

The background of the slide features the coat of arms of the Government of Nunavut. It is a shield divided into four quadrants. The top-left quadrant shows a stylized building. The top-right quadrant shows a caribou head with antlers. The bottom-left quadrant shows a sailing ship on wavy lines representing water. The bottom-right quadrant shows a bird with spread wings. Above the shield is a crown with four maple leaves. Below the shield is a banner with the text "ANĖ FOR A'".

## **Agenda Item 11**

## **Standing Orders**

**Falkirk Council**

**Title: Standing Orders**  
**Meeting: Falkirk Council**  
**Date: 29 March 2017**  
**Submitted By: Director of Corporate and Housing Services**

**1. Purpose of Report**

- 1.1 The purpose of this report is to present revisions to the Standing Orders, in particular the Scheme of Delegation, to reflect, firstly, the requirements of the Community Empowerment (Scotland) Act 2015 with particular regard to decision making on Asset Transfer requests, review of Asset Transfer decisions and decisions on Participation Requests and, secondly, to clarify the role of the Chief Officer of the Integration Joint Board. The proposed revisions to Standing Orders are shown underlined and in bold in the appendix to the report.

**2. Recommendations**

- 2.1 **It is recommended that Council agrees:-**
- (1) to establish a Community Empowerment Review Committee; and**
  - (2) the revisions to Standing Orders set out in the appendix to the report.**

**3. Background**

- 3.1 The Asset Transfer provisions of the Community Empowerment (Scotland) Act 2015 (the Act) came into force on 23 January 2017. As a result, there is a requirement to amend Standing Orders to reflect the provisions in the Act.
- 3.2 Since the Standing Orders were last revised, the Integration Joint Board has become operationally responsible for some social work services. This requires the position of the Chief Officer to be reflected in the Scheme of Delegation.

#### **4. Considerations**

- 4.1 The Executive agreed on 10 January 2017 that it would receive reports from officers on all valid Asset Transfer requests and take the decision on the transfer request. Standing Order 60.22(i) has been amended to reflect this. The delegation to Chief Officers to declare land as surplus to operational requirements up to a value of £5,000 does not apply where an Asset Transfer request has been made.
- 4.2 Section 86 of the Act requires that, on application by the community transfer body, the Council must carry out a review of the decision reached by the Executive.
- 4.3 It is proposed that a new committee is established to deal with such reviews. Amendments to Standing Orders 37.1, 37.5 and 59A add to the Scheme of Delegation a committee entitled the Community Empowerment Review Committee (CERC).
- 4.4 It is important that the CERC is made up of members who are not members of the Executive because it made the initial decision. It is proposed that the CERC is made up of five members - the Provost and Deputy Provost with, on a rota basis, three other members who are not members of the Executive. The convener of the CERC would be the Provost, or in his/her absence the Deputy Provost.
- 4.5 The CERC will follow the procedures set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016. These Regulations set out the process for review of Asset Transfer decisions in detail.
- 4.6 Community transfer bodies can appeal to the Scottish Ministers following a review by the Council.
- 4.7 Standing Order 59A is worded in such a way as to allow some flexibility for the CERC to consider reviews on other decisions made by the Council under the Act (such as participation requests) should the Act or regulations made under it require reviews to be dealt with in such a manner.
- 4.8 Standing Order 60.22(vi) has been introduced in advance of the Community Right to Buy provisions coming into force. This amendment is to allow, a delegation to Chief Officers to respond to the Scottish Ministers with comments on applications by community bodies to register an interest over land owned by the Council. The Council only has 21 days to provide such comments to the Scottish Ministers from the date of notification. This delegation of powers would be subject to Chief Officers consulting with the relevant portfolio holder and local members.

- 4.9 The provisions of the Act in relation to participation requests will come into force on 1 April. In accordance with the current scheme, decisions in relation to these requests will be taken by the Executive or Education Executive. This is consistent with the approach suggested above for Asset Transfer Requests. Regulations made by Scottish Ministers under the Act require, however, that requests are determined within 30 working days following receipt of all the information required to be submitted for such a request. The only change proposed to Standing Orders is a new Standing Order 60.22A to make it clear that the relevant Chief Officer could take a decision in consultation with the portfolio holder and local members where it is not practicable to have the request considered by committee in time to meet the statutory deadline.

### **Integration Joint Board (IJB)**

- 4.10 The Chief Officer of the IJB is responsible for the delivery of social work services delegated by the Council to the IJB, in the same way as other service directors. Her position is different, however, in that she is primarily responsible to the IJB and acts in accordance with its strategic plan and policy decisions. At the same time, the delegated social work services are delivered through the Council and its employees. The Council remains the procuring authority for social work services. The current scheme of delegation does not reflect this complex position. As the IJB is itself about to adopt a Scheme of Delegation, this is an opportune point in time to clarify the position. It is understood that the health board will be undertaking a similar exercise in relation to its Scheme of Administration.
- 4.11 The first change is to clarify in the definitions section that the Chief Officer is a Chief Officer for the purpose of the Council's Scheme of Delegation. The opportunity is also taken to delete reference to the deputy chief officer positions following Council's decision to do so at its budget meeting on 22 February 2017. Thereafter a new provision is inserted in the Scheme of Delegation to Officers modifying its provisions as it applies to the Chief Officer. These relate to consultation arrangements (adding reference to the Chairperson and Vice Chairperson of the IJB), adherence to policy (to reflect the need to comply with both IJB and Council policy) and to adherence to agreed budgets (inserting reference to the IJB budget and directions to the Council).

## **5. Consultation**

- 5.1 Discussions have taken place with the Chief Officer in relation to the proposed changes to the scheme of delegation.

## **6. Implications**

### **Financial**

- 6.1 There are no direct financial implications.

### **Resources**

- 6.2 The Council is fulfilling a statutory requirement within the Community Empowerment (Scotland) Act 2015. By establishing a new committee there will be a consequential impact on officer and member workload. Training on the procedures involved will be given to members in advance of the first review being heard.

### **Risk**

- 6.3 If the Council fails to introduce a proper process for dealing with reviews of decisions, it will be in breach of the Community Empowerment (Scotland) Act 2015.

### **Equalities**

- 6.4 Nil

### **Sustainability / Environmental Impact**

- 6.5 Nil

## **7. Conclusions**

- 7.1 There is a requirement for the Council to be able to deal with reviews of decisions taken on Asset Transfer requests. Amendment of Standing Orders as suggested in the report and the creation of the CERC will allow a structure for reviews to be considered in compliance with the legislation. The amendments should also allow the CERC to deal with other forms of review should that be introduced and required under the legislation.
- 7.2 While the Community Right to Buy provisions of the Act are not yet in force, it is an opportune moment to provide delegated powers to Chief Officers to give comments to the Scottish Ministers on requests notified to the Council by the Scottish Ministers. Chief Officers would be obliged to consult with the relevant Portfolio Holder and local members.

- 7.3 The clarification of the Chief Officer role will assist clearer decision making in relation to social work services delegated to the IJB.

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Director of Corporate & Housing Services

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**Date:** 21 March 2017

## **Appendices**

- 1) Revisions to Standing Orders

### **List of Background Papers:**

- None

## **STANDING ORDERS RELATING TO MEETINGS- EXTRACTS**

### **2. DEFINITIONS**

- 2.1 In the Standing Orders, unless the context otherwise demands, the following terms will have the undernoted meanings:-

<b>Term</b>	<b>Meaning</b>
The 1973 Act	The Local Government (Scotland) Act 1973
The 1989 Act	The Local Government and Housing Act 1989
The 1992 Act	The Local Government Finance Act 1992
The 1994 Act	The Local Government etc. (Scotland) Act 1994
Administration	The group or groups of councillors (including any individual councillor or councillors not part of any group) which the Leader of the Council has given written notice to the Chief Executive forms the Administration subject to the proviso that the notice will be signed by the leaders of all groups and by all councillors not part of any group, forming the Administration.
Budget	The budgets approved by Council each year consisting of the Revenue Budget, the General Services Capital Programme, the Housing Revenue Account and Council House Rents and the Housing Investment Programme.
Chief Officer	The Chief Executive, the Directors of Services, <b><u>the Chief Officer of the Integration Joint Board</u></b> and other officers holding posts recognised by the Council as having chief officer status including Heads of Service.
Clear days	When referring to service of Notices, the term “clear days” refers to weekdays, excluding weekends, Bank Holidays, local or national holidays, the day the Notice is posted and the day on which the meeting is held.
Falkirk Community Trust	A charitable company established to provide cultural, leisure, sport, recreational and library services for the Falkirk Council area.

### 37. COMMITTEES

**37.1** The number of members on each committee and the quorum for each will be as set out below:-

<b>Committee</b>	<b>Membership</b>	<b>Quorum</b>
Executive	12 consisting of the Leader and 8 other members drawn from the Administration and 3 members not drawn from the Administration	4
Education Executive	12 consisting of the Leader and 8 other members drawn from the Administration and 3 members not drawn from the Administration plus 3 representatives of denominational bodies as required by section 124 of the 1973 Act; 2 teachers nominated from the serving staff of schools, 2 parental representatives nominated by the Parents' Forum and 2 non-voting young people – the chair and vice chair of the Youth Ambassador programme or such other representatives of young people as determined by the Education Executive.	4 elected members
Scrutiny Committee	8 consisting of 4 members drawn from the Administration and 4 members not drawn from the Administration	3
Scrutiny Committee (External)	8 consisting of 4 members drawn from the Administration and 4 members not drawn from the Administration	3
Planning Committee	12 except when conducting a pre-determination hearing required by s 38A of the Town and Country Planning (Scotland) Act 1997 when the membership will comprise all	4 except when conducting a pre-determination hearing required



	members of Council	and Country Planning (Scotland) Act 1997 when the quorum will be quarter of the
Planning Review Committee	5 the convener and Depute Convener of the Planning Committee, ex officio, with 3 others drawn from the remaining members of the Planning Committee on a rota basis	3
Civic Licensing Committee	10	4
Audit Committee	7 6 elected members and 1 lay member	4
Appeals Committee	8	3
Pensions Committee	6 elected members and 3 lay members	4
Appointments Committee	6 plus the relevant Portfolio Holder. Where there is more than one relevant Portfolio Holder, the Portfolio Holders should agree amongst themselves which	3
Emergency Committee	The members of the Executive	4
Bo'ness Common Good Fund Committee	The Provost, Depute Provost and members of the former	3
Denny and Dunipace Common Good Fund Committee	The Provost, Depute Provost and members of the former Burghal area	3
Falkirk Common Good Fund Committee	The Provost, Depute Provost and members of the former	3
Grangemouth Common Good Fund	The Provost, Depute Provost and members of the former	3
<b><u>Community Empowerment Review Committee</u></b>	<b><u>5</u></b> <b><u>consisting of the Provost and Depute Provost and 3 other members, on a rota basis, all not being members of the Executive</u></b>	<b><u>3</u></b>

- 37.2 (i) The Convener of the Executive will be the convener of the Emergency Committee.

- (ii) The Convener and Depute Convener of the Planning Committee will be the Convener and Depute Convener of the Planning Review Committee.

37.3 The Council may appoint special committees for such purposes as it may from time to time consider expedient.

37.4 With the exception of the Executive, the Education Executive, the Scrutiny Committee and the Common Good Fund Committees and from time to time the Planning Review Committee, membership of all committees will, as far as reasonable, reflect the political balance of the Council.

37.5 The Chief Governance Officer is authorised to appoint, nominate and convene committees, boards and panels for specific statutory purposes. These include:-

- (i) Complaints Review Committee (Social Work);
- (ii) Education Appeals Committee;
- (iii) Appointments Committee (Education);
- (iv) Attendance Committee (Education);
- (v) Planning Review Committee; **and**
- (vi) **Community Empowerment Review Committee**

## **SCHEME OF DELEGATION TO COMMITTEES -EXTRACTS**

### **59A. COMMUNITY EMPOWERMENT REVIEW COMMITTEE**

#### **Composition of the Community Empowerment Review Committee**

**59A.1 The Community Empowerment Review Committee will consist of the Provost and the Depute Provost with, on a rota basis, three other members who are not members of the Executive. The Provost will be the convener of the Community Empowerment Review Committee. The depute convener will be the Depute Provost. No member of the Community Empowerment Review Committee shall be a member of the Executive.**

#### **Terms of Reference and Powers of the Community Empowerment Review Committee**

**59A.2 When a valid application for review of a decision of the Council or a failure to make a determination by the Council has been made under the Community Empowerment (Scotland) Act 2015 and regulations made in terms of the Act, to review any such decision or non determination.**

**59A.3 To confirm the decision, modify the decision or any part of it or substitute a different decision.**

**59A.4 To conduct any review in accordance with the procedures provided for in the Community Empowerment (Scotland) Act 2015 and regulations made in terms of the Act.**

## **SCHEME OF DELGATION TO OFFICERS - EXTRACTS**

- 60.1 Chief Officers are the only officers specifically empowered to act and take decisions in the name of the Council.
- 60.2 The Chief Executive is the Head of Paid Service and has authority over all other Chief Officers so far as is necessary for efficient management and for carrying out the Council's functions. His or her principal responsibilities are:-
- (i) to be the Council's principal adviser on general policy, and to ensure that all proposals are consistent with policy;
  - (ii) to make long term assessments of resources, needs and commitments and to co-ordinate advice on forward planning;
  - (iii) to ensure that the Council's policies and programmes are implemented and that the Council's staff is managed effectively having regard to statutory responsibilities; and
  - (iv) to be responsible for management of the Council's operational buildings.
- 60.3 Subject to paragraph 60.2 above, the Council's Chief Officers are answerable to the Council for the efficient management of the services provided by their staff and due performance of their statutory functions.
- 60.4 The Council's Chief Officers are hereby empowered to take operational decisions:-
- (i) discharging any of the functions of the Council except for any matters specifically reserved to Council or Committee and provided that any such decision does not alter or depart from any Council policy or any procedure which has been approved by Council or any of its Committees and is consistent with the Budget;
  - (ii) on all managerial and professional matters incidental or ancillary to the discharge of functions delegated under (i) above or relating to lawful requirements imposed on them or their staff by third parties; and
  - (iii) without exception, where an emergency requires that a decision under (i) above be taken without reference to Council or Committee .
- 60.5 The Council's Chief Officers may use whatever means they consider appropriate to discharge the functions of the Council allocated to or dealt with by them or their staff, including:-
- (i) incurring expenditure;

- (ii) engaging and deploying staff provided (a) that there shall be no increase in agreed staffing levels unless the increase is necessary to implement any decision of Council, and (b) all matters relating to remuneration and terms and conditions of employment are conform to Council policy;
- (iii) deploying other resources within their control;
- (iv) placing contracts and procuring other resources within or outside the Council; and
- (v) determining any matter which is necessary to enable the Council to provide any service, to comply with any duty or requirement in the provision or management of any service, to assist the efficient and effective management of the Council or a function thereof or to implement any decision of the Council.

60.6 In exercising their delegated powers the Council's Chief Officers must:-

- (i) act within the law and the Council's Standing Orders, Contract Standing Orders and Financial Regulations and any Code of Conduct or Practice adopted by the Council from time to time;
- (ii) ensure that no decision taken by them would impact significantly on service delivery across the whole of the Council area;
- (iii) ensure that decisions taken are compliant with agreed revenue and capital budgets;
- (iv) have regard to the Corporate Plans;
- (v) ensure the implementation of corporate policies and strategies, both at an area wide and local level;
- (vi) ensure that the performance of their Service across the Council area in relation to agreed standards is reported appropriately;
- (vii) ensure that local members are informed about the performance of their service in their ward; and
- (viii) consult, as appropriate, with the Portfolio Holder for the service area involved and the local members.

60.7 The Council's Chief Officers may authorise other officers to exercise powers delegated to them. However, actions taken under that authority must be taken in the name of the Chief Officer concerned, and remain his or her responsibility.

60.8 Emergency action taken under delegated powers must be reported to the next meeting of the appropriate Committee.

60.9 The Council's Chief Officers will have full legal authority under paragraph 60.4 above to take or authorise actions, decisions, expenditure and commitments on behalf of the Council. However, without qualifying that legal authority, conformance with Council policy should be assured in one of the following ways:-

- (i) the matter involves the implementation of a Council policy approved by Committee; or
- (ii) the matter was approved by Committee as part of the annual service plan and budget; or
- (iii) the procedure set out in paragraph 60.10 below is followed.

60.10 The procedure referred to in paragraph 60.9(iii) above is as follows:-

The Chief Executive or Chief Officer concerned will:-

- (i) consult the Convener of the relevant Committee or relevant Portfolio Holder as appropriate before exercising the delegated power;
- (ii) consult the Chief Governance Officer, the Chief Finance Officer and any other Chief Officer involved as a matter of good administrative practice before exercising the delegated power;
- (iii) keep a record of the exercise of the delegated power; and
- (iv) make this record available to the Members of the relevant Committee.

60.11 Approval of the budget by Council provides authorisation for Chief Officers to incur expenditure and collect income in respect of revenue and capital budgets, subject to:-

- (i) any restrictions or conditions included in service plans;
- (ii) further approval from the Executive where sufficient detail has not been included in service plans; and
- (iii) compliance with the financial limits set from time to time.

60.12 All Directors must ensure to the satisfaction of the Chief Executive and the Director of Corporate and Housing Services that:-

- (i) appropriate systems for planning, monitoring, evaluating and reviewing performance are in operation for the Services for which they are responsible;

- (ii) capital expenditure is planned and monitored continually to ensure that the Council's plans are actioned, including the prompt implementation of associated revenue elements; and
- (iii) revenue expenditure is planned and monitored continually to ensure that it is within approved estimates and continues to be justified by Service performance.

60.13 Where specific powers and duties are imposed upon specific Officers of the Council by operation of law, those powers and duties will be undertaken by the Officer so empowered having regard to the procedures set out by law, the Council's policies and this Scheme of Delegation. The statutory appointments which the Council is obliged to make are listed at clause 60.24 below.

**60.13A In paragraphs 60.1 – 13, provisions relating to the exercise of delegated powers by Chief Officers shall, in relation to the Chief Officer of the Integration Joint Board, apply with the following modifications,**

**(a) references to consultation with the Portfolio Holder are to the Portfolio Holder and the Chairperson and Vice Chairperson of the Integration Joint Board;**

**(b) references to a Council plan, strategy or policy are to a Council and Integration Joint Board plan, strategy or policy; and**

**(c) references to the budget of the Council are to the budgets of the Council and the Budgets of the Council and the Integration Joint Board.**

## **60.22 Property Matters**

### **(i) Land and Property surplus to Operational requirements**

Chief Officers will have the authority to make the decision on removal from operational service land and property no longer required for operational purposes for internal transfer or for disposal either on the open market or on a negotiated basis where the value of the asset is assessed to be less than £5,000. **Notwithstanding the foregoing, Executive shall decide on all applications for Asset Transfer made to the Council by a Community Transfer Body under the Community Empowerment (Scotland) Act 2015.**

Before any land or property is declared surplus by Chief Officers, they will consult the relevant Portfolio Holder and local members and may, where deemed appropriate consult with any other Council Service.

### **(ii) Disposal of Surplus Land and Property**

The Director of Development Services, in consultation with the relevant Chief Officer, will have authority to agree terms for the disposal or internal transfer of land and property, which has been declared surplus (whether in terms of paragraph 60.22(i) above or by the Executive), subject to a maximum value of £350,000 in any particular case.

(iii) **Leases and other Property Transactions**

The Director of Development Services will have authority:-

- (a) to agree terms for leases up to 25 years duration and up to an annual rental value of £100,000;
- (b) to agree terms for ground leases for a duration of up to 125 years with a capital value of up to £350,000 or equivalent rental value; and
- (c) to agree the terms of other property transactions eg assignments, subleases, licences, servitudes, wayleaves and the like subject to and consistent with the financial values detailed above.

(iv) **Acquisition of Land and Property**

- (a) The Director of Development Services, in consultation with the relevant Chief Officer, will have authority to approve any terms and conditions for the acquisition or internal transfer of land and property subject to a maximum value of £350,000 in any particular case provided that he or she is satisfied that the acquisition or transfer is consistent with the provisions of Paragraph 9 in relation to conformance with Council Policy, is contained within the approved capital programme or is otherwise approved by reference to a decision of the Executive or Council.
- (b) The Director of Development Services will have authority to instruct the Chief Governance Officer to conclude any relevant property transaction.

(v) **Demolition of Buildings**

Chief Officers, in consultation with the relevant Portfolio Holder, will have the authority to instruct the demolition of any building held under their operational remit in circumstances where the building is an imminent danger to health and safety or is beyond economic repair.

(vi) **Community Right to Buy**

**Chief Officers, in consultation with the relevant Portfolio Holder and local members, shall be authorised to prepare and submit to the Scottish Ministers consultation responses on any applications by community bodies to register an interest in land owned by the authority under the Community Empowerment (Scotland) Act 2015.**



#### **60.22A Participation Requests**

**Chief Officers, in consultation with the relevant Portfolio Holder and local members (where appropriate), shall be authorised to respond to participation requests under the Community Empowerment (Scotland) Act 2015, where it is not practicable to bring the matter before the Executive or Education Executive.**