
REPORT TO:	Extraordinary Council	AGENDA ITEM: 8
DATE OF MEETING:	3 rd August 2009	CATEGORY: DELEGATED
REPORT FROM:	Chief Executive	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	Andrea McCaskie (595831)	DOC:
SUBJECT:	Political Proportionality	REF:
WARD(S) AFFECTED:	All	

1.0 Recommendations

- 1.1 That the Council approves and adopts the recommended allocation of seats to the Political Groups and Independent/Non-Grouped Members for the remainder of the municipal year.
- 1.2 That the Council allocates seats between Political Groups and Independent/Non-Grouped Members as set out at Annexe 'A' and invites the two Groups to make nominations to fill the seats.

2.0 Purpose of Report

- 2.1 To consider the Council's political proportionality following the resignation of Councillor Pabla from the Labour Group.

3.0 Detail

- 3.1 The Council's duty to determine the allocation of seats is prescribed by Section 15 of the Local Government and Housing Act 1989 ("the Act") (specifically subsections (3) to (5) as modified by The Local Government (Committees and Political Groups) Regulations 1990 ("the Regs")). A Political Group is defined as being constituted by at least two Members who have advised the proper officer of the local authority in writing that they wish to be treated as a Political Group.
- 3.2 Following the resignation of Councillor Pabla from the Labour Group, the political composition of the Council is now as follows:-
 - Conservative Group 21
 - Labour Group 13
 - Independent/Non-Grouped Members 2
- 3.3 The Council is required to review the representation of the different Political Groups on Committees and Sub-Committees at, or as soon as practicable after, the Annual Meeting of the Council; or where notice is received of a change in the composition of Political Groups.

3.4 The principles of determination are as follows:-

- (a) All the seats are not allocated to the same Group;
- (b) The majority of the seats go to the Group (if any) which has an overall majority on the Council;
- (c) Subject to the above two principles, that the number of seats on the total of all the ordinary Committees allocated to each Group bears the same proportion to the proportion on the Full Council.

3.5 Previously, Counsel's opinion was sought on whether the rules on political proportionality applied to Independent/Non-Grouped Members. It was advised that Section 15 does not apply to single Independent/Non-Grouped Members, quoting the case of *R (East Riding) v Joint Committee*. However, following the deferral of this matter at the last Meeting held on 9th July 2009, it was considered appropriate to clarify the issue and the relevant sections of the advice now received are reproduced below:-

"I have had considerable difficulty in construing the statutory scheme. The position is bedevilled by the fact that the notes in the Local Government Encyclopedia, commenting on s15 of the Local Government and Housing Act 1989, states that a decision of Rafferty J in R (East Riding) v Joint Committee holds that "the use of the words 'political groups' implied that an authority was not under a duty to take account of independent councillors when undertaking its review". With respect to Rafferty J, I do not consider that this statement is an accurate description of the overall statutory scheme when the impact of regulation 16 of the 1990 Regulations is taken into account. This regulation was not cited to Rafferty J, and her decision directly concerned the statutory provisions governing appointment to police authority. I have no alternative but to consider the proper construction of the modifications made by regulation 16; and I have now reached a clear view about their meaning.

S15(3) of the 1989 Act contains the basic duty to consider allocation to groups. I agree with my Instructing Solicitor that the presence of the two independents in South Derbyshire means that the modifications made by regulation 16(2) and (3) apply. Regulation 16(2) modifies s15(3). In order to understand it more easily, I set out the modified version of the most important wording:-

- *It shall be the duty of that authority 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 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.*

In my opinion, the exercise called for by this modified wording requires the authority to establish what percentage of the total council membership is represented by the membership of each of the two groups – labour and conservative – and allocate the corresponding percentage of the total of 100 seats to members of those groups. My mathematics will need checking, but this produces c58%, and therefore 58 seats, for the conservatives, and 36%, and therefore 36 seats, for the labour group. This leaves 6 for non-group members – ie independents. The duty to allocate these 6 seats is the subject of the duty in s16(2A) of the Act, as inserted by the modification

made by regulation 16(3) – the duty to make appointments of people who “are not members of any political group.”

Under the relevant modifications, the authority must make a determination under s15(3). This determination will allocate seats to groups in the appropriate proportions. It is quite right that at this stage nothing is allocated to non-group members. However, there will remain seats which are not allocated at all because the groups do not make up 100% of the Council membership.

The duty to give effect to the s15(3) allocation is contained in s16. Here, where there are non-group members, the modification in s16(2A) comes into play. This requires, in my view, the seats that are not allocated by the determination under s15(3) (as modified) to be filled by persons who are not members of any group.

The key is to understand that where there are independents the s15 determination does not allocate 100% of the seats. This is the deliberate effect of the modification. The duty to make appointments to independents in s16(2A) of the seats not allocated under the s15(3) determination completes what is in my view a coherent statutory scheme.”

- 3.6 The total number of Committee seats on the District Council for allocation is 100. On the basis of the above advice, after calculating the proportionality for the two Groups, this gives 58 seats to the Conservative Group and 36 seats to the Labour Group, leaving a remaining balance of 6 unallocated seats to be allocated between the two Independent/Non-Grouped Members, as indicated on the schedule attached at Annex 'A'.

4.0 Financial Implications

- 4.1 None.

5.0 Corporate/ Legal/ Employment Implications

- 5.1 The rules on political balance are covered by Sections 15 and 16 of the Local Government and Housing Act 1989 and by The Local Government (Committees and Political Groups) Regulations 1990.

6.0 Community Implications

- 6.1 None.

7.0 Background Papers

- 7.1 Local Government and Housing Act 1989
The Local Government (Committees and Political Groups) Regulations 1990
Counsel's Opinion