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**Subject:** REVIEW OF ALLOCATION OF SEATS TO POLITICAL GROUPS

**Meeting and Date:** COUNCIL – 17 MAY 2019

**Report of:** JOINT REPORT OF THE CHIEF EXECUTIVE AND MONITORING OFFICER

**Classification:** UNRESTRICTED

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**Purpose of the report:** To allocate the seats on the committees of the Council to the different political groups and to appoint members to those committees in accordance with the allocation.

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- Recommendation:**
- (a) That the Council appoint the committees set out at paragraph 2.1 of the report.
  - (b) That the Council reviews and determines the representation of the different political groups and non-politically aligned members on the ordinary committees of the Council and the other bodies to which it makes appointments.\*
  - (c) That the Council appoints to the seats on the ordinary committees to give effect to the allocations and the nomination of the political groups and appoints to the other bodies to which it makes appointments.
  - (d) That the Council make appointments to the positions of Chairman and Vice-Chairman for each of the ordinary committees of the council and the two scrutiny committees.
  - (e) That having determined the allocation of seats to political groups, the Council consider whether it wishes officers to review (a) the committee structure and/or (b) the number of seats on each committee. \*\*

*\* If making a determination otherwise than in accordance with Option 1 the Council would need to formally approve the preferred method of determination and allocation as 'alternative arrangements' in accordance with Section 17(1) Local Government and Housing Act 1989 and Regulation 20 Local Government (Committees and Political Groups) Regulations 1990. To be effective no member of the Council must vote against the proposal.*

*\*\* Such a review would, in accordance of the provisions of the Constitution, require a report to be submitted to the Governance Committee prior to consideration by the full Council. (see paragraphs 2.1 – 2.4)*

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## 1. Summary

- 1.1 In accordance with its Constitution, the Council is required to appoint a number of committees to functions that are neither reserved to the Council nor are executive functions.

1.2 A review of the allocation of seats to political groups is required at, or as soon as practicable after, each Annual Meeting of the Council in accordance with the provisions of the Local Government and Housing Act 1989.

1.3 The prompt and correct allocation of committee seats is vital to maintaining an effective and transparent governance framework

## 2. **Appointment of Committees**

2.1 The Constitution of the Council requires that the following committees, boards and fora be appointed by the Council:

- Dover Joint Transportation Board (7 district seats plus other seats required in accordance with the agreement governing the Board)
- East Kent Services Committee (2 seats)
- Electoral Matters Committee (5 seats)
- General Purposes Committee (5 seats)
- Governance Committee (7 seats)
- Joint Health, Safety and Welfare Consultative Forum (5 seats + 5 staff member seats)
- Joint Staff Consultative Forum (5 seats + 5 staff member seats)
- Licensing Committee (15 seats)
- Planning Committee (10 seats)
- Regulatory Committee (5 seats)
- Scrutiny (Community and Regeneration) Committee (10 seats)
- Scrutiny (Policy and Performance) Committee (10 seats)

2.2 The Council may wish to consider whether, following the reduction in the size of the Council from 45 to 32 members, it wishes to ask officers to review (a) the committee structure; and/or (b) the number of seats on each committee.

2.3 However, the implementation of any changes to the committee structure set out in paragraph 2.1 would require a constitutional amendment. Where this is the case, the judgement of Mr Justice Stuart-Smith, *R (Bridgerow Ltd) v Cheshire West and Chester Borough Council* [2014] EWHC 1187 (Admin) (30 April 2014) mandates that the Council must act in accordance with the adopted and published constitution. Failure to do so would render any decision made by a body incorrectly appointed unlawful.

2.4 Accordingly, if Members request that officers review (a) the committee structure and/or (b) the number of seats on each committee, the required Constitutional amendments to the Constitution could only be approved by full Council after consideration of the proposal and report by the Governance Committee and the Council's statutory officers.

## 3. **Review of Allocation of Seats to Political Groups**

3.1 The political composition of the Council is currently 19 Conservative Group members, 12 Labour Group members and 1 'independent' member who is not a member of either of the political groups on the Council. In this report the member who is not a member of a political group is referred to as a "non-aligned member".

3.2 To be recognised as a political group, the group is required to have at least two members and to have formally notified the authority that those members wish to be treated as a political group. Members in a political group on the Council are not required to be in the same political party to form a political group. The Conservative

and Labour Groups have notified the Proper Officer they have formed political groups and meet the previously mentioned requirements of a political group.

3.3 Section 15 of the Local Government and Housing Act 1989 (specifically subsections (3) to (5)) prescribes the Council's duty to determine the allocation of seats which states the basic principles of seat allocation.

3.4 In summary, these principles of determination are:

- (a) That not all of the seats are allocated to the same political group;
- (b) 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;
- (c) Subject to the above two principles, that the number of seats on ordinary committees which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of the Council as is borne by the number of members of that group to the membership of the authority; and
- (d) Subject to (a) to (c), that the number of 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.

#### **Section 15(3) of the Local Government and Housing Act 1989**

3.5 The determination of seats on the Council has been undertaken in accordance with the principles set out in Section 15(3) of the Act, which states as follows:

“15(3) Where at any time the representation of different political groups on a body to which this section applies falls to be reviewed under this section by any relevant authority or committee of a relevant authority, it shall be the duty of that authority or committee, as soon as practicable after the review ,to determine the allocation to the different political groups into which the members of the authority are divided of all the seats which fall to be filled by appointments made from time to time by that authority or committee.”

3.6 However, where the Council has members who are non-aligned, this section is amended by regulation 16 of the Regulations to read as follows:

“15(3) Where at any time the representation of different political groups on a body to which this section applies falls to be reviewed under this section by any relevant authority or committee of a relevant authority, it shall be ***the duty of that authority or committee, as soon as practicable after the review 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 of those seats the same proportion as is borne by the number of members of that group to the membership of the authority.***”

3.7 Additionally, where there are non-aligned members, section 16(2A) of the Local Government and Housing Act 1989 has effect. This provides:

*“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 the persons appointed to those seats are not members of any political group”*

3.8 The implications of these changes to paragraph 15(3) taken with section 16(2A) is to require that the Council must allocate seats to the political parties in accordance with the four principles set out above. If there are any seats left over, they must then make appointments to the non-aligned members.

#### 4. **Variations to Political Balance Principles**

4.1 Prior to the allocation of seats, the Council may approve alternative arrangements for making appointments if it resolves to do so without any member voting against them.

#### 5. **Failure of a Political Group to Appoint to its Allocation**

5.1 If a political group fail to express their wishes within a period of three weeks of being notified of its allocation (which shall be taken as commencing from the date of the Council meeting where this report is considered), the Council at its first meeting after this period may make such appointment as it sees fit by majority vote regardless of the principles of political balance.

#### 6. **Definition of Ordinary Committees**

6.1 The following are a list of the ordinary committees of the Council:

- Electoral Matters Committee
- General Purposes Committee
- Governance Committee
- Planning Committee
- Regulatory Committee

6.2 The total number of seats on the ordinary committees of the Council is 32 seats.

#### **Non-Ordinary Committees**

6.3 In addition to the above ordinary committees, the Council also appoints seats on the Dover Joint Transportation Board (district council seats only) and the two Overview and Scrutiny Committees.

6.4 It is the view of the Solicitor to the Council that Section 21 (11) of the Local Government Act 2000 (under which Scrutiny Committees are appointed), makes the Scrutiny Committees 'bodies' to which the political balance rules apply. What it does not do is to make them automatically 'ordinary committees' for the purposes of the political balance rules.

#### 7. **Allocation of Seats – Other Bodies**

7.1 In addition to the ordinary committees of the Council (and those treated as such), there are three other bodies of the Council. Although these are not bound by the same requirements for political balance as the ordinary committees it should be noted that seats on the individual bodies have historically been allocated separately on the basis of political balance.

7.2 The bodies are the Licensing Committee, the Dover Joint Transportation Board, the Joint Staff Consultative Forum and the Joint Health, Safety and Welfare Consultative Forum.

#### **Allocation of Seats – Licensing Committee**

7.3 Pursuant to Section 6 of the Licensing Act 2003, the Licensing Committee must have at least ten, but no more than fifteen, members. The current arrangement of fifteen members allows the Licensing Committee to appoint five broadly area-based sub-committees to conduct hearings and has functioned effectively since its introduction

in 2003. An important reason for having 5 area-based sub-committees is that Members as a matter of convention do not sit on Licensing Sub-Committees considering applications relating to their wards. Accordingly, this report recommends the continued appointment of 15 councillors to the Licensing Committee.

- 7.4 The Licensing Committee is not subject to the requirements of the Local Government and Housing Act 1989 with regard to political proportionality, although this principle has voluntarily been applied in allocating the seats at the annual Council meetings held since May 2006. It is however at the discretion of the Council to set the size of the Licensing Committee and the allocation of seats, subject to the restriction mentioned above.

#### **Allocation of Seats – Joint Staff Consultative Forum and the Joint Health, Safety and Welfare forum**

- 7.5 In accordance with s.15(6) of the Local Government and Housing Act 1989, a seat on an advisory committee shall not be treated as being subject to the political balance requirements unless the authority have determined that it must be so filled. However, the Council has historically voluntarily applied the principles of proportionality in allocating seats to these fora.

#### **Allocation of Seats – Executive Committees**

- 7.6 The allocation of seats on the Executive and Executive Committees is a matter for the Cabinet and is outside the scope of this report.

#### **Allocation of Seats – Dover Joint Transportation Board**

- 7.7 The Dover Joint Transportation Board is not an 'ordinary committee' for the purposes of seat allocation.

#### **Allocation of Seats – East Kent Services Committee**

- 4.7 The terms of reference of the East Kent Services Committee specify that its membership must be composed of the Leader and Deputy Leader of the Council. As less than three members are appointed by the Council, it is not required to be politically balanced.

### **8. Identification of Options**

- 8.1 Option 1 – To allocate seats to the ordinary committees of the Council and the two scrutiny committees strictly in accordance with the statutory scheme and to make appointments to the Licensing Committee, the Dover Joint Transportation Board the Joint Staff Consultative Forum, the Joint Health Safety and Welfare Consultative Forum and the East Kent Services Committee as members see fit. This option is set out in Appendix 1.

- 8.2 Option 2 - To appoint on the basis of other alternative arrangements. Members should note that on this occasion officers are not putting forward the long established Dover convention of assigning seats to the political groups and non-aligned members equally based on the number of members that each possesses as a proportion of the Council as a whole. This is because the composition of the Council is such that this approach would make a minimal difference from the statutory scheme in terms of the results.

### **9. Evaluation of Options**

- 9.1 Option 1 is strictly in accordance with the statutory scheme and does not require an unopposed vote to approve.

- 9.2 Option 2 would require the approval of Council to agree the variation(s) without any member of the Council voting against. This could include the long established Dover convention of assigning seats to the political groups and non-aligned members

equally based on the number of members that each possesses as a proportion of the Council as a whole. However, the Council can only approve this option if no member of the Council votes against it.

- 9.3 In view of the possibility of so many different permutations Council would need to give officers instructions as to how these arrangements should be structured in order to enable a further report to be submitted to Council for approval. Further, as at the date of the meeting no committees have been appointed the Council should make interim appointments to the committees.

10. **Resource Implications**

- 7.1 None.

11. **Appendices**

Appendix 1 – Proposed allocation of seats as set out under Option 1

12. **Background Papers**

Localism Act 2011

Local Government Act 1972

Local Government and Housing Act 1989

The Local Government (Committees and Political Groups) Regulations 1990

Local Government Act 2000

Licensing Act 2003

The Licensing Act 2003 (Hearings) Regulations 2005

Local Government and Public Involvement in Health Act 2007

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