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**Subject:** REVIEW OF ALLOCATION OF SEATS TO POLITICAL GROUPS 2025

**Meeting and Date:** COUNCIL – 29 JANUARY 2025

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

**Classification:** UNRESTRICTED

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**Purpose of the report:** A review of the allocation of seats to political groups under section 15 of the Local Government and Housing Act 1989 was requested by Councillor C F Woodgate and the Conservative Group upon his joining the political group.

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**Recommendation:**

- (a) 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.\*
- (b) 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.
- (c) That the Council make appointments to the positions of Chairman and Vice-Chairman for each of the ordinary committees of the council.

\* Note: *If making a determination in accordance with Option 1, this would not be an 'alternative arrangement' and would therefore not require an unopposed vote against the proposal to be effective.*

*If making a determination otherwise than in accordance with Option 1 (a different 'alternative arrangement') 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.*

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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:

(a) each Annual Meeting of the Council in accordance with the provisions of the Local Government and Housing Act 1989

(b) as soon as practicable after there is delivered to the proper officer a notice under regulation 8, where such delivery is more than one month after the last

review carried out in accordance with section 15(1)(b) of the 1989 Act or, as the case may be, paragraph (a) above;

- (c) as soon as practicable after there is delivered to the proper officer a notice under paragraph (b) of regulation 9 which - (i) is accompanied by a further notice signed as mentioned in that paragraph and requesting a review under section 15 of the 1989 Act; and (ii) is received by him more than one month after the last such review.
- (d) as soon as practicable after there is delivered to the proper officer a notice under regulation 9(b) which is accompanied by such a notice as is mentioned in paragraph (c)(i) and each such notice - (i) is signed by a member elected to the authority pursuant to section 89 of the 1972 Act; and (ii) is received by the proper officer not more than one month after the date of the member's election.

1.3 In this instance, the review is requested following a notice under paragraph (b) of regulation 9 of The Local Government (Committees and Political Groups) Regulations 1990.

1.4 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 Advisory Board (7 district seats plus other seats required in accordance with the agreement governing the Board)
- East Kent Services Committee (2 DDC seats – joint committee with Canterbury City Council and Thanet District Council)
- Electoral Matters Committee (5 seats)
- General Purposes Committee (5 seats)
- Governance Committee (7 seats)
- Investigation and Disciplinary Committee (3 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)
- Overview and Scrutiny Committee (10 seats)
- Planning Committee (10 seats)
- Regulatory Committee (5 seats)

2.2 Separate from the above, the Cabinet is appointed by the Leader of the Council and any Policy/Project Advisory Groups (PAGs) are appointed by the Leader or Cabinet. Sub-Committees are appointed by the parent committee.

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

3.1 The political composition of the Council is currently 15 Labour Group members, 15 Conservative Group members and 2 non-aligned 'independent' members who are not a member of either of the political groups on the Council and do not constitute a political group in their own right. In this report the two members who are not members of a political group are referred to as "non-aligned members" (NAM).

- 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.
- 3.5 These principles are listed in order of priority in accordance with Section 15 of the Local Government and Housing Act 1989. 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 principle and so on.
- 3.6 The obligation to ensure that there is proportionality in the political composition of public bodies extends only to proportionate representation of members of political groups and does not require non-aligned 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)*, the Court held that the use of the words "political groups" implied that an authority was not under a duty to take into account non-aligned councillors when undertaking its review of the representation of different political groups.

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

- 3.7 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."
- 3.8 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.**”

3.9 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”*

3.10 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 groups 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. It therefore follows that if there are no seats left over, then no seats will be allocated to the non-aligned member(s).

#### 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 (Regulation 15 of The Local Government (Committees and Political Groups) Regulations 1990)**

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.

5.2 This does not apply to Non-Aligned Members as it is for the Council to make those appointments in accordance with section 16(2A) of the Local Government and Housing Act 1989. Definition of Ordinary Committees

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

- Electoral Matters Committee (5 seats)
- General Purposes Committee (5 seats)
- Governance Committee (7 seats)
- Investigation and Disciplinary Committee (3 seats)
- Planning Committee (10 seats)
- Regulatory Committee (5 seats)

5.4 The total number of seats on the ordinary committees of the Council is 35 seats.

#### **Allocation of Seats – Overview and Scrutiny Committee**

5.5 In addition to the above ordinary committees, the Council also appoints seats on the Overview and Scrutiny Committee.

- 5.6 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 Overview and Scrutiny Committee a 'body' 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.
- 5.7 The Overview and Scrutiny Committee is composed of 10 seats.

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

- 6.1 In addition to the ordinary committees of the Council (and those treated as such), there are other bodies to which the Council makes appointments. 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.
- 6.2 These 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**

- 6.3 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.
- 6.4 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.
- 6.5 The Licensing Committee is responsible for appointing its own Chairman and Vice-Chairman and appointing its own Sub-Committees.
- 6.6 The Licensing Committee is currently composed of 15 seats.

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

- 6.7 The Dover Joint Transportation Advisory Board is not an 'ordinary committee' for the purposes of seat allocation. However, historically the district councillors appointed to the Board have been made in accordance with the principles of political balance.
- 6.8 The Chairman and Vice-Chairman of the Dover Joint Transportation Advisory Board alternates between Kent County Council and Dover District Council. The Cabinet is responsible for appointing the Chairman or Vice-Chairman of the Dover Joint Transportation Advisory Board, depending on which position the Council is appointing to.
- 6.9 The Dover Joint Transportation Advisory Board is composed of 7 (district) seats. There are also 7 county council seats. Additionally, there are 5 town/parish seats (non-voting) comprised of 1 for Dover Town Council, 1 for Deal Town Council, 1 for Sandwich Town Council and 2 for Kent Association of Local Councils.

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

- 6.10 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.
- 6.11 The Joint Fora are responsible for appointing their own Chairmen and Vice-Chairmen.
- 6.12 The Fora are each composed of 5 (district councillor) seats and 5 (staff representative) seats.

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

- 7.10 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.

#### **Allocation of Seats – Executive Committees and Project Advisory Groups**

- 7.11 As mentioned earlier in the report, the allocation of seats on the Executive, Executive Committees and Project Advisory Groups is a matter for the Cabinet and is outside the scope of this report. These will be determined at the June 2023 meeting of the Cabinet.

### **7. Committee Chairmen and Vice-Chairmen – Ordinary Committees**

- 7.1 The Council is also required to appoint the Chairmen and Vice-Chairmen of the Ordinary Committees, which are as follows:
- Electoral Matters Committee
  - General Purposes Committee
  - Governance Committee
  - Planning Committee
  - Regulatory Committee
- 7.2 These are appointed by a simple majority vote.

### **8. Overview and Scrutiny Committee Chairman and Vice-Chairman**

- 8.1 The Council also makes the appointment for the Chairman and Vice-Chairman of the Overview and Scrutiny Committee. In accordance with Rule 6 of the Overview and Scrutiny Committee Procedure Rules:

“Subject to the Council Rules of Procedure, the overview and scrutiny committees/sub-committees will be chaired by a councillor who is not a member of the largest political group on the Council, unless there is no such person serving on the committee/sub-committee. In such cases, the committee/sub-committee may appoint such person to chair it from amongst the councillors sitting on it.”

- 8.2 Since the formation of an Overview and Scrutiny Committee under the Local Government Act 2000, there has always been a largest political group on the Council even if the Council itself was under no overall control.
- 8.3 However, the Council currently has no largest political group given that both political groups have 15 members respectively. Therefore, no such person exists on the Overview and Scrutiny Committee to chair it.

- 8.4 The Overview and Scrutiny Committee Procedure Rules make provision for such a situation in Rule 6 where it states that “in such cases, the committee/sub-committee may appoint such person to chair it from amongst the councillors sitting on it.”
- 8.5 It will therefore be for the Overview and Scrutiny Committee at its next meeting to appoint a chair from amongst its members.
- 8.6 In considering this matter, the relevant legislation has been consulted as well as the Council’s Constitution and there is no statutory or constitutional impediment to the Chairman of the Overview and Scrutiny Committee being from any of the political groups on the Council in the absence of a largest political group or even being a Non-Aligned Member.

## **9. Other Committee Chairman and Vice-Chairman**

- 9.1 The Licensing Committee, East Kent Services Committee, Joint Health, Safety and Welfare Consultative Forum, the Joint Staff Consultative Forum and the Investigating and Disciplinary Committee all appoint their own Chairmen and Vice-Chairmen.
- 9.2 The Chairman and Vice-Chairman of the Dover Joint Transportation Advisory Board are appointed by Kent County Council and Dover District Council’s Cabinets.

## **8 Identification of Options**

- 8.1 This report sets out a range of options for the allocation of seats. In summary, these options are (a) to make a determination in strict accordance with the rules of political balance or (b) to make a different determination not in accordance with the strict rules of political balance. Some of these options can be agreed by majority vote and others only by an unopposed vote.
- 8.2 Option 1 – To allocate seats to the ordinary committees of the Council and the Overview and Scrutiny Committee strictly in accordance with the statutory scheme and to make appointments to the Licensing Committee, the Dover Joint Transportation Advisory 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.
- 8.3 Option 2 - To appoint on the basis of other alternative arrangements.

## **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 it.
- 9.3 In view of the possibility of so many different permutations it is requested that if it is the will of the Council to agree a variation, it would be helpful for officers to be given advance notice of these intentions so that the implications of any changes can be considered.

## **10 Resource Implications**

- 10.1 No additional resource implications on the basis of current committee structure. It should be noted that the Council’s Members’ Allowances Scheme only permits one Special Responsibility Allowance to be paid per member.

## **11 Climate Change and Environmental Implications**

There are no direct climate change or environmental implications arising from the report.

12 **Appendices**

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

Appendix 2 – Political Group Seat Nominations (to follow)

13 **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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