

FALKIRK COUNCIL

Subject: DECISION MAKING STRUCTURES
Meeting: FALKIRK COUNCIL
Date: 19 MARCH 2013
Author: CHIEF EXECUTIVE

1. INTRODUCTION

1.1 At its meeting on 18 May 2012, Council asked me to carry out a review of decision making structures and to report back on that review to a future meeting of Council. On 5 December 2012, Council had an opportunity to consider my report. The report outlined two broad options for consideration. The first was a revised committee structure; the second option was an Executive/Cabinet Model. The report also offered for Members' consideration an option that the Council take all decisions without the need for the appointment of committees.

1.2 The decision of the Council was as follows:-

- (1) The current committee structure requires to be replaced by a more efficient and modern structure;
- (2) A detailed report on a Council executive/cabinet structure, designed to meet Falkirk Council needs and circumstances, be submitted to a special meeting of the Council;
- (3) In order to allow full discussion of this important matter, this report includes details of an alternative structure, again designed to meet Falkirk Council's needs and circumstances;
- (4) The report includes proposals for changes to standing orders required to accompany each of the structures;
- (5) The report includes consideration of the proposal to re-introduce Baillies;
- (6) The report includes consideration of Petitions committees, reporting back from external organisations and substitutes/pairing;

2. EXECUTIVE/CABINET MODEL

2.1 The underlying principle of any Cabinet or Executive model is that the principal decision making functions of the Council are centred in a Cabinet or Executive rather than in a series of service or themed committees. The other common principles to be found in such models are that (a) the Cabinet or Executive would largely consist of members of the Administration who would be lead spokespersons or portfolio holders in particular areas and (b) the power which transfers to such an Executive or Cabinet requires to be balanced by a properly developed scrutiny mechanism. Bearing these principles in mind, this report offers a suggested model of Cabinet or Executive decision making. For the purposes of this report the term 'Executive' is used to refer to a Cabinet or Executive Committee. In developing the model, account has been taken of the size of the Council in relation to the number of members who could realistically be involved in an Executive

but allowing sufficient numbers to participate in scrutiny. The model also takes into account the political culture of the Council, and the history of active member participation in scrutiny, in setting out an enhanced role for member involvement both in scrutiny and in policy development. There remain some choices to be made by Council if it is to adopt this model and these are set out within the body of the report.

- 2.2 The broad shape of the proposed model is set out in appendix 1 to this report. The key change suggested in the model is the creation of an Executive and an Education Executive. It is important to note although that these are shown as separate bodies in the plan, they are, in essence, the same body. The Education Executive is set out separately to reflect the fact that in discharging the Council's functions as education authority the Executive requires to include the three Church representatives within its membership. For the purposes of this section of the report, references to the Executive include reference to the Education Executive.
- 2.3 The role of the Executive would be to take lead responsibility for the development of policy and to take all decisions on behalf of the Council which are not delegated to officers subject to three important exceptions:-
- (1) issues which are reserved to Council;
 - (2) regulatory or individual employment decisions; and
 - (3) matters which fall within the remit of the Pensions Committee.
- 2.4 There are some matters, for example, the setting of the budget, which require by law to be reserved to Council. The Executive Model requires to reflect this. The list of the issues which would be reserved to Council is included as appendix 2 to the report. Those which require to remain with Council are highlighted in bold. There are some further issues included in the appendix where, by long established practice, the Council has taken these decisions. They are also included in the list.
- 2.5 It can also be seen in the plan of the model that the existing Planning, Civic Licensing, Appeals and Appointments Committees continue in existence and their remits would remain unchanged.
- 2.6 The Pensions Committee would also remain in existence and, to an extent, would sit outside the main decision making processes of the Council. This reflects the unique status of the Pensions Committee in having its own statutory governance arrangement.
- 2.7 Ordinarily, an Executive would not reflect the political balance of the Council. Rather, it would reflect the ability of an Administration to carry votes in Council and Committees where they hold a majority of the membership. It would be open to the Council to have an Executive wholly made up from Administration members. That is not the option suggested here and it is considered that there would be a proper role for Opposition members on the Executive. One suggestion, based on experience of other Councils, would be to have nine Administration and two Opposition members. This is offered for consideration but it will be for Council to determine the balance within the Executive.

- 2.8 Again, in the ordinary course of events, the members of the Administration within the Executive would be principal spokespersons or portfolio holders for significant areas of the Council's work. For the remainder of this report they will be referred to as portfolio holders. The role of a portfolio holder will be to speak on behalf of the Executive on the area within their responsibility; to be politically accountable to the wider Council for those areas and to lead in policy development. The portfolio holder would not be a decision maker; decision making would rest with the Executive as a whole. The subject areas of the portfolio holders are a matter for Council to determine. The Plan contains one list of potential portfolios which assumes the Leader (or Leader and Depute Leader) having responsibility for significant corporate policy initiatives such as community planning, the poverty strategy and equalities as well as finance; however, it remains available to Council to determine what portfolios it wishes to create.
- 2.9 As noted above, a portfolio holder will have the opportunity to take a significant role in leading policy development. One innovation in the suggested model is the ability of the Executive to form, at its own initiative, policy development panels which will report to the Executive. It is envisaged that such a Panel would be led by the portfolio holder but would involve members from the wider membership of the Council including the Opposition. The aim of this proposal is to enhance the involvement of Members in policy development and allow them to be fully involved in assessing the policy options and the evidence supporting them before recommendations are made to the decision making Executive. These will not be standing policy development panels but, rather, short life panels formed to consider a significant policy area. It would be open to Council to determine that these would be formal committees and as such require to take place in public or, alternatively, as they will not be decision making bodies, to determine that they have the status of internal meetings akin to member/officer working groups which would allow more flexibility as to the degree of access accorded to the public, both to meetings and to papers.
- 2.10 In summary, it can be seen that this part of the model proposes a powerful decision making body at the centre of the Council with a significant new policy making role. This, in turn, raises the question of the manner in which the Executive will be accountable to the Council as a whole and the manner and extent to which its decisions are scrutinised.

3. SCRUTINY

- 3.1 The model encompasses two means by which the wider Council can scrutinise the decisions of the Executive. The first arises from the Executive's relationship with the Council; the second arises from the creation of the proposed scrutiny committee and the development of the framework for detailed scrutiny of the outcomes of the decisions made by the Executive.

- 3.2 The Executive and, in particular, the portfolio holders within the Executive, will be accountable to the wider Council. The principal means of ensuring this accountability would be an enhanced scope for questions to portfolio holders at meetings of the Council. It is envisaged that this could take the form of written questions to portfolio holders within their area of responsibility related to any items of business before that Council meeting or any items which had been considered in the Executive meetings in the cycle prior to that meeting. The Council will require to give some consideration to the Standing Orders which would be required to allow for this section of Council business to be dealt with. Consideration could be given, for instance, to whether supplementary questions would be allowed or whether there would require to be a limit in number or in time allocated to questions and, if so, the selection of questions or the order in which they were taken.
- 3.3 Members will be aware that, currently, decisions from committees can be called in to the Council. While it would be open to the Council to include this within its model of decision making, it is suggested that this would not fit well with the general principles of an Executive structure. If this issue were to be resolved against the inclusion of a call in provision, it would be appropriate for the Council to give consideration to the related question of whether the delegation of decision making powers to the Executive would be to the Executive *exclusively* or whether the Council would continue to have a *concurrent* decision making capacity. The tension here lies between the maintenance of the benefits of an Executive model in establishing clear lines of authority and accountability along with speed and finality as against maintaining a role for the meetings of Council as a public forum for democratically elected representatives to debate the issues of the day. It is suggested that this issue is considered in more detail as part of the review of Standing Orders referred to in part 7 of this report.
- 3.4 As can be seen from the plan, the model also envisages the creation of a scrutiny committee. It is for Council to determine but it is envisaged that the scrutiny committee, in contrast to the Executive, would be politically balanced. A committee of eleven members is suggested. This reflects the size of the Council, the proposed size of the Executive and the need to maintain a distinction between the members of the Executive on the one hand and the Scrutiny Committee on the other. Options are available for an enhanced role for the opposition in the scrutiny process. Again, this would be for the Council to determine.
- 3.5 The principal role of the scrutiny committee would be to establish, implement and oversee the annual scrutiny plan of the Council. It is envisaged that the scrutiny committee would identify a number of areas that would benefit each year from detailed and in depth scrutiny. The committee would recommend a plan to Council. When agreed, it would be the role of the committee to establish scrutiny panels which would consider the subject areas within the plan. The committee would exercise oversight of the work of the panels and would receive the panels' reports before these were passed to the Executive. The membership of the panels could be drawn from the wider membership of the Council or the committee with the only restriction being that it would not be appropriate for a member from the Executive to sit either on the scrutiny committee or any of its panels. In common with the Policy Development Panels, as they will have no decision making role, there is a choice for the Council to make on whether the Panels are constituted as sub committees which would require public access to

meetings and reports or whether there would be advantage in these being internal meetings to allow for flexibility on that issue.

- 3.6 In addition, it is envisaged that the scrutiny committee would have the role of considering the Following the Public Pound reports. The committee could perform the Council's scrutiny function in relation to the work of the Community Trust and also the scrutiny role in respect of the policing plan and the fire and safety plan, albeit that decision making (for example, approving the annual police and fire plans) would remain with the Executive. It would be open for the Executive to refer any other matter to the scrutiny committee to consider as it saw fit.
- 3.7 It is also suggested that the Audit Committee as currently constituted with an independent chair, should continue. The Audit Committee performs a distinct and valuable role and it is considered appropriate that this role is maintained. The model also envisages a continued role for the Best Value Forum. There is a risk of some duplication in the roles of the Forum and the Scrutiny Committee but it is understood that members value the role which the Forum currently performs.

4. FINALISED EXECUTIVE MODEL

- 4.1 It can be seen from the description of the Executive Model and the scrutiny processes which lie alongside it that there are a number of choices to be made by the Council if this were to be the favoured model. It would be useful to set these out at this stage.
- the size and political composition of the Executive.
 - the number of portfolio holders and their remits.
 - whether the policy development panels should be formally constituted as sub-committees requiring public access.
 - whether there should be call in powers from the Executive to Council.
 - whether the Executive's decision making powers should be exclusive or, alternatively, concurrent with those of Council.
 - the size, composition and convenership of the scrutiny committee.
 - whether the scrutiny panels should be formally constituted as sub-committees.

5. ALTERNATIVE STRUCTURE

- 5.1 As can be seen above, there are a number of different formulations for the Executive model and, in that sense, it contains its own alternative(s). A further alternative which Council may wish to consider, however, is to maintain the Education Committee in its current form, i.e. as a politically balanced committee with the addition of the statutory representatives and those other non-voting representatives currently appointed by Council. The committee could exist alongside the Executive. The Executive would maintain all its powers other than those remitted to the Education Committee. Broadly speaking, the same provisions for scrutiny would apply. Matters within the remit of the Education Committee could form the subject of scrutiny undertaken in the context of the scrutiny plan with reports being made to the Education Committee rather than to the

Executive. There would, however, be no portfolio holder for Education and accordingly no scope for questioning at the Council.

6. MEETINGS OF THE EXECUTIVE

- 6.1 If it is assumed that the same number of Council meetings takes place each year i.e. five, not taking into account the special meeting for the purpose of agreeing the budget and setting the council tax, meetings of the Executive could take place on a three weekly cycle with one meeting in three being devoted to education business. An illustrative timetable has been prepared and is attached as Appendix 3.

7. STANDING ORDERS

- 7.1 If Council decides to adopt the Executive model set out in this report, changes will be required to the Council's Standing Orders which are made up of the:

- Standing Orders Relating to Meetings
- Scheme of Delegation to Committees and Officers
- Contract Standing Orders, and
- Financial Regulations.

- 7.2 Amended Standing Orders are not included with this report as their detail will depend in large measure on the decisions taken by Council on this report. If Council takes a decision at this meeting on the structure it wants to adopt, the intention would be to present draft standing orders relating to meetings together with a scheme of delegation to committees to the meeting of Council suggested to take place in April. Changes to the scheme of delegation to officers, contract standing orders and financial regulations would follow to the June meeting.

- 7.3 Once Council has taken the decision on its preferred decision making structure and on the other issues set out in paragraph 4.1, the scheme of delegation to committees will be drawn up to reflect these decisions and to set out how they will work in practice. If the Executive and Scrutiny model is adopted, the scheme will include a role and remit for these Committees, the powers available to them and the interaction between them, together with how the scrutiny and policy development panels would carry out their roles in practice.

- 7.4 Members have, at various stages, expressed some frustration with certain aspects of the existing standing orders relating to meetings, e.g.

- the length of speeches
- the length of meetings
- the application and use of standing orders 18.2 and 18.3
- the number of motions on the agenda and the notice required to be given
- whether notice in advance should be given of amendments, either generally or with particular reference to the budget setting meeting

- 7.5 It would be helpful to have an indication from Council of the particular areas of the standing orders relating to meetings where there is felt to be a need for change in order that the standing orders drafted for Council's consideration at the next meeting can address these concerns. Officers would then work in consultation with the Provost, as Convener of the Council, and with the Depute Provost, in putting together an amended set of standing orders related to meetings for submission to Council in April.

8. BAILLIES

- 8.1 In accordance with the decision taken by Council in December 2012, the proposal to re-introduce the civic role of Baillie is again before Council.
- 8.2 As set out in the December report, the term "Baillie" is a historic one linked to the Royal Burghs. It continued to have a legislative relevance with respect to burgh courts until 1975 when the District Courts (Scotland) Act abolished those courts and with them the statutory role of Baillie. It is understood that some Councils, principally cities, e.g. Glasgow and Stirling, have re-introduced the honorary title and role.
- 8.3 The Provost has been appointed by Council as its civic head. He is assisted in that role by the Depute Provost. It would be available to Council, should it so wish, to further expand the number of members formally holding civic roles. The honorary title of Baillie could be applied to those roles.
- 8.4 This issue is before Council for consideration with regard both to the re-introduction of the title and to the nature of the role a person accorded the title would perform.

9. PETITIONS COMMITTEE

- 9.1 A number of local authorities in Scotland have established some form of system for receiving public petitions, whether by the establishment of a petitions committee or the incorporation of a right of public petition within existing decision making structures. In part, the increasing use of public petitions' systems can be attributed to the success of the Petitions Committee of the Scottish Parliament in creating a direct link between electors and parliament.
- 9.2 There are some common features generally found in the systems within local authorities:
- the subject matter of the petition should relate to issues which fall under the remit of the local authority, in some cases including the wider community planning partnership.
 - petitions where the subject matter is *sub judice* or commercially sensitive or where the subject matter of the petition is overtly party political or is defamatory would not be accepted.
 - there is an expectation that the petitioner(s) have sought to address the matter in another way e.g. through contact with council officers.
 - a specified number of signatories is required before the council or committee would be required to consider the matter.

- 9.3 It is suggested that if Council were minded to favour the option of a public petitions system and, at the same time, to adopt an Executive model, that the role of considering petitions would most naturally fall to the Scrutiny Committee. If Council decides in favour of this option, a detailed remit and procedure for the petitions role of the Scrutiny Committee would be presented as part of the new standing orders at a later meeting of Council.

10. EXTERNAL ORGANISATIONS

- 10.1 The Council has appointed members to a variety of external organisations. In total, there are 48. Most of the appointments were made at the statutory meeting on 18 May 2012 but some were made on an ad hoc basis at subsequent meetings. The organisations are diverse, extending across a broad spectrum of involvement from formal statutory bodies (e.g. NHS Forth Valley), through directorships with companies (e.g. Falkirk Community Trust) to involvement in more community based local groups (e.g. Falkirk & District Arts & Civic Council)
- 10.2 The various organisations differ in purpose and in terms of their set up and constitutions. They include registered charities, companies limited by guarantee or part funded by the Council and local community groups. This can influence the role council members are expected to play:
- acting as a conduit to exchange information.
 - providing insight on the Council's position.
 - representing the community.
 - reporting on Council decisions and policy.
 - acting as a trustee.
 - acting as a director.
- 10.3 Currently there is no mechanism to allow Council appointed representatives to report back on their activities or on key issues raised within the organisation which may impact on the Council. Council has indicated that it wants to look at options for reporting back.
- 10.4 A variety of options for reporting to Council on external organisations is available. These include:
- the submission of minutes to Council by way of the information bulletin. The availability of minutes very much depends on the organisation concerned and their usual practices of preparing and publishing minutes. Contact with the organisations on which the Council is currently represented, however, has established that 43 of them would be agreeable, in principle, to making their minutes available and to them appearing on the Council's website.
 - informal access to minutes, either by way of the website only or placing them in, for example, the members' lounge for any interested member to peruse.
 - having a formal feedback session incorporated into Council agendas with a set period given for questions and answers.
 - Submitting a formal report to Council at each meeting on activity within the previous cycle.

- 10.5 Council is invited to consider whether it wishes to adopt a method of reporting back on external organisations and, if so, the preferred method.
- 10.6 It is suggested also that there would be merit in looking closely at all appointments to external organisations to establish if they still serve a meaningful purpose and are the most efficient and effective use of members' time. It is intended that a report will be placed before the June meeting of Council to consider this issue further.

11. SUBSTITUTES AND PAIRING

- 11.1 The Council considered a report on the potential for allowing substitutes to sit on scrutiny committees at its meeting on 20 June 2012. A copy of that report is attached at appendix 4. While the issue remains one for Council to consider, it may be suggested that the proposed Executive model set out in this report would not lend itself easily to adoption of a system of substitution. Nevertheless, the issue is one for members to consider.
- 11.2 Pairing is a system whereby members of opposing parties agree not to vote when other business prevents them from being present at a meeting of Council or a committee. It is normally managed by agreement between each party's whips. The adoption of such a system by the Council would depend on agreement among the parties and is therefore before Council for consideration.

12. REMUNERATION

- 12.1 A change in the Council's established decision making structure will impact on the remuneration framework agreed at the statutory meeting on 18 May 2012. The current framework is shown at appendix 5.
- 12.2 Rates of remuneration for councillors are set out in The Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007. Some of the payments are fixed, e.g. the basic payment that every councillor receives and the amount paid to the Leader of the Council, while other payments are for each Council to decide on within certain financial parameters set out in the Regulations, e.g. the amount paid to senior councillors.
- 12.3 The amended decision making structure suggested in this report does not impact on the role of basic councillors, the Leader or the Provost but the nature and role of senior councillors does change.
- 12.4 In terms of the Regulations, the maximum number of senior councillors that can be appointed in Falkirk is fourteen. This number is exclusive of the Leader and the Provost. Each local authority has the flexibility to determine the positions it considers to be senior and thereby meriting higher salaries, with the revised guidance issued by the Scottish Government in April 2010 simply stating that it should be a councillor who holds a significant position of responsibility in the Council's political management structure.

- 12.5 The Council can therefore determine the number of councillors designated as ‘senior’ up to a maximum of 14, and can determine the rate of remuneration paid to each, provided that no councillor is paid more than 75% of the payment made to the Leader of the Council (i.e. not more than £24,352) and the total amount paid to all senior councillors does not exceed £284,105.

13. PHASING AND TRANSITIONAL ARRANGEMENTS

- 13.1 Assuming a decision on the preferred decision making model is taken at this meeting, consideration needs to be given to when it should take effect.
- 13.2 The current committee structure (apart from the regulatory committees) is currently in abeyance pending this decision. If the Executive and Scrutiny model is adopted and appropriate standing orders and a scheme of delegation approved in April, the new structure could take more or less immediate effect. In that respect, the illustrative timetable shown at appendix 3 has a first meeting of the Executive taking place on Tuesday 7 May 2013 with the first meeting of the Scrutiny Committee two days later on Thursday 9 May 2013. Commencing the new structure at that stage would allow a full cycle of meetings to take place before breaking for the summer recess after the meeting of Council on 26 June 2013. The alternative would be to wait until after the recess to formally start the new system and either institute another cycle of Policy and Resources and Scrutiny Committees or delegate the standard recess powers to officers earlier than usual to cover the hiatus.
- 13.3 If it is determined to move to the new structure in May, meetings of the standing regulatory committees would still be set in April and early May, with the following dates being suggested:
- Planning Committee on Site on 9 April
 - Civic Licensing Committee on 10 April
 - Planning Committee on 1 May 2013
- 13.4 Council would then meet on 24 April 2013 with the new model coming into effect on 1 May 2013. Portfolio holders and any other committee positions could also be appointed from that date.
- 13.5 For any other urgent decisions required to be taken in April, it is suggested that the standard recess powers be delegated to chief officers, recognising that special meetings of the existing committees could still be called in the event of a matter requiring to be dealt with outwith these powers.

14. RECOMMENDATIONS

It is recommended that Council

1.
 - (a) decides whether or not to adopt an Executive model of decision making;
 - (b) if the decision is in favour of an Executive model, considers and determines the issues set out in paragraph 4.1;
 - (c) decides whether the new decision making structure should come into effect in May (in which case, to adopt the timetable at appendix 3) or after the recess and, if the latter, whether a further cycle of Policy and Resources and the current scrutiny committees should take place during May and June;
 - (d) agrees that the revised Standing Orders relating to Meetings and the Scheme of Delegation to Committees be presented to a meeting of Council in April and a revised Scheme of Delegation to Officers and Contract Standing Orders be presented to the June meeting;
 - (e) agrees that standard recess powers are granted to Chief Officers pending the commencement of the Executive model and that the meetings referred to in paragraphs 13.3 and 13.4 are set;
2. considers whether to introduce the office of Baillie.
3. considers whether to introduce a public petitions system and, if so, whether to establish a separate committee for this purpose;
4. considers whether to adopt a formalised method of reporting back from appointees to external organisations and, if so, determines the appropriate model;
5. considers whether provision should be made in the standing orders for substitution;
6. considers the remuneration framework in light of the decisions made above.

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Chief Executive
12 March 2013

LIST OF BACKGROUND PAPERS

Nil