

## **Title of report: Appointments to Council Committees and Outside Bodies**

**Meeting: Council**

**Meeting date: 28 May 2021**

**Report by: The Monitoring Officer**

### **Classification**

Open

### **Decision type**

This is not an executive decision

### **Wards affected**

(All Wards);

### **Purpose**

To exercise those powers reserved to Council at its annual meeting:

- (a) To confirm its committees and the number of seats on each, including terms of reference and functions of those committees;
- (b) To review the representation and determine the allocation of seats on committees and relevant outside bodies to political groups for the coming year;
- (c) To make appointments to the positions of chairpersons and vice-chairpersons of committees; and
- (d) To make arrangements for such appointments to committees and other bodies as may be necessary, including co-optees.
- (e) To agree that dispensations are given to members who have indicated that, for Covid 19 related personal and/or health reasons they are unable to attend in person meetings.

## **Recommendation(s)**

**That:**

- (a) the list of ordinary committees listed at paragraph 11 be confirmed with their terms of reference as set out in the Council's constitution;**
- (b) the number of seats on each committee as set out at paragraph 11, and the allocation of those seats to political groups as set out at appendix 1 be approved;**
- (c) the allocation of seats on outside bodies to political groups as set out at appendix 2 be approved;**
- (d) the appointment of five co-opted members of children and young people scrutiny committee be approved as follows:**
  - one representative as nominated by the diocese of Hereford**
  - one representative as nominated by the archdiocese of Cardiff**
  - one parent governor as elected from the primary school sector**
  - one parent governor as elected by the secondary school sector**
  - one parent governor as elected by the special school sector;**
- (e) the suspension of the rules of proportionality in respect of the standards panel, the River Lugg Internal Drainage Board, and the Wye Valley AONB Joint Advisory Committee be approved;**
- (f) the appointment of committee chairpersons and vice chairpersons of the committees listed at appendix 3 be approved.**
- (g) waives the requirements of Section 85(1) of the Local Government Act 1972 and agrees that any councillor unable to attend a meeting for a period greater than six months for Covid 19 related reasons, receives a dispensation from the requirements of section 85 until 28 November 2020.**
- (h) authorises the Monitoring Officer to approve the individual dispensations requests of any councillor who is unable to attend a council meeting for Covid19 related reasons and notes that the Monitoring Officer will retain a list of those councillors who apply for this dispensation.**

## **Alternative options**

- 1. To draw up a different set of committees of a different size and composition with different terms of reference.**
- 2. Council could decide to not suspend the rules of proportionality with respect to the outside bodies; the River Lugg Internal Drainage Board, and the Wye Valley AONB Joint Advisory Committee. This may result in those members with a local interest in the work of these bodies being unable to contribute to their discussions and decision-making. If the rules of proportionality were not suspended for the standards panel then only members of the largest political groupings would be eligible to sit on the panel or the size of the panel would need to increase to ensure that political proportionality could be achieved.**

3. Council could decide to suspend the rules of proportionality for all committees and establish its own criteria for appointing members to its committees. This would require a vote to do so in respect of each committee to which these rules apply and without any member of the council voting against each proposal. However such a blanket approach is inconsistent with the spirit of political proportionality within the Local Government and Housing Act 1989 and would additionally require Council to approve which councillor would take each individual seat on the relevant committees and outside bodies.
4. To not approve dispensations to members would unfairly trigger councillor disqualifications. This is not recommended because the proposal in this report is made to avoid Members being disqualified from office for non-attendance during the Coronavirus Pandemic and, therefore, no other option has been considered.

## Key considerations

5. Council is required to review its political composition and how this is applied to appointments to committees and sub-committees of the council at each annual meeting of Council. Similarly, the constitution requires Council to review its ordinary committees at the annual meeting and make appointments to them.
6. The membership of the respective political groups at the council is shown in the table below:

<b>Group</b>	<b>Number</b>
Conservative group	14
Independents for Herefordshire	19
Liberal Democrats	7
The Green Party	7
True Independents	5
Not aligned	1
<i>Total</i>	<i>53</i>

7. Council is under a duty to ensure membership of those committees and outside bodies covered by the relevant rules reflects the political composition of the council, as far as practicable, by allocating seats on the committees to political groups in proportion to their numerical strength on the council, whilst also maintaining a similar proportional balance of overall seat numbers. Once Council has approved the allocation of seats to political groups, it is a matter for the relevant political group leaders to confirm which of their members will take up any seats allocated to their group. Cabinet (as the executive), the licensing sub committee (a statutory committee) and the health and wellbeing board (with a membership set out by statute) are exempt from the requirements of political proportionality.
8. Any member who is not aligned to a group is not entitled to an allocation of seats within these rules. It is only where the proportionality calculations have been made and if any seats remain unallocated that Council may determine to appoint a member that is not a member of one of the political groups on the Council.

9. These rules of political proportionality should also be applied when allocating seats on outside bodies to which the council makes three or more appointments.
10. It is open to Council to suspend the rules of political proportionality in relation to allocation of seats on any particular body. To do so requires approval by Council with no member voting against the proposal; this is known as a *nem con* vote. Abstentions do not invalidate such a vote.
11. Council has agreed to establish committees of council as listed in the table below. The terms of reference for these committees are set out within the functions scheme of the constitution:

<http://councillors.herefordshire.gov.uk/ieListDocuments.aspx?CId=332&MIId=6384&Ver=4&Info=1>

<b>Committee</b>	<b>Seats</b>
Adults and wellbeing scrutiny	7
Audit and governance	7
Children and young people scrutiny	7
Employment panel	5
General scrutiny	7
Planning and regulatory	15
<i>Total seats</i>	<i>48</i>

12. The table in appendix 1 details the allocation of seats on the above committees based on the political proportionality of the council as set out in the table in paragraph 6 above. Appendix 1 reflects the current allocation of seats on the Council's committees. The proportionality of the Council has changed since the previous calculation of proportionality and allocation of seats at the annual meeting on 11 September 2020. Since the previous annual meeting of Council: a by-election has taken place for the electoral ward of Newton Farm which resulted in an additional member for the Conservative Group; one member has left the Herefordshire Independents Group and joined the True Independents Group; and the Herefordshire Independents Group and It's Our County Group have merged to form a new group, Independents for Herefordshire, consisting of 19 members.
13. Those outside bodies to which three or more appointments are currently made on a politically proportionate basis are detailed in the table in appendix 2, with the allocation of seats based on the political proportionality of the council as set out in paragraph 6 above.
14. The council is required to appoint certain education representatives onto the scrutiny committee at which educational matters are considered; in Herefordshire's case this is the children and young people scrutiny committee. Specifically the council must co-opt representatives from parent governors and relevant diocesan representatives (Church of England and Roman Catholic). There is a statutory election process by which the

parent governor representatives are selected, with one representative being sought from each of the primary, secondary and special school sectors. Each relevant diocese is asked to nominate a diocesan representative. All appointments of co optees follows the council's appointment process set out in the co optee protocol.

15. In line with previous practice, it is proposed to suspend the rules of political proportionality in relation to a small number of specified bodies. These are detailed in the table below together with the reason for seeking the suspension.

Body	Seats	Reason for suspension
Standards panel	Up to 3 seats	This panel is formed on an as required basis; its elected membership is drawn from the membership of the audit and governance committee which is itself politically proportionate.
River Lugg Internal Drainage Board	7	This is a geographically focused body therefore it is appropriate to nominate members from relevant wards.
Wye Valley AONB Joint Advisory Committee	4	This is a geographically focused body therefore it is appropriate to nominate members from relevant wards.

16. Council is required to appoint the chairpersons and vice chairpersons of committees listed at paragraph 11 above. The Leader of the Council has delegated authority to appoint the Chairperson of the Health and Wellbeing Board. The Council Chairperson will call for nominations to each post in turn and in the event of there being more than one nominee for any one post a vote will be held in accordance with council procedure rules.
17. Under section 30 and 31 of the Localism Act 2011 ('the Act'), any members who are nominated for positions which attract a special responsibility allowance under the councillors' allowances scheme have a schedule 1 disclosable pecuniary interest in that item. As a result the members may not participate in any discussion or vote on the matter.
18. However the monitoring officer, having received a written request on behalf of all members affected by the preceding paragraph, has granted a dispensation to all members who have a schedule 1 interest.
19. The dispensation is granted under section 33 (2)(a) of the Act, as it is considered that without the dispensations the number of persons prohibited by section 31(4) from participating in the item in question would be so great a proportion of the members of Council as to impede the transaction of the business. This dispensation is from both section 31(4)(a) and section 31(4)(b) of the Act.
20. Those members affected may therefore participate in the discussion and vote on all of the recommendations, although individual members should refrain from voting in respect of recommendation (f) where they are nominated.

21. Section 85(1) of the Local Government Act 1972 ('Vacation of office by failure to attend meetings') requires that, if a member of a local authority fails to attend any meeting of the authority throughout a period of six consecutive months from the date of their last attendance at a meeting, they shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.
22. Attendance in an official capacity at a relevant meeting of the Council is defined as attendance at Cabinet, a Committee or a Sub-Committee of the Council or at any meeting of a joint Committee or other such body discharging functions of the Council or at any meeting as a representative of the Council is deemed to be a meeting of the Council.
23. As a result of the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 on 6 May 2021 remote attendance is no longer lawful for members to be present and voting.
24. Until there is any further legislation authorising remote attendance, then public meetings of the council must now take place in a public space, and so members are required to attend these meetings 'in person'. It may be that for Covid19 related reasons that some members will not be able to attend meetings in public and therefore non attendance would be recorded against them and if new the 'legislation is not introduced and/or further lockdown's and/or a reduced roadmap within the next 6 months then non attending members risk disqualification as a member.
25. Waiving the requirements of Section 85 now and approving a comprehensive reason for any non-attendance if that reason is Covid19 related, will avoid councillors feeling compelled to attend in person meetings.
26. Covid19 circumstances include when a member or close family members, are suffering from Covid19 including any side effects or they have tested positive for Covid19, or they or their close family members are required to self-isolate or they or a close member of their family need to shield from public engagement because of health vulnerabilities and Covid19.
27. It is therefore proposed that dispensations be granted for any councillor who provides the Monitoring Officer with prior written notice that they will be unable to attend a public meeting of the Council due to a Covid19 reasons set out above.
28. In the meantime, meetings that are not required to be held in public, will continue to be held remotely so that all members of the council are able to participate and all meetings in public will be available to view via the Youtube channel.

## **Community impact**

29. In accordance with the council's adopted code of corporate governance, Herefordshire Council is accountable for how it uses the resources under its stewardship, including accountability for outputs and outcomes achieved. In addition the council has an

overarching responsibility to serve the public interest in adhering to the requirements of legislation and government policies.

## **Environmental Impact**

30. Whilst this is a decision on back office functions and will have minimal environmental impacts, consideration has been made to how it is in line with the Council's Environmental Policy.

## **Equality duty**

31. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
32. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on the administrative functions of the Council, we do not believe that it will have an impact on our equality duty however the council will seek to ensure that all appointments are made fairly (i.e. no discrimination on the basis of protected characteristics) and that committee meetings are physically accessible to all.

## **Resource implications**

33. Budgets are in place to cover allowances for any appointments made. In the event that Council decides on the establishment of additional committees a budget will need to be identified to meet the cost of any special responsibility allowance associated with the new committee. If Council agrees additional committees, appointments to the position of chairperson and vice chairperson will be agreed, if appropriate, during consideration of this report. All members appointed to positions of special responsibility and to committees are provided with training to enable them to fulfil their duties.

## **Legal implications**

34. The council is required to ensure that the allocation of seats to committees is compliant with relevant rules contained in the Local Government and Housing Act 1989 and regulations made under that act.

35. In summary these regulations require that in determining the allocation of seats the council must apply the following four principles as far as reasonably practicable:
- a. that not all the seats on the body are allocated to the same political group;
  - b. that 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 paragraphs (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority; and
  - d. subject to paragraphs (a) to (c) above, that the number of the 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.
36. The proposals in this report comply with these requirements. Once the proportionate allocation of seats has been made in accordance with the above principles, if any seats remain unallocated Council may determine to appoint a not aligned grouped member to fill the seat.
37. Alternative arrangements not complying with these requirements as set out in paragraph 10 may be made so long as no member of the council votes against it.
38. The requirements for political balance apply to ordinary committees of the council. The licensing sub committee is appointed under the Licensing Act 2003 and is not included in the definition of an ordinary committee. As a result the rules of political proportionality do not apply and there is no need to suspend the rules of proportionality for this committee.
39. The chairperson of the licensing sub committee will be a member of the planning and regulatory committee. The vice chairperson of the planning and regulatory committee is not necessarily the standing chairperson of the licensing sub committee. Whilst the two posts may be held by the same member this is not a constitutional requirement.

## Risk management

	Risk / opportunity	Mitigation
	Failure to appoint to committees and outside bodies could render them inquorate or unlawful	The recommendations in this report mitigate these risks
	Failure to obey the rules of political proportionality could similarly render a committee or body unlawful	The recommendations in this report mitigate these risks



## **Consultees**

40. No consultees.

## **Appendices**

Appendix 1: Table of allocation of seats on committees of council

Appendix 2: Table of outside bodies with politically proportionate appointments

Appendix 3: Chairperson/vice chairperson posts

## **Background papers**

None identified

**Please include a glossary of terms, abbreviations and acronyms used in this report.**