

Consultation on Nominet members' voting rights

Executive summary

This consultation paper examines a range of possible changes to members' voting rights and seeks your opinion on those changes. It outlines the options and seeks member feedback by 5 June 2006.

If any changes to members' voting rights are proposed as a result of this consultation, they can be implemented by the Board prior to the next Annual General Meeting.

Introduction - why change members' voting rights?

When we were first set up, and voting rights were originally formulated, there were about 100 members, most of which were actively involved in Nominet. It was agreed that rights should reflect members' relative commercial involvement in .uk, but that this should be limited in order to prevent capture. In this context, a cap of 10% of the total vote was set and relative commercial involvement was reflected in the calculation process.

Over the years, the situation has changed. There are now nearly 3,000 members, most of whom are not actively involved in Nominet's corporate governance. As a result, we commonly see a turnout of 10% or less in company votes. A 10% vote now wields a great deal more power than was originally foreseen. At present, elections and other votes may be decided by one or two members. A number of our members have therefore requested that we review the voting rights and correct what they perceive as an imbalance.

Given our role as the registry for .uk, our voting structure should inspire confidence, and support legitimacy, neutrality and transparency. Our objective is to ensure that members' relative commercial involvement in the .uk domain service is fairly reflected in the voting rights, whilst retaining the original vision that the company should not be open to capture - either by a small number of organisations with large voting power, or by a large number of people who have little or no connection with the .uk domain service (e.g. people who join solely in the hope of achieving a distribution of Nominet's reserves, the so called "carpet baggers"). Finding the ideal voting system is necessarily a compromise between these constraints.

This consultation paper outlines a number of options regarding members' voting rights and we are now seeking your comments and feedback on these options.

What are the potential voting options?

There are many possible options for changing the voting rights, but we have suggested four options which represent a range of different opinions. If you would like to propose an alternative, please do so in your consultation response.

Option 1 - Weighted voting with a cap of 10 % of the *total*/votes.

This is the current mechanism for calculating voting rights.

Each member has a minimum of one vote. Members also have further votes calculated on the basis of the number of domain name registrations and renewals paid for during the previous financial year (October 1 - September 30). Voting strength is calculated according to an agreed formula with a cap of 10 % of the *total* votes (for the detailed formula please see appendix 1).

This option reflects each member's relative commercial involvement in the .uk domain name service. However, if there is a low turnout then one or two large members can decide the outcome of a vote entirely on their own (whether for, or against).

Option 2 - Weighted voting with a cap of 10 % of the votes cast.

This option was proposed by the Board at the recent Extraordinary General Meeting, and was defeated.

As currently, each member would be allocated an "equal vote", and members also have further votes calculated on the basis of the number of domain name registrations on their tag. Voting strength is calculated according to an agreed formula with a cap of 10 % of the votes cast (for the detailed formula please see appendix 2).

This option still reflects each member's relative commercial involvement in the .uk domain name service but caps the influence of the larger members at 10 % of votes cast. This reduces the influence of larger members where there is a low turnout.

Therefore to pass a vote which requires a 90 % majority (as is required to change the details of Nominet's Memorandum of Association), would be more challenging than at present.

Under this option, one large member with a small amount of support from elsewhere, could effectively block the passing of the resolution on their own. In a vote which requires a 75 % majority, three large members could block the passing of the resolution.

Some of the other anomalies under the current system would also be fixed under this option, for example the provisions relating to connected persons.

Option 3 - Weighted voting with a cap of 3 % of the votes cast.

This is similar to option 2, however the proposed threshold is lower.

Again, each member has an "equal vote" and members also have further votes calculated on the basis of the number of domain name registrations on their tag.

Voting strength is calculated according to an agreed formula with a cap of 3 % of the votes *cast* (for the detailed formula please see appendix 3).

This option reflects each member's relative commercial involvement in the .uk domain name service. However, in this case, the influence of the larger members is capped at 3 % of votes cast.

The rationale for having the cap at 3 % is to balance the requirement for voting power to reflect commercial involvement in .uk against the need to avoid capture. In this context, we believe that an appropriate measure is to consider how many members it would take to block a 90 % resolution.

Under this option, in a vote which requires 90 % to pass a resolution, it would require four large members to get together to block the passing of the resolution. In a vote which requires 75 % to pass a resolution, it would require at least nine large members to get together to block the passing of the resolution.

The flipside of this is that it would be a great deal more difficult than currently to achieve a 90 % or 75 % majority in favour of a vote.

Again, some of the other anomalies under the current system would also be fixed under this option, for example the provisions relating to connected persons.

Option 4 - One member - one vote

Each member has one vote.

This option only gives a voting right according to membership and does not reflect each member's relative commercial involvement in the .uk domain name service. Whilst this option would appear to be the most democratic and fair, it does have drawbacks. In particular, Nominet's Articles *require* that voting rights reflect members' relative commercial involvement in the .uk domain service – so it would not be possible for the board to introduce this option without a change in the Articles, which would require a 75 % vote of members in a general meeting.

This option possibly opens the way for large numbers of parties with no involvement in the domain name industry to become Nominet members and have a significant impact on the future of the company, without necessarily having any interest in the management of the Internet in the UK. In combination with Nominet's strong financial position, this option could result in a repeat of the carpet bagging attempts experienced in 1999. Equally, it could encourage more people with an interest in the management of the Internet in the UK to become members, if they had previously been deterred from this as a result of the current voting rights.

Question

- 1 Which of the four options available do you believe provides the most appropriate set of voting rights, and why?
Option 1 - The weighted voting bylaw has a cap of 10 % of the *total* votes.
Option 2 - The weighted voting bylaw has a cap of 10 % of the votes *cast*.
Option 3 - The weighted voting bylaw has a cap of 3 % of the votes *cast*.
Option 4 - One member - one vote.
- 2 Do you have any other comments that you would like to make on this issue?

How to respond

The consultation period runs from 4 May 2006 to 5 June 2006. Please send your responses to votingrightsconsultation@nominet.org.uk.

All responses will be published on our website however we reserve the right to remove any materials that in our reasonable opinion are defamatory, offensive or unintelligible.

We look forward to receiving your comments.

A response can be submitted by letter, fax or email - please use email where possible. Contact details for this consultation are:

Voting Rights Consultation
Emily Taylor
Nominet UK
Sandford Gate
Sandy Lane West
Oxford
OX4 6LB
England
e-mail: votingrightsconsultation@nominet.org.uk
Tel: 01865 332211
Fax: 01865 332290

Additional copies

Additional copies of this document may be downloaded from Nominet's website <http://www.nominet.org.uk/policy/consultations/votingrights/>

Help with queries

Questions about the policy issues raised in the document can be asked by email to: votingrightsconsultation@nominet.org.uk

Appendix 1 – Current Voting Rights bylaw

1. Purpose

The purpose of this document is to set the rules relating to poll voting rights of members of the Steering Committee related to the member's relative commercial involvement in the .uk Domain Name system.

2. Scope

These rules establish members' poll voting rights and any formal ballots of the members of the Steering Committee.

3. Method

3.1 At any general meeting or on any formal ballot of the members of the Steering Committee, votes will only be available to those who are members at the time of the vote. (This means persons recorded in the NOMINET UK register of members, held at the registered office.)

3.2 Votes will be allocated on the basis of the number of names registered and paid for by the appropriate member during the previous financial year. The NOMINET UK financial year runs from 1st October to 30 September.

3.3 In order to give NOMINET UK time to recalculate voting rights annually, they will become valid three calendar months after the end of the financial year.

3.4 75 % of the votes will be allocated in proportion to how many Domain Names have been registered by the members of the Steering Committee in the previous financial year. The remaining 25 % will be allocated on a one member one vote basis. In practice, this will be achieved by:

$$V_i = \min\{\text{round}[(3 * M * D_i) / D_{tot}] + 1, V / 10\}$$

[The round function rounds to the nearest integer below. min[x, y] means the minimum of x or y.] where

- V_i is the number of votes for member i ,
- D_i is the number of Domain Names registered and paid for member i ,
- M is the total number of members,

- **D_{tot}** is the number of Domain Names registered by all members (i.e. the sum of **D_i**)
- **V**, the total number of votes for all members is the sum of all **V_i**.

3.5 Elections for appointments by the Steering Committee will be conducted using Single Transferable Votes as specified by the rules laid down by the Electoral Reform Society in the current edition of their publication entitled How to run an election using the Single Transferable Vote.

3.6 If in the reasonable opinion of the Council of Management of NOMINET UK, acting in the best interests of the company, voting patterns are substantially distorted by votes being held by large numbers of "connected persons" (as defined in Section 839 of the Income and Corporation Taxes Act 1988 or in any legislation amending or replacing it) the Council of Management may redistribute the votes between members of the Steering Committee.

3.7 Any redistribution under paragraph 3.6 above will have the effect of reducing the total number of votes to which the connected persons are entitled, but such that the total vote held by the connected persons is not less than the number of votes which the formula would have produced had all the Domain Name registrations in question been made by a single member of the Steering Committee.

3.8 At no time shall any member of the Steering Committee have more than 10% of the total voting rights in the company.

Appendix 2 – Option 2

1. Purpose and Scope

1.1. This bylaw controls how weighted voting rights are determined for members of the company.

1.2. This bylaw is established by the board in consultation with the membership under article 51. It may be altered by the board from time to time in consultation with the membership. It establishes poll voting rights related to the member's relative commercial involvement in the .UK domain name service in accordance with article 19.

2. Closing the register

2.1. Before a poll vote is to take place, the directors will authorise a date and time when the register of members will be closed.

2.2. Only those members on the register of members when the register is closed will be given votes.

3. Eligibility to vote

3.1. Any member who ceases to be a member automatically loses their right to cast their votes and any voting rights or votes which have been allocated to them are cancelled. If this occurs whilst the register is closed, this will not cause any other voting rights to be recalculated.

4. Method of voting

4.1. This is set out in the separate Electoral Rules policy, and is not part of this Bylaw.

5. Calculation of voting rights on a poll

5.1. Principles

- 5.1.1. 25 % of the votes shall be distributed equally amongst the membership (called “equal votes”).
- 5.1.2. 75 % of the votes allocated shall be distributed in relation to the number of paid-for domains on the register linked to members’ tags (called “weighted votes”).
- 5.1.3. Subject to rounding, one weighted vote will be allocated for every paid-for domain on the register.
- 5.1.4. If any single voter (or group of connected voters) casts more than 10 %, subject to rounding, of the total votes cast in any poll, a cap will apply, as specified in 5.3 below.
- 5.1.5. Every member will be entitled to at least one vote.

5.2. Process for allocating votes

- 5.2.1. In summary, weighted votes are calculated first, and the number of equal votes is derived as one third of the weighted votes (so they comprise one quarter of the total votes), subject to rounding. A cap is then applied.
- 5.2.2. The register is closed and the number of members is counted (M).
- 5.2.3. Each member is given their weighted votes (W). This is calculated as

$$W = Dm$$

where Dm is the number of paid-for domain names that member has on the register at the time the register is closed.

- 5.2.4. Each member is given the same number of equal votes (E). This is calculated as

$$E = D_{tot} / (M \times 3)$$

where D_{tot} is the total number of paid-for domains on the register.

- 5.2.5. The total number of votes for each member is then rounded up to the nearest higher integer, leaving them with their total allocated vote (A). Note for completeness, this is calculated by

$$A = \text{Round} (D_m + (D_{tot} / (M \times 3))),$$

simplified to

$$A = \text{Round} (W+E)$$

where $\text{Round}()$ is a function that rounds up to the nearest higher integer.

5.3. Applying the cap

- 5.3.1. After the votes are cast the total number of votes is counted and multiplied by 0.1, and rounded to the nearest integer, to get ten percent (T).
- 5.3.2. Each member that has voted who has more than T votes has their vote reduced to T.
- 5.3.3. The Board considers whether, in the best interests of the company, groups of connected voters should have their combined votes reduced to T. If the Board decides that they should do so, those votes are reduced pro-rata accordingly. Groups of voters are 'connected' if either they are "connected persons" (according to the system set out in the Income and Corporation Taxes Act 1988 or any similar laws replacing it) or they are a "concert party" (as set out in the City Code on Takeovers and Mergers).
- 5.3.4. There is no recalculation of T consequent upon any such reduction.
- 5.3.5. The rounded Votes are then processed using the voting system set out in the Electoral Rules policy.

6. Members' voting rights other than on a poll

- 6.1. This clause shall determine member's voting rights other than on a poll, including without limitation on raising a requisition.

- 6.2. Each member's voting power will be calculated according to the formula set out in this bylaw as if a poll took place.
- 6.3. The cap will be applied on the basis that a poll vote took place at that time in which all members voted.

Appendix 3 - Option 3

1. Purpose and Scope

- 1.3. This bylaw controls how weighted voting rights are determined for members of the company.
- 1.4. This bylaw is established by the board in consultation with the membership under article 51. It may be altered by the board from time to time in consultation with the membership. It establishes poll voting rights related to the member's relative commercial involvement in the .UK domain name service in accordance with article 19.

2. Closing the register

- 2.1. Before a poll vote is to take place, the directors will authorise a date and time when the register of members will be closed.
- 2.2. Only those members on the register of members when the register is closed will be given votes.

3. Eligibility to vote

- 3.1. Any member who ceases to be a member automatically loses their right to cast their votes and any voting rights or votes which have been allocated to them are cancelled. If this occurs whilst the register is closed, this will not cause any other voting rights to be recalculated.

4. Method of voting

- 4.1. This is set out in the separate Electoral Rules policy, and is not part of this Bylaw.

5. Calculation of voting rights on a poll

5.1. Principles

- 5.1.1. 25 % of the votes shall be distributed equally amongst the membership (called "equal votes").

- 5.1.2. 75 % of the votes allocated shall be distributed in relation to the number of paid-for domains on the register linked to members' tags (called "weighted votes").
- 5.1.3. Subject to rounding, one weighted vote will be allocated for every paid-for domain on the register.
- 5.1.4. If any single voter (or group of connected voters) casts more than 3 %, subject to rounding, of the total votes cast in any poll, a cap will apply, as specified in 5.3 below.
- 5.1.5. Every member will be entitled to at least one vote.

5.2. Process for allocating votes

- 5.2.1. In summary, weighted votes are calculated first, and the number of equal votes is derived as one third of the weighted votes (so they comprise one quarter of the total votes), subject to rounding. A cap is then applied.
- 5.2.2. The register is closed and the number of members is counted (M).
- 5.2.3. Each member is given their weighted votes (W). This is calculated as

$$W = D_m$$

where D_m is the number of paid-for domain names that member has on the register at the time the register is closed.

- 5.2.4. Each member is given the same number of equal votes (E). This is calculated as

$$E = D_{tot} / (M \times 3)$$

where D_{tot} is the total number of paid-for domains on the register.

- 5.2.5. The total number of votes for each member is then rounded up to the nearest higher integer, leaving them with their total allocated vote (A). Note for completeness, this is calculated by

$$A = \text{Round} (D_m + (D_{tot} / (M \times 3))),$$

simplified to

$$A = \text{Round} (W+E)$$

where $\text{Round} ()$ is a function that rounds up to the nearest higher integer.

5.3. Applying the cap

- 5.3.1. After the votes are cast the total number of votes is counted and multiplied by 0.03, and rounded to the nearest integer, to get three percent (T).
- 5.3.2. Each member that has voted who has more than T votes has their vote reduced to T.
- 5.3.3. The Board considers whether, in the best interests of the company, groups of connected voters should have their combined votes reduced to T. If the Board decides that they should do so, those votes are reduced pro-rata accordingly. Groups of voters are 'connected' if either they are "connected persons" (according to the system set out in the Income and Corporation Taxes Act 1988 or any similar laws replacing it) or they are a "concert party" (as set out in the City Code on Takeovers and Mergers).
- 5.3.4. There is no recalculation of T consequent upon any such reduction.
- 5.3.5. The rounded Votes are then processed using the voting system set out in the Electoral Rules policy.

6. Members' voting rights other than on a poll

- 6.1. This clause shall determine member's voting rights other than on a poll, including without limitation on raising a requisition.
- 6.2. Each member's voting power will be calculated according to the formula set out in this bylaw as if a poll took place.
- 6.3. The cap will be applied on the basis that a poll vote took place at that time in which all members voted.