

Item: 14

General Meeting of the Council: 3 May 2023.

Notice of Motion.

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To consider the implications of the suggested course of action contained in the Notice of Motion, lodged by Councillor Scott, as detailed on the agenda for this meeting.

2. Recommendations

The Council is invited to note:

2.1.

That the Chief Executive has received a Notice of Motion in relation to the voting rights of religious representatives on the Education, Leisure and Housing Committee.

2.2.

That the Notice of Motion requests that the Council amend the Scheme of Administration to agree that only elected members of the Council with a mandate from the electorate should be allowed to vote on the Education, Leisure and Housing Committee.

2.3.

That the main implication of the suggested course of action is that voting rights are removed from the religious representatives on the Education, Leisure and Housing Committee.

It is recommended:

2.4.

That the Council considers whether to support the Notice of Motion.

2.5.

That, should the Notice of Motion be carried, voting rights be removed from the religious representatives on the Education, Leisure and Housing Committee.

3. Notice of Motion

3.1.

The Notice of Motion, as detailed on the agenda for this meeting, was lodged on 30 March 2023 in accordance with Standing Order 17.1, and requests that the Council amend the Scheme of Administration to agree that only elected members of the Council with a mandate from the electorate should be allowed to vote on the Education, Leisure and Housing Committee.

3.2.

Standing Order 17.2 provides that a Notice of Motion must be received by the Chief Executive at least 14 Clear Days prior to the date of any Meeting of the Council, in order for the Notice of Motion to be included within the business of that Meeting.

3.3.

Standing Order 17.3 states that a Notice of Motion shall be accompanied by a report from the Chief Executive or the relevant Corporate Director on the implications of any suggested course of action.

4. Background

4.1.

In accordance with the Local Government (Scotland) Act 1973, as amended, the Council is obliged to appoint three religious representatives to a committee whose purposes include:

- Advising the Authority on any matter relating to the discharge of its functions as education authority; or
- Discharging any of those functions of the Authority on its behalf.

4.2.

Currently, the three religious representatives, appointed by the Council in May 2022, are full members of the Education, Leisure and Housing Committee, with full voting rights.

5. Benchmarking

5.1.

Following receipt of the Notice of Motion, benchmarking with other local authorities was carried out. From the limited number of responses received, there is a mixed picture of religious representatives having voting rights – some have full voting rights, others have voting rights but only in respect of matters relating to the discharge of the functions as education authority (where the committee has a wider remit than solely education matters). Two councils (Moray and Perth and Kinross) confirmed that their religious representatives have no voting rights.

5.2.

Between 2017 and 2022, the Council had only one religious representative on the Education, Leisure and Housing Committee, namely the representative nominated by the General Assembly of the Church of Scotland.

5.3.

During that same period, the Education, Leisure and Housing Committee voted on seven separate occasions:

- One related to an education matter.
- Two related to lifelong learning matters (one resulted in two votes).
- Three related to housing matters.

5.3.1.

The religious representative voted on one lifelong learning matter (the one matter which required two votes). For the remaining votes, the religious representative was either not present at the meeting or had left the meeting before the vote occurred.

6. Assessment of Implications of Notice of Motion

6.1.

As stated in the preamble of Councillor Scott's Notice of Motion, the Scottish Government has clarified, in press articles, that "voting rights on committees are a matter for each local authority".

6.2.

There are three options which the Council may wish to consider:

- Option 1 – Do not support the motion and status quo remains – full voting rights remain for the religious representatives.
- Option 2 – Support the motion – remove voting rights from the religious representatives.
- Option 3 – Support the motion in part – by removing voting rights from the religious representatives on matters which the Council has no statutory duty to provide for in its capacity as the local education authority, namely Housing, Leisure or Lifelong Learning (which includes Orkney College) matters.

6.3.

The main implication of the Notice of Motion, should it be approved, is that voting rights would be removed from the religious representatives on the Education, Leisure and Housing Committee (Option 2 above).

7. Island Communities Impact

As the policy being reviewed in terms of this report has been assessed as being unlikely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Orkney, a full Island Communities Impact Assessment has not been undertaken.

8. Corporate Governance

This report relates to the Council complying with governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

9. Financial Implications

There are no financial implications arising directly from the recommendations in this report.

10. Legal Aspects

10.1.

Section 57 of the Local Government (Scotland) Act 1973 provides that a local authority (such as the Council) may appoint a committee for the purpose of discharging any of its functions. Section 57(3) allows for the inclusion of non-elected members on certain committees.

10.2.

In terms of the Local Government (Scotland) Act 1973 and the Education (Scotland) Act 1980, the Council is the education authority for Orkney.

10.3.

Section 124(1) of the Local Government (Scotland) Act 1973 provides that, where an education authority appoints a committee whose purposes include advising the authority on any matter relating to the discharge of its functions as education authority, or discharging any of those functions of the authority on its behalf, the members of such committee shall be appointed in accordance with this section. For the Council, the relevant committee is the Education, Leisure and Housing Committee.

10.4.

In terms of Section 124(2) of the 1973 Act, at least half of the persons appointed to be members of such a committee must be members of the authority, and the remainder of the members of such committee must include three religious representatives, comprising (in terms of Section 124(4)):

- One representative of the Church of Scotland, nominated in such manner as may be determined by the Church; and

- Two persons, in the selection of whom, the Council is required to have regard (taking account of the representation of the Church of Scotland) to the comparative strength of all the churches and denominational bodies having duly constituted charges or other regularly appointed places of worship in Orkney.

10.5.

In addition to the three religious representatives referred to above, the Council may, in terms of Section 124(3), appoint additional persons who are not members of the authority to such committee subject to the requirement that persons who are not members of the Council should make up no more than half of the committee's members.

10.6.

The 1973 Act is silent on the voting rights of members of an education committee who are not also members of the Council.

10.7.

Nonetheless, Section 14(1) of the Local Government and Housing Act 1989 provides that, subject to certain exceptions, a person who is a member of a committee appointed under Section 57 of the 1973 Act by a relevant authority and is not a member of that authority shall for all purposes be treated as a non-voting member of that committee. This would include the non-elected non-religious members of an education committee appointed under Section 124 of the 1973 Act, such as teacher representatives.

10.8.

However, in relation to religious representatives, Section 14(6) provides that "nothing in this section shall prevent the appointment as a voting member of a committee such as is mentioned in subsection (1) of section 124 of the Local Government (Scotland) Act 1973 (committees appointed by education authority); or of a person such as is mentioned in subsection (4) of the said section 124."

10.9.

It follows from the above that it is within the gift of the Council to allow the religious representatives on its Education, Leisure and Housing Committee to have voting rights and, where voting rights have been conferred, it is equally within the gift of the Council subsequently to revoke such voting rights.

10.10.

There is no express statutory impediment to the Council deciding to retain the religious representatives' right to vote, for example, on matters relating to provision of school education, but to revoke their right to vote on other matters that fall within the remit of the Education, Leisure and Housing Committee.

11. Contact Officers

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