85 of that Act. Although failure to attend any qualifying meetings for six consecutive months (without specific prior approval for such specific absence having been granted by the full council) results in such a councillor ceasing to be a member of the local authority, there is a second stage required namely the formal declaration of a casual vacancy. Section 86 of that Act requires the local authority to declare that office vacant 'forthwith'. At present there is no delegation of this duty and it must be performed by the full council in the absence of such grant of delegation.

36. The guidance advocates as a matter of good practice the grant of delegated authority so as to avoid potential delay occasioned by having to wait until a meeting of the full council is called and held. The requirement to declare such a vacancy forthwith creates an understandable expectation that such declaration will be made promptly without delay. Councillors are therefore requested to grant delegated authority to the Director of Corporate Services to declare any vacancies under section 86 of that Act.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

37. The [Corporate Plan 2021 – 2025](#) and its corporate aims are furthered through having effective corporate governance arrangements in place. Good governance arrangements are therefore essential to the delivery of the council's services and the decision-making process that support this.

CONSULTATION

38. A copy of this report was sent to all Group Leaders and to the three non-aligned councillors.

FINANCIAL / BUDGET IMPLICATIONS

39. There are no additional costs associated with the proposals contained in this report. The recommendations accord with the resources available within the overall budget agreed by Full Council in February 2023.

LEGAL IMPLICATIONS

40. As set out in the report.

EQUALITY AND DIVERSITY

41. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is not considered that the content of this report has any negative impact on any of the protected characteristics.

OPTIONS

42. Option 1: That the existing committees be reappointed with no changes to their size or terms of reference, except that the Audit Committee shall be renamed the Audit and Governance Committee.
43. Option 2: That other changes be made to existing committee arrangements.
44. Option 3: That the political proportionality review and arrangements be formally approved, with the membership of the Harbour Committee being seven elected councillors, two of which should be Cabinet portfolio members (provided the

Committee is politically proportionate unless alternative arrangements are agreed without dissent).

45. Option 4: That other alternative arrangements be agreed.
46. Option 5: That the appointments set out in Appendix 1 to this report (as amended) be approved.
47. Option 6: That other appointments be made.
48. Option 7: That the Director of Corporate Services be granted delegated authority to declare any vacancy in the office of councillor under section 86 of the Local Government Act 1972 as amended and that the constitution be updated accordingly.
49. Option 8: That Full Council does not delegate authority under section 86 of the Local Government Act 1972.

RISK MANAGEMENT

50. The recommendations are to ensure that the council meets its corporate governance requirements and responds to changing requirements and demands. These should lessen the risks arising from any challenge to the decision-making process by way of judicial review or other such legal action.

EVALUATION

51. Council could make changes to its existing agreed committee arrangements but in view of the size of membership of the local authority (39 councillors) no change is being recommended at this stage except as regards the Harbour Committee to address the issue raised by the political proportionality review.
52. Full council considered political proportionality and agreed alternative arrangements at its meeting on 18 January 2023. This review is only triggered due to this meeting being the annual meeting of council.
53. Council has no option and must respect the duly expressed wishes of the respective political groups and to appoint those nominated to their allocated seats and to appoint those nominated as substitutes (unless no such wishes were expressed within the prescribed statutory deadline in which case the council has discretion to appoint – this is not yet applicable as time only begins to run after the decision to allocate seats has been made and after the Monitoring Officer has given due written notice). Council must also respect the proportion of seats required to be allocated to non-aligned councillors, though is not required to appoint any particular councillor to any specific seat. Those put forward for appointment should be eligible, suitable and willing to serve. Attention is drawn to the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities – Chapter 4 Selecting Committee Members [Title \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
54. To discharge, in a more timely manner, the duty to formally declare vacancies in certain cases forthwith under section 86 of the Local Government Act 1972 would be achieved through the grant of delegated authority.

APPENDIX 1 ATTACHED

55. The Appendix sets out the committees to be re-established (with no changes to their size or their terms of reference) and appointments to such committees (including substitutes where permitted) and to the positions of chair and vice-chair of such committees which are required under Part 4A Section 1 to be appointed at each annual council meeting.

BACKGROUND PAPERS

56. None.

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