

Article 2 – Members of the Council

(References: Part 1, Part VA and Sections 79 and 80, Local Government Act 1972,
Section 18, Local Government and Housing Act 1989 and regulations thereunder,
Section 7, Superannuation Act 1972 and regulations thereunder,
Section 9H Local Government Act 2000 and regulations thereunder)

2.01 Composition and eligibility

(a) Composition

The Council is comprised of 36 members (otherwise called councillors). Councillors are elected by the registered voters of each ward in accordance with a scheme drawn up by the Electoral Commission and approved by the Secretary of State.

The Borough of Torbay is divided into 16 Wards with either one, two or three councillors elected to serve each ward.

(b) Eligibility

To be eligible to stand for election as a councillor a person must be over 18 years of age and a British or Commonwealth subject or a citizen of the Republic of Ireland or the European Union and either:

- (i) be registered to vote in Torbay;
- (ii) have occupied, as owner or tenant, any land or premises in the area of Torbay during the whole twelve months preceding the day on which he/she is nominated as a candidate;
- (iii) have resided in the area of Torbay during the whole twelve months preceding the day on which he/she is nominated as a candidate; or
- (iv) have his/her principal or only place of work in the area of Torbay in the twelve months preceding the day on which he/she is nominated as a candidate.

Disqualifications for the office of councillor (as set out in section 79 and 80 of the Local Government Act 1972) include:

- (i) ceasing to be a local government elector for the Borough when that was his/her sole qualifying criteria for election to office;
- (ii) holding a paid office by Torbay Council or politically restricted post elsewhere within the meaning of Part 1 of the Local Government and Housing Act 1989;
- (iii) bankruptcy;
- (iv) having been sentenced to a term of imprisonment of not less than three months during the five years preceding an election; or
- (v) being disqualified under any enactment relating to corrupt or illegal practices.

2.02 Election and terms of councillors

The regular election of councillors will be held on the first Thursday in May every four years with the next election being in 2023. The terms of office of councillors will start on the fourth day after the date of the election that they were elected and will finish on the fourth day after the date of the next regular election. The calculation of time for the fourth day includes weekends but not bank holidays (Section 243(1) of the Local Government Act 1972).

2.03 Vacation of Office by Failure to Attend Meetings

Section 85 of the Local Government Act 1972 requires (subject to exceptions) that a member of a local authority shall cease to be a member if he or she fails to attend any meeting of the Council or its committees or sub-committees or a meeting of the Cabinet within 6 months of the date of his or her last attendance. The Council has resolved that periods when a councillor is in receipt of a medical certificate, shall not be counted in the calculation of the period of six months for the purposes of Section 85 of the Local Government Act 1972.

The provisions in this Article 2.03 also relate to parent governor representatives on the Overview and Scrutiny Board by virtue of Regulation 7(5) of the Parent Governor Representatives (England) Regulations 2001 (SI 478/2001).

2.04 Roles and functions of all councillors

The roles and duties of all councillors can be found in their job descriptions in Part 6 of this Constitution.

2.05 Political Groups

A political group shall be treated as constituted when written notification has been delivered to the Head of Governance Support in writing which:

- a) is signed by two or more members who wish to be treated as a political group;
- b) names the political group; and
- c) names one member of the group who has signed the notice to act as its leader and may name one other member who is authorised to act in the place of the leader when he is unable to act (the deputy leader).

The name of the group or the name of the person who is leader or deputy leader may be changed by a further notice in writing delivered to the Head of Governance Support and signed:

- a) in the case of a change in the name of the group or the deputy leader, the notice must be signed by the leader of the group or a majority of the members of the group;
- b) in the case of a change of the leader of the group, the notice must be signed by a majority of the members of the group.

Groups who are not aligned to a main political party or independent councillors that wish to include any element of a political party name within their description/name, shall not do so without written confirmation by the Party concerned being delivered to the Monitoring Officer.

A Member shall cease to be treated as a member of a political group when:

- a) they cease to be a member of the authority;
- b) they have notified the Head of Governance Support in writing that they no longer wish to be treated as a member of the group;

- c) there is delivered to the Head of Governance Support a notice under The Local Government (Committees and Political Groups) Regulation 1990 section 8 or 9(b) signed by the person whereby a new political group is constituted or he joins another political group; or
- d) when a notice in writing, signed by the majority of the members of the group, stating that they no longer wish the person/s to be treated as a member of that group is delivered to the Head of Governance Support.

2.07 Political Proportionality

In accordance with the Local Government and Housing Act 1989, local authorities are under a duty to ensure that the nominations to the seats on the Council's Committees are made in accordance with the size of each group, unless alternative arrangements are notified to all members and agreed without any member voting against them. The Council is required to observe the following principles as far as it is reasonably practicable:

- a) that not all seats on the body are allocated to the same group;
- b) that the majority of seats on the body are 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 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 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) and c) above, 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.

The composition of the Cabinet and its committees, sub-committees or working parties need not reflect the political balance of the Council as a whole (Article 6 provides further details as to the composition of the Cabinet) and therefore is also excluded from the requirements of political proportionality.

2.08 Conduct

Councillors are subject to the Members' Code of Conduct and the Protocol on Member/Officer Relations (as set out in Part 5 of the Constitution).

2.09 Allowances

Councillors and co-opted members will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.