



Purpose: For Decision

Name of meeting **COUNCIL**

Date **15 SEPTEMBER 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. The review has become necessary due to the resignation last month of Cllr Geoff Brodie from the Alliance Group, resulting in a change in group membership figures and so in the proportionality overall. Two vacancies arise for the Alliance Group for nominations to be made, and there is a net reduction in two seats available to the Alliance Group, with two seats becoming allocated to the ungrouped.
3. The report 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). This inclusion of consideration of alternative arrangements on the agenda gives councillors an option should they wish to pursue it. Without it being included, councillors would not have this option at this time.
4. Where political proportionality applies and has not been disapplied (under section 17 of that Act), nominations will be needed to the vacancies in the seats which are (re)allocated in accordance with those rules following this political proportionality review, and if any other changes in the wishes of political groups are to be given effect.
5. Full council must appoint in accordance with the wishes duly expressed by those established political group(s). Seats must also be allocated in proportion to the ungrouped overall. Full council must appoint so as to reflect the proportion of seats allocated to the ungrouped.

6. The report also deals with other appointments which still stand to be made, being the IWALC representative on the Planning Committee and the IWALC representative on the Health and Wellbeing Board. All other appointments are unaffected.

BACKGROUND

7. At the Annual Council meeting held on 26 May 2021 a review of the political proportionality was undertaken in respect of those bodies which are required to be politically proportionate. A further review is required for the reason stated above.
8. The table below lists the numbers of councillors belonging to established political groups and those who are ungrouped:

	<u>May 2021</u>	<u>September 2021</u>
Alliance	18	17
Conservatives	18	18
Ungrouped	3	4
<u>Total:</u>	39	39

9. As a result of this resignation and further review, the seat allocation is that:
- (i) the Alliance Group has two vacancies to nominate councillors for appointment by the council namely:

<u>Committee</u>	<u>Vacancy</u>	<u>Nomination Received</u>
Appointments and Employment Committee	1 Alliance Group	TBA
Corporate Scrutiny	1 Alliance Group	Cllr Karen Lucioni

- (ii) the ungrouped has two additional seats to fill and to be appointed to by the council, namely:

<u>Committee</u>	<u>Vacancy</u>	<u>Nomination Received</u>
Appeals Committee	1 Ungrouped	Cllr Geoff Brodie
Planning Committee	1 Ungrouped	Cllr Geoff Brodie

10. Appendix 1 sets out the old and new proportionate seat allocations.
11. Should however the council wish to make alternative arrangements, 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).

12. At the most recent meeting held on 21 July 2021, the council agreed that there should be one non-voting member of the Planning Committee to be nominated by the Isle of Wight Association of Local Councils (IWALC). (By section 13 of the Local Government and Housing Act 1989 it could not, by law, be a voting co-opted member).
13. IWALC have nominated Cllr Shirley Smart to be appointed to the Planning Committee. Council is therefore formally requested to make that appointment.
14. Turning now to the Health and Wellbeing Board (which for clarity is not a body required to be politically proportionate), IWALC have nominated Cllr Kai Wacker to be appointed to the Health and Wellbeing Board and has nominated Cllr Shirley Smart to be appointed to the Health and Wellbeing Board as the authorised substitute. Council is therefore formally requested to make these appointments.

STRATEGIC CONTEXT

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

CONSULTATION

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

FINANCIAL / BUDGET IMPLICATIONS

17. 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

18. Under section 16 of the Local Government and Housing Act 1989 the power to appoint elected councillors to committees is that of the local authority i.e. the council. (The power to appoint sub-committees rests with the parent committee).
19. This 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.
20. 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.
21. 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.

22. 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.
23. 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 regulation 15 of the same regulations. The seats could be left vacant for a period of time.
24. 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.
25. The Health and Wellbeing Board has been established under section 194(1) of the Health and Social Care Act 2012. Under the Constitution the Board's membership includes a representative from IWALC, being what the local authority thinks appropriate under section 194(2)(g) of that Act.
26. It is for the council to appoint the nominated representative from IWALC as under section 194(11) of that Act a Health and Wellbeing Board is a committee of the local authority which established it and is treated as a committee appointed under section 102 of the Local Government Act 1972, but it is not required to be politically proportionate by virtue of regulation 7 of the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

EQUALITY AND DIVERSITY

27. 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

28. To approve the review of political proportionality.
29. To appoint those nominated by Alliance Group to their vacant allocated seats (in the absence of any alternative arrangements being agreed without dissent).
30. To appoint Cllr Geoff Brodie to the two new unallocated seats, namely to the Appeals Committee and to the Planning Committee, or such other ungrouped councillor as might be nominated.
31. To appoint Cllr Shirley Smart to serve as a non-voting co-opted member of the Planning Committee.
32. To appoint Cllr Kai Wacker to serve as the IWALC representative on the Health and Wellbeing Board and to appoint Cllr Shirley Smart to serve as the authorised substitute for Cllr Kai Wacker as the IWALC representative
33. To agree alternative arrangements and to make appointments in accordance with those alternative arrangements.

RISK MANAGEMENT

34. 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

35. Council has no option and must respect the duly expressed wishes of the respective political group and to appoint those nominated to their allocated seats (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).
36. 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).
37. 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

38. To approve the review of political proportionality.
39. To appoint those nominated by Alliance Group to their vacant allocated seats (in the absence of any alternative arrangements being agreed without dissent).
40. To appoint Cllr Geoff Brodie to the two new unallocated seats, namely to the Appeals Committee and to the Planning Committee, or such other ungrouped councillor as might be nominated.
41. To appoint Cllr Shirley Smart to serve as a non-voting co-opted member of the Planning Committee.
42. To appoint Cllr Kai Wacker to serve as the IWALC representative on the Health and Wellbeing Board and to appoint Cllr Shirley Smart to serve as the authorised substitute for Cllr Kai Wacker as the IWALC representative.

APPENDICES ATTACHED

43. Appendix 1 – Political proportionality review, and reallocated seat allocation.

BACKGROUND PAPERS

44. None.

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

CLAIRE SHAND
Director of Corporate Services

CLLR LORA PEACEY-WILCOX
Leader of the Cabinet/Council