



Purpose: For Decision

Name of meeting	ANNUAL COUNCIL
Date	26 MAY 2021
Title	POLITICAL PROPORTIONALITY, ALTERNATIVE ARRANGEMENTS, ALLOCATION OF SEATS, NOMINATIONS, AND APPOINTMENTS TO COMMITTEES
Report of	MONITORING OFFICER

EXECUTIVE SUMMARY

1. The purpose of this report is to formally undertake a statutory review of the political proportionality arrangements (as triggered under section 15 of the Local Government and Housing Act 1989) in respect of bodies that are required to be politically proportionate.
2. It is also to give formal notice that alternative arrangements are to be considered. Political proportionality (where applicable) may be disapplied in whole or in part if such arrangements proposed by members at the meeting are agreed (provided there is no dissenting vote).
3. Where political proportionality applies and has not been disapplied (under section 17 of that Act), seats will be allocated in accordance with those rules.
4. At the time of writing this report (18 May 2021) not all political groups that are intended to be formed have been duly notified to me. Only one political group (the Conservative Group) has been duly established. This means that it has not yet been possible to work out the seat allocation and finalise seat allocation so Appendix A to this report is yet to be completed. Members will be updated.
5. Nominations will be received from established political group(s) in respect of seat allocations on committees, and Full Council must appoint in accordance with the wishes duly expressed by those established political group(s). Seats will also be allocated in proportion to the ungrouped overall.
6. Members are advised to read and consider this report in conjunction with the report on the appointment of committees.

BACKGROUND

7. This report is broadly divided into five parts, namely (1) the review of the political proportionality (2) allocation of seats (3) the nomination of seats (4) appointments to seats (including the appointment of chairmen and vice-chairmen of committees) and (5) alternative arrangements.

Review of the Political Proportionality (Political Balance)

8. Certain council bodies are required by law to be subject to the statutory roles on political proportionality. The Widdicombe Committee (Cmnd. 9797 (1986)) recommended the introduction of the 'principle of proportionality' and this was implemented in the Local Government and Housing Act 1989 ('the Act') in respect of principal councils (but not local councils).
9. 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.
10. It should be noted that the concept of a 'political group' is distinct from that of an established political party in that members of a political group duly established do not necessarily have to be of the same political persuasion, though often they are. Thus, political party grouping is not the same as a statutory 'political group' as defined for the purposes of the Act and regulations made under it.
11. Section 15 (1) ('duty to allocate seats to political groups') of the Act 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'). At the time of writing this report the council has divided itself into one or more such political groups, and so there is a requirement to conduct such a review. 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.
12. 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 2 (section 15(5)(b) of the Act) (NB. This does NOT apply where there is no majority group).

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.

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

That, subject to priority being given first to principle 1 [and then principle 2 (but only if there is a majority group)], '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 (2 if majority group) & 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 2 but only if there is a majority group) and 3 which as stated above have priority in their respective order.

13. 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.
14. As the determination of the actual size of council bodies by definition affects the number of seats that are to be allocated, Members are requested to consider this report in conjunction with the report on appointment of committees.
15. In the event that there is/are any non-aligned member(s) (i.e. ungrouped member(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 members, but they cannot demand to be placed on any particular body as their wishes as to nomination are not required to be followed.

Seat Allocation

16. To allocate seats to political groups requires that such political groups (to which seats are to be allocated) have been lawfully established at the point of time when allocation is to be made. Appendix A to this report sets out the ordinary committees and other bodies which are required to be politically proportionate (unless alternative arrangements are duly made).

Nominations

17. Once the seats have been properly allocated, nominations from the political groups to which such seat allocations have been made will need to be duly invited and duly received. 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.

Appointments

18. 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. The council cannot override the wishes of those political groups.

Alternative arrangements

19. 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).

STRATEGIC CONTEXT

20. Good governance arrangements are essential to the delivery of the council's services and the decision-making process that support this.

CONSULTATION

21. None as seat allocation has not yet been agreed.

FINANCIAL / BUDGET IMPLICATIONS

22. 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 2021.

LEGAL IMPLICATIONS

23. Under section 16 of the Local Government and Housing Act 1989 the power to appoint to committees is that of the local authority i.e. the council. (The power to appoint sub-committees rests with the parent committee).
24. The power to appoint councillors to committees (and indeed the power to remove councillors from committees) cannot be delegated by the Full Council to a committee or to any officer of the council or indeed to any political group, but must

be exercised by the Full Council itself. This is because the power to make delegated arrangements under section 101 of the Local Government Act 1972 is subject to any express provision contained in that Act or in any subsequent enactment, and section 102 of the Local Government Act 1972 and section 16 of the Local Government and Housing Act 1989 are such express provisions.

25. It is the duty of the council itself to exercise the power of appointment of elected members to its committees 'as soon as practicable'. The obligation on the Full Council is to give effect at the first practicable opportunity. Appointments are required to be made.
26. As it is only the council that can make appointments to its committees (and only the council has the power to remove) the council must, if it wishes to have any substitutes, appoint substitutes to its committees as political groups have no power to appoint, merely to nominate. The appointment of named substitutes (where such substitution is permitted by law and under the Constitution) has the merit of transparency and openness, and, as the council has already agreed that political groups should only nominate members as substitutes if they have had relevant training in the work of the committee, this approach enables training and resources to be better focussed and better discharges its fiduciary duty to ratepayers.
27. Under regulation 14 of the Local Government (Committees and Political Groups) Regulations 1990 as amended, the appointed proper officer (the Monitoring Officer) has the duty to notify the relevant leaders of the political groups 'as soon as practicable' after the agreed allocation of seats (or after any vacancies subsequently arising) so that such political groups may nominate members from their groups for appointment by the council to the seats allocated on its committees to their groups.
28. Should a political group fail to express its wishes in relation to such appointment within three weeks beginning with the date on which the proper officer gave due written notice, the council has discretion to make such appointment to that seat as they think fit in accordance with reg 15 of the same regulations. The seats could be left vacant for a period of time.
29. This legal inability to implement the nominations of political groups by way of delegated authority is clearly administratively inconvenient as delays in appointment inevitably result, but any purported delegation would be, and is, unlawful and ineffective.

EQUALITY AND DIVERSITY

30. 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

31. To approve the review of political proportionality.
32. To appoint those nominated by the respective political groups to their allocated seats as contained in Appendix A.
33. To appoint to any unallocated seats those named ungrouped councillors as contained in Appendix A.
34. To appoint named substitutes as contained in Appendix A.
35. To agree alternative arrangements and to make appointments in accordance with those alternative arrangements.

RISK MANAGEMENT

36. 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

37. 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).
38. Equally Council has no option and must appoint any unallocated seats to ungrouped members, but it does have discretion as to which ungrouped member(s) to appoint. Fairness requires ungrouped members to be able to nominate their substitutes too from among any other ungrouped member(s).
39. An effective governance system for the council is essential to enable business to be transacted openly and in a timely manner. The appointment of elected members (including where appropriate substitutes) to its committees seeks to do this.

RECOMMENDATIONS

40. That the review of political proportionality set out in Appendix A to this report be approved.
41. That those councillors nominated by the respective political groups to their allocated seats as contained in Appendix A to this report be appointed.
42. That those named ungrouped councillors be appointed to the unallocated seats as contained in Appendix A to this report.
43. That the named substitutes as contained in Appendix A to this report be appointed.

APPENDICES ATTACHED

44. Appendix 1 – Political proportionality review, seat allocations, nominations, and appointments to council committees.

BACKGROUND PAPERS

45. None.

Contact Point: Christopher Potter, Monitoring Officer, ☎ 821000 e-mail christopher.potter@iow.gov.uk

CLAIRE SHAND
Director of Corporate Services