

COUNCIL

28 MARCH 2017

REPORT OF CORPORATE DIRECTOR (CORPORATE SERVICES)

A.4 OPERATION OF POLITICAL PROPORTIONALITY RULES IN ALLOCATING SEATS ON COMMITTEES ETC. TO NON-ALIGNED MEMBERS

(Report prepared by Ian Ford, Martyn Knappett and Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To enable Council to consider the operation of political proportionality rules in allocating seats on Committees etc. to Non-Aligned Members.

To enable Council to then choose one of the three available options which will be implemented with effect from the Annual Meeting of the Council on 25 April 2017.

EXECUTIVE SUMMARY

The political proportionality rules that apply in allocating seats on Committees etc. are set out in the Local Government and Housing Act 1989 and apply only to political groups and not non-aligned Members.

Members have requested clarification on this and therefore Officers have reviewed how the political proportionality rules apply in allocating seats on Committees etc. to Non-Aligned Members (i.e. Members who are not a member of any political group on the Council). This is also in the light of the fact that six Members are not a member of any political group which equates to 10% of the Council's total membership.

Following the review Officers have put forward three options for Members to consider.

This report sets out those three options for Council to consider in making its decision.

RECOMMENDATION(S)

That Council decides which of the three Options it wishes to see approved and implemented with effect from the Annual Meeting of the Council on 25 April 2017, bearing in mind that the case law points to recommending Option 3 but that Section 17 of the Local Government and Housing Act 1989 allows for alternative approaches to be taken if no Member votes against.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Council's decision on this matter will help ensure good governance in the way the

Council operates its Committee system.

FINANCE, OTHER RESOURCES AND RISK

None.

LEGAL

Sections 15 and 17 of the Local Government and Housing Act 1989 are relevant.

The Council has a duty under the legislation, either when certain changes occur or at its Annual Meeting, to review the representation of different political groups and the determination of the allocation of seats on committees etc. The Act (Section 15) requires that the Council, in exercising its duty and power, so far as reasonably practical, give effect to the principles of political balance which can be summarised like this:

- All seats on a committee must not be allocated to the same political group;
- The majority group (if there is one) must have the majority of seats on each committee;
- The total number of committee seats across the Council must be allocated proportionately to the number of seats each group has on the full Council; and
- The seats on each committee must be allocated in proportion to the number of seats of each group on the full Council.

The principles are in order of priority. This means that the second principle is applied subject to the first. Similarly, the third principle is applied subject to the first and the second and so on.

A “political group” comprises two or more Members who have given written notice of their wish to be treated as a group. It must have a Leader and may have another Member authorised to act in the place of the Leader (“the representative”). A Member is to be treated as a member of a group if he/she is party to such a notice, or otherwise gives notice, signed by the Leader, or representative, or a majority of the group members, that he/she wishes to join the group.

The obligation to ensure that there is proportionality in the political composition of public bodies to which this Section applies extends only to proportionate representation of members of political parties and does not require independent members to be proportionally represented. In [*R. \(East Riding of Yorkshire Council\) v Joint Committee for the purpose of making appointments to the Humberside Police Authority \(\[2001\] A.C.D. 44; 3 L.G.L.R. \(forthcoming\), QBD*](#) the Court held that the use of the words “political groups” implied that an authority was not under a duty to take into account independent councillors when undertaking its review of the representation of different political groups on such a body (on the facts as joint police authority). It was suggested, however, that it might be appropriate for Parliament to clarify the issue given the increase in independent elected representatives. The wording of the Act clearly referred to “parties” and it had to be assumed that it was Parliament’s intention that only representatives of political parties were to be included in the calculation. Reference to Hansard only served to confirm that assumption. The wording had to be given its natural meaning and independent councillors who by definition did not belong to any party could not be taken into account. Any apparent unfairness which resulted could only be remedied by Parliament.

To date the inclusion of non-aligned members within the allocation calculation has not been to ensure that they achieve political proportionality but to allow an elected Member to sit on a committee and represent the Tendring District in its decision making on

committees. The proceedings of a body are not to be invalidated by any departure from Sections 15 and 16 of the 1989 Act, and alternative arrangements not complying with the requirements may be made, by virtue of Section 17 of the 1989 Act, if no Member of the relevant authority, or committee, votes against. However, as the case law demonstrates the Council's obligation does not extend to including any non-aligned Members within the allocation review. An alternative approach strictly in accordance with Section 17 of the 1989 Act could be taken by the Council.

OTHER IMPLICATIONS

None.

PART 3 – SUPPORTING INFORMATION

OPTIONS TO BE CONSIDERED BY COUNCIL

Option One – Maintain the Status Quo

This Option is an alternative approach that departs from Section 15 of the 1989 Act and can only be implemented in strict accordance with Section 17 of that Act i.e. only if no Member of the Council votes against.

This Option would see the Council continue its current practice of including the Non-Aligned Members in the initial calculation and allocate seats to them as if, in effect, they were a group in themselves. At the present time this would equate to 10% of the overall seats on Committees etc.

Appendix A to this report sets out an example of how, based on the current information, such a calculation would look for the Annual Meeting of the Council in April.

Option Two – Do Not Include The Non-Aligned Members In The Initial Calculation

This Option is an alternative approach that departs from Section 15 of the 1989 Act and can only be implemented in strict accordance with Section 17 of that Act i.e. only if no Member of the Council votes against.

This Option would see the Council not include the Non-Aligned Members in the initial calculation or allocation of seats but would instead see the Non-Aligned Members assigned the remaining "left-over" seats once the Political Groups have taken their allocations.

Appendix B to this report sets out an example of how, based on the current information, such a calculation would look for the Annual Meeting of the Council in April.

Option Three – Do Not Include The Non-Aligned Members At All

This Option complies with Section 15 of the 1989 Act.

This Option would see the Council not include the Non-Aligned Members at all and the initial calculation would be carried out as if the Council had, in effect, 54 Members and not 60. Therefore, no Non-Aligned Members would receive any Committee seats unless they were unilaterally donated by a Group Leader. This would need Council approval.

Appendix C to this report sets out an example of how, based on the current information,

such a calculation would look for the Annual Meeting of the Council in April.

NOTE: In preparing the three examples Officers have assumed for now that UKIP will win the St James Ward By-Election. This is based solely on the fact that the late John Hughes was elected for UKIP in the St James' Ward at the Council Elections in May 2015. Obviously the figures would be recalculated in the event that another Party won the By-Election.

BACKGROUND

In conducting the review Officers contacted other Councils to ascertain how they would administer the operation of political proportionality rules in allocating seats on Committees etc. to Non-Aligned Members.

From the 13 replies received back from Councils, those Councils implement (or would implement) the options as follows:

Option 1 = 2 Councils;

Option 2 = 3 Councils;

Option 3 = 8 Councils.

APPENDICES

Appendix A – Example Political Proportionality Calculation for Option 1

Appendix B – Example Political Proportionality Calculation for Option 2

Appendix C – Example Political Proportionality Calculation for Option 3