



Chester-le-Street District Council

REPORT TO: COUNCIL

DATE OF MEETING: 29 May 2008

REPORT OF: Head of Legal & Democratic Services

SUBJECT: Appointment of Committees, Annual Review of Political Balance, Disapplication of Political Balance Rules, Allocation of Seats, and Appointments and Nominations to Bodies

ITEM NUMBER:

1. Purpose and Summary

1.1 The purpose of this report is to:-

- (1) establish/appoint Committees and other bodies as required by Rule 1 of Part 4A ('Rules of Procedure') in the Council's Constitution ('the Constitution'), deciding their size and agreeing their Schemes of Delegation;
- (2) undertake the annual review of the representation of 'political groups' on bodies to which section 15 of the Local Government and Housing Act 1989 ('the 1989 Act') applies which the Authority has to do in pursuance of its statutory duty under the 1989 Act at its Annual Meeting (or as soon as practicable after the meeting) [NB. The Council has in its Constitution agreed that this is to happen at its Annual Meeting];
- (3) consider whether or not to disapply the political balance requirements that otherwise apply to certain bodies;
- (4) decide the allocation of seats to the political groups following the Council's political balance review in accordance with the political balance rules as required by law and under the Constitution ;
- (5) appoint members to those Committees and outside bodies as required by Rule 1 of Part 4A ('Rules of Procedure') in the Constitution and nominate members to outside bodies which appoint.

1.2 The Report therefore deals with the establishment of Committees and other bodies, explains what 'political groups' are and explains the consequential triggering of the need for a review of the political balance on certain Council bodies. It details how the review is required to be undertaken, sets out the Council's statutory duty following the review to allocate seats to political groups who then may put forward nominations of particular members to fill the particular

political group's allocation. The Report then deals with such appointments and other appointments to the Council bodies and appointments to outside bodies.

- 1.3 Members are therefore recommended to duly establish Committees and other bodies, conduct the annual review of political balance, consider whether or not to disapply the political balance rules to certain bodies, allocate seats to political groups, and make appointments to Council and outside bodies and nominate members to outside bodies for appointment.

2. Consultation

- 2.1 The views of the political groups and the non-grouped Member are sought.

3. Transition Plan and People and Place Priority

- 3.1 The Council's Constitution is the internal governance document which assists in the delivery of the Council's organisational goals as expressed from time to time.

4. Implications

4.1 Financial and Value for Money Statement

- 4.1.1 None directly arising from this report.

4.2 Local Government Reorganisation Implications

Durham County Council takes over district council responsibilities on 1 April 2009 and Chester-le-Street District Council will cease to exist after 31 March 2009. Appointments will need to reflect this end date.

4.3 Legal

- 4.3.1 The Council is required by its Constitution to transact certain business at its Annual Meeting. Rule 1 of Part 4A ('Rules of Procedure') refers.
- 4.3.2 Moreover, the Council has a statutory obligation under section 15 of the 1989 Act and regulations made thereunder to review the representation (on bodies required to be politically balanced) of different political groups on various specified occasions, including at its Annual Meeting (or as soon as practicable thereafter).
- 4.3.3 After such a review it is the Council's statutory duty under section 16 of the 1989 Act to determine the allocation of seats to political group(s) as soon as practicable.
- 4.3.4 In allocating seats to political groups the Council has to implement the statutory principles laid down in Section 15 (5) of the 1989 Act. These are set out later in the Report at Appendices 1 & 2.

4.3.5 Section 15 (4) of the 1989 Act requires the Council in the exercise of its duty to allocate to make only determinations as give effect, so far as reasonably practicable, to the principles specified in Section 15(5) of the 1989 Act. This recognises that exact precision is not always possible.

4.4 Personnel

4.4.1 None

4.5 Other Services

4.5.1 None

4.6 Diversity

4.6.1 None

4.7 Risk

4.7.1 The risk to the Council is that it will be in breach of its statutory duty and its own procedures in the Constitution unless it duly establishes Committees, reviews the political balance, allocates seats to political groups and make appointments.

4.7.2 The risk to the Community is that confidence in democracy will be eroded if the Council fails in its legal duties.

4.8 Crime and Disorder

4.8.1 None

4.9 Data Quality

4.9.1 Every care has been taken in the development of this report to ensure that the information and data used in its preparation are accurate, valid, reliable, timely, relevant and complete. The Council's Data Quality Policy has been complied with in producing this report.

4.10 Other Implications

4.10.1 None.

5. Background, Position Statement and Options Appraisal

5.1 Prior to the 1989 Act it was possible for bodies to consist solely of members from one political group. Since 1989 certain bodies are required by law to be politically balanced.

5.2 Sections 15 to 17 of the 1989 Act and the subsequent regulations provide for a system of political balance. Reviews are required to be undertaken by the Council (and members are reminded this duty applies to Committees too) on certain prescribed occasions, including on an annual basis.

5.3 Political Groups

5.3.1 The concept of a 'political group' is distinct from that of an established political party in that members of a political group do not necessarily have to be of the same political persuasion, though often they are.

5.3.2 At least two members can demand to be treated as a political group. In other words, there cannot be a political group of just one Member.

5.3.3 Seats are allocated to political groups and the Council then has no choice but to formally resolve that the nominated members by each political group be appointed in accordance with that political group's wishes. Section 16 of the 1989 Act lays down the statutory duty to give effect to appointments as soon as practicable.

5.3.4 This report is prepared on the assumed basis that the political groups named below are still duly established at the date of the Annual Meeting and their relative strengths are:-

Labour Group: 26

Independent Group: 5

Conservatives: 2

Liberal Democrat (Non-Grouped): 1

5.3.5 Provision is also made in the legislation about the allocation of seats to members who do not belong to any political group. It indicates that, where there are members of the Council who do not belong to a political group, a proportion of seats on each body to which appointments are made, equal to the proportion of authority members who do not belong to a political group, will not be allocated to any political group.

5.3.6 When it comes to appointments to these seats to non-grouped Member(s) they will therefore fall to be made by the Council at its discretion. There is no nomination rights procedure equivalent to that which applies to political groups, but the wishes of any non-grouped member should be sought. Section 16 (2A) of the 1989 Act states: 'Where appointments fall to be made to seats on a body to which section 15 applies otherwise than in accordance with a determination under that section, it shall be the duty of the authority or the committee, as the case may be, so to exercise their power to make appointments as to secure that persons appointed to those seats are not members of any political group.'

5.4 Political Balance

5.4.1 'Political balance' is the concept that seats should be allocated in proportion to the number of seats held by 'political groups' i.e. places on council bodies should be proportionate to overall strength on the Full Council.

5.4.2 Not all bodies are required by law to be politically balanced, though of course it might be decided in some situations to make those bodies politically balanced by choice.

5.4.3 The first step therefore is to identify which bodies are not required by law to be politically balanced. These are the Executive, the Standards Committee, and the Statutory Licensing Committee.

5.4.4 The second step is to identify those bodies which are required by law to be politically balanced (unless the rules are disapplied without dissent by those present and voting). These bodies are:-

5.4.4.1 Overview and Scrutiny Committees and their sub-committees are required under section 21 (11) of the Local Government Act 2000 to be politically balanced.

5.4.4.2 Ordinary committees and ordinary sub-committees appointed under section 102(1) (a) of the Local Government Act 1972 are required to be politically balanced.

5.4.4.3 Advisory committees and advisory sub-committees appointed under section 102(4) of the Local Government Act 1972 are required to be politically balanced.

5.4.4.4 Certain joint committees appointed by two or more authorities under section 102(1)(b) of the Local Government Act 1972 are required to be politically balanced (but only if there are at least three seats to be allocated).

5.5 Disapplication of Political Balance Requirements

5.5.1 Under section 17 of the 1989 Act and subsequent Regulations it is possible to waive the requirements of political balance. The procedure is laid down which requires two hurdles to be jumped namely (1) advance notification of any proposal for alternative (i.e. non-proportionate) arrangements be given to all members and (2) there is a resolution of the Council to disapply with no member voting against. Notification can be in the agenda which indicates that approval of alternative arrangements for appointments is to be considered. In other words, if the vote is less than unanimous, there will be no disapplication of the requirements of political balance. Any member present and voting can thus veto alternative arrangements by voting against them. If there is however no dissent, such alternative arrangements can take any form that is otherwise lawful.

5.5.2 Even if alternative arrangements are approved without dissent, such arrangements cease to have effect under section 17(2) of the 1989 Act when the Council's statutory duty to review representation is triggered under the 1989 Act or subsequent regulations. Alternative arrangements therefore have a limited shelf-life, the length of which cannot be predicted from the outset.

5.6 Review of Political Balance and Allocation of Seats to Political Groups

5.6.1 Appendix 1 to this report sets out the strength of the political parties and the assumed strength of the political groups and the non-grouped and sets out the statutory principles which must be applied which distort the figures.

5.6.2 In performing the statutory duty of the Council to determine the allocation to different political groups of seats on a body to which section 15 of the 1989 Act applies, the Council can only make determinations which give effect, so far as reasonably practicable, to the statutory principles specified in section 15(5) of the 1989 Act.

5.6.3 **No one party gets all the seats** - The first principle (section 15(5)(a)) to be applied to any proposed allocation of seats is that no political group is to get all the seats allocated on a particular body (i.e. no one party body). An adjustment to any proposed allocation is therefore required to prevent a breach of this first principle. Where such an adjustment is required, it may have the effect of inflating the entitlement of a political group beyond that which the proportionate seat percentage would indicate. The only way in which a body which is required to be politically balanced under section 15 of the 1989 Act can be a one political group membership is by the Council agreeing to disapply the political balance requirements under section 17 of the 1989 Act (see para. 5.6 above).

5.6.4 **The majority party gets a built-in majority on each body** - The second principle (section 15(5)(b)) only applies where one political group has a majority on the Council and therefore does not apply where there is a 'hung' Council in terms of political groups. This Council does have a political group with an overall majority and therefore this second principle must be applied with the effect that all bodies to which section 15 of the 1989 Act applies and has not been disapplied by section 17 of the 1989 Act must have a majority of seats allocated to the Labour Group. In practice, given the present political balance overall, the application of this second principle will not cause any difficulty.

5.6.5 **Proportionate strength on the Council is applied to the allocation of the total number of seats on 'Ordinary Committees'**. The third principle (section 15(5)(c)) needs more detailed explanation as confusion can arise unless proper categorisation is understood. This third principle overrides (i.e. takes precedence over) the fourth principle.

5.6.6 Appendix 1 to this Report sets out the allocation of seats on the Ordinary Committees.

- 5.6.7 **Each particular body is to be proportionate to the strength on the Council.** The fourth principle (section 15 (5) (d)) applies to all the bodies to which section 15 of the 1989 Act applies. This requires the seats on each body to be allocated to each political group proportionate to its relative strength on Full Council.
- 5.6.8 Appendix 1 to this Report lists the allocation of seats on all bodies to which the political balance rules apply.
- 5.6.9 As principle (c) takes precedence over principle (d), there is a need to check the results to ensure that any political group does not have too high/too low a proportion of allocated seats when the seats on each body are added up to create a total no. of seats on the bodies, and then compared with the total seats for Ordinary Committees.
- 5.6.10 Adjustments sometimes have to be made. Where this has to take place, an agreed position between members is preferable, provided the agreed position does not conflict with the Council's duty under section 15(4) of the 1989 Act which is "to make only determinations as give effect, so far as reasonably practicable, to the principles in subsection (5)".
- 5.6.11 The allocation of seats is dependent upon whether or not the Council intends to disapply the political balance rules from any particular body. Previously the Council has, for example, disappplied the rules from the Performance Committee. Appendices 1 and 2 show the effect of each option.

5.7 Establishment of Committees

- 5.7.1 Under Rule 1 of Part 4A ('Rules of Procedure') of the Constitution, the Council is required at its Annual Meeting 'to appoint at least one Overview and Scrutiny Committee, a Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions...'
- 5.7.2 The changes from the arrangements which existed at the end of the last municipal year are as follows:-
- (a) There is to be only one Overview and Scrutiny Committee) comprising all non-Executive Members of the Council ;
 - (b) The Standards Committee shall be comprised of twelve people (see the Review of the Constitution Report and para. 5.8.2 post);
 - (c) The Planning Committee shall consist of all 34 elected Members;
 - (d) The Licensing Committee shall consist of all 34 elected Members.
- 5.7.3 Other than the changes set out at para. 5.7.2 and the changes to the Scheme of Delegation to the Overview & Scrutiny Committee and the Standards Committee set out in the Review of the Constitution Report it is recommended that the status quo be retained.

5.8 Appointments

Bodies not required to be politically balanced

- 5.8.1 The Leader of the Council appoints the Executive so there is no decision to be made by the Council.
- 5.8.2 Council is requested to appoint three elected members to serve on the Standards Committee – one from the Executive, one other from the majority party and one from a minority group. The Council is also asked to appoint five Independent members with an advertisement for a sixth vacancy being authorized and undertaken and also to appoint three Parish Representatives. There would be in total 12 members instead of the existing 9 members. The increase is recommended in order to facilitate the new local referrals system of complaints introduced on 8 May 2008 which requires an Assessment Sub-Committee, a Review Sub-Committee and a Hearings Sub-Committee.
- 5.8.3 Council is required to appoint fifteen members to serve on the Statutory Licensing Committee (which deals with Licensing Act 2003 and Gambling Act 2005 matters).

Bodies required to be politically balanced

- 5.8.4 Where the Council duly receives nominations from political groups as to their appointments to seats allocated to their political groups, the Council is obliged to respect and give effect under section 16(1) of the 1989 Act as soon as practicable to those wishes and resolve that such members be appointed to serve on those bodies to which allocations were made.
- 5.8.5 Where the political balance rules do not apply, the Council has a discretion over the appointments.
- 5.8.6 As there are currently no joint committees with any other Authority, there are no outside bodies to which the requirements of political balance apply. The Council may or may not decide to appoint or nominate proportionately.

6. Recommendations

- 6.1 That the Council notes the annual review of the political balance on the Council.
- 6.2 That the Council re-establishes the Council bodies which existed immediately before the end of the last municipal year with their Schemes of Delegation unchanged with the exceptions that (1) all four Overview & Scrutiny Committees are replaced by a single Overview & Scrutiny Committee and (2) that the Standards Committee be increased by an additional Parish Representative and two Independent Members, with in both such cases the respective Schemes of Delegation agreed in the 2008 Review of the Constitution Report (3) the Planning Committee is increased to all 34 elected members and (4) the Licensing Committee is increased to all 34 elected members subject to the proviso at (3) and (4) that no member shall be entitled to participate in any decision-making on such Committees unless training has been undertaken by such a member to the satisfaction of the Chief Executive.
- 6.3 That the Council continues to disapply the political balance requirements from the Performance Committee.
- 6.4 That the Council following the above review determines the allocation of seats to the political groups in accordance with the statutory rules as set out in Appendix 1 to this report.
- 6.5 That the Council appoints members to the Council bodies as set out in Appendix 3 to this report and appoints Members and nominates members to serve on outside bodies as set out in Appendix 4 to this report.

7. Background Papers / Documents Referred to

None.

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Version 2

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