

FALKIRK COUNCIL

Subject: POLICY DEVELOPMENT PANEL – REVIEW OF THE SCHEME FOR THE ESTABLISHMENT OF COMMUNITY COUNCILS AND SUPPORT – UPDATE
Meeting: EXECUTIVE
Date: 19 AUGUST 2014
Author: CHIEF GOVERNANCE OFFICER

1. PURPOSE

- 1.1 The purpose of this report is to provide an update on the work of the policy development panel (pdp) since it last reported to the Executive on 27 May 2014.

2. BACKGROUND

- 2.1 The policy development panel was established by the Executive in 2013 to review the current Scheme for the Establishment for Community Councils (the Scheme) and the support provided by Falkirk Council to the community councils in its area.
- 2.2 The panel reported its interim findings to the Executive on 27 May 2014 and was asked to report to this meeting on the following:-
- (1) a review of the Scottish Government's model constitution and standing orders with a view to these being incorporated within the draft Scheme approved by the Executive in May together with a timetable for a formal review of the Scheme and associated documents: and
 - (2) a review of practices adopted elsewhere within Scotland to enforce the model code of conduct.

3. MODEL SCHEME AND ASSOCIATED DOCUMENTS

- 3.1 The Scottish Government developed a model Scheme for the Establishment of Community Councils in 2009 which included a model code of conduct, a model constitution and model standing orders as supporting documents.
- 3.2 A revised model Scheme was agreed by the Executive in May 2014 as its draft Scheme for formal consultation. The Executive instructed the panel to review the model constitution and model standing orders provided by the Scottish Government with a view to these being incorporated within the draft Scheme documentation. The model code of conduct had previously been adopted by the Executive in August 2013.

4. REVIEW OF THE MODEL CONSTITUTION AND MODEL STANDING ORDERS

- 4.1 The Council adopted its current constitution for community councils (appendix 1) in 2002 and this has remained unchanged. The panel is of the view that this document,

while fit for purpose, is not written in a plain English style or laid out in a way which facilitates its use as a working document. The model constitution (appendix 2), as with the package of model documents prepared by the Scottish Government, is written in plain English and is designed to be user friendly. Having adopted a revised version of the model Scheme as the draft Scheme for consultation there is a logic in adopting the model documentation as a single package from a practical and consistent point of view. However the panel was mindful that any adopted constitution should reflect the needs of community councils in the Falkirk area. It therefore undertook a two stage review of the model constitution. First the model constitution was reviewed against the current constitution. The panel then sought the views of community councillors on the model document with particular focus on its practical implementation.

4.2 On comparison the two documents are similar – however, the model constitution introduces a number of new, practical measures. These are:-

- **Section 4** – this section ties in with the model Scheme and establishes in the constitution the role and responsibilities of community councils.
- **Section 7** – this sets out how to deal with casual vacancies and largely mirrors the terms of the current constitution. It does, however, introduce a requirement that six months must pass following an election before the community councils can act to fill casual vacancies.
- **Section 8** – this section introduces the availability of the casting vote for the convener.
- **Section 9** – previously office bearers were appointed for the lifetime of the community council. The model constitution allows a one year period of office. Further re-elections are permitted.
- **Section 9** – The model constitution introduces a new condition that no one member of the community council may hold two offices at once.
- **Section 11** – The model constitution introduces a set quorum for all community councils of one third or three, whichever is greater. The current constitution is silent on the matter of quorums for ordinary meetings of councils.
- **Section 11 (g)** – This allows members of the community to petition a special meeting to allow items of business to be discussed.
- **Section 11 (h)** – The model constitution allows for community council meetings to be heard in private. The current constitution does not include such a provision.
- **Section 12** – This section sets out clearly that the public should be allowed, under the guidance of the convener, to speak at community council meetings.
- **Section 13** – The model constitution clarifies the requirements for the community council to agree its calendar at its annual general meeting and to notify the Community Council Liaison Officer following the meeting.
- **Section 14 (a)** – The model constitution includes a statement that all money provided by the Local Authority for administrative purposes should be used for the prescribed purposes and that any other monies raised must be used in furtherance of the community council's objectives.
- **Section 14 (c)** - The model constitution introduces a new condition that authorised signatories must not be co-habitees.
- **Section 17** – The model constitution requires a majority vote for the dissolution of a community council whereas the current constitution requires two thirds of the total voting membership.

4.3 The panel's support officers met with community councillors on 30 June 2014. The purpose of this meeting was to hear community councillors' views on the model constitution and standing orders. Bo'ness, Reddingmuirhead & Wallacestone, Shieldhill,

Maddiston and Larbert, Torwood & Stenhousemuir community councils were represented at the meeting. There was unanimous agreement between the community councillors that the changes brought in by the model constitution were positive and as a whole it provided greater clarity in regard to their role and the role of the community council.

- 4.4 The group, however disagreed with two new provisions. These were section 11 (g) and section 11 (h).
- 4.5 The former allows members of the community to requisition special meetings to consider an issue. The group was mindful of the role of community councils and the need for them to engage with the local community. It supported the principal that there should be a means for issues to be raised by members of the public. However, the group felt that with each community council holding ten scheduled regular meetings in a year there was ample scope to allow issues to be discussed within the timetabled programme. The group was also mindful that special meetings can be called by the convener or by the Council. The group suggested therefore that issues could be raised by the public without recourse to a special meetings being called as a matter of course.
- 4.6 The group therefore recommended a change to this section, as follows:- “it shall ensure that these are discussed at the next scheduled meeting”.
- 4.7 In regard to section 11 (h) the group felt that this provision, which allows for meetings to be held in private, contradicts the ethos of holding all meetings in public. The group could see almost no circumstance where the community council should meet in private and the group therefore proposed that it be deleted.
- 4.8 A summary of the group’s comments are given below;
- Section 3(f) – the current constitution includes reference to the non political nature of community councils. The group felt this should be included in any new constitution. This has been incorporated.
 - Section 8 – the construction of this paragraph led to confusion amongst the group and it was considered that it was unclear. The model scheme allows co-opted community councillors to vote on all matters bar the co-option of members. The current constitution allows co-optees to vote on all matters bar the co-option of members, alterations to the constitution and dissolution of the community council. The group agreed that there was benefit in following the provisions of the model scheme and altering the paragraph accordingly. Additionally, in regards to the convener’s casting vote, it was suggested that the phrase “in addition to his/her deliberative vote” should be inserted for clarity.
 - Section 11(a) – the model Scheme and constitution set a quorum of a third or 3, whichever is greater. However a suggestion made at the meeting that this must include at least one office bearer could not be agreed upon.
 - Section 14 – the model Scheme requires that accounts are independently examined by an auditor appointed by Falkirk Council. The model constitution contradicts this, requiring accounts examined by two independent examiners. The group supported the terms of the constitution. However advice from Finance Services recommends that it is preferable that the accounts are examined by a qualified accountant and so the constitution has been amended to reflect the terms of the Scheme.

- 4.9 Following the meeting the model constitution was revised (appendix 3) and issued for comment to all community councillors. Having considered the feedback the panel recommends this as its draft constitution for inclusion within the agreed draft Scheme for consultation.
- 4.10 The panel also considered the model standing orders developed by the Scottish Government (appendix 4). Currently the Council does not provide standing orders within the support documents issued to community councils. The panel therefore welcomed an introduction of formal standing orders, to be applied uniformly across community councils as a positive innovation. The model standing orders follow the style and format of the model Scheme and as such the panel supports their adoption. Again, the panel was keen to consult with community councillors and took the opportunity to seek the views of the representatives of the community councils on 30 June. The model standing orders (appendix 5), revised as a consequence of the feedback in regard to the requisition of special meetings (see paragraph 4.7), were issued to all community councillors. The revised document was welcomed with no further change required. Accordingly this is recommended to the Executive for inclusion within the draft Scheme.

5. CODE OF CONDUCT

- 5.1 The panel noted, in presenting its interim findings that there is no mechanism in place to enforce the terms of the model code of conduct introduced by the Scottish Government in 2009. In its interim report the panel noted that a Scottish Government short life working group looking at the arrangements for community councils had recommended as part of its review in 2013 that “an independent and simple enforcement and appeals mechanism is explored.”. In the absence of a generic process some local authorities have introduced their own local solutions.
- 5.2 In terms of the national perspective the Scottish Government engaged the Improvement Service in late 2013 to assist in taking forward the recommendations of the shortlife working group and to work with local authorities to ensure that best practice is identified and shared.
- 5.3 As part of its work, which has included thus far establishing a knowledge hub to share best practice amongst CCLOs, the Improvement Service issued, in July 2014, a questionnaire to all CCLOs seeking information on a number of issues in regard to their schemes. The questionnaire specifically sought authorities’ views on a proposal that an independent body should be charged with the responsibility to consider and determine complaints about community councils and community councillors. It is intended that the results from the survey will allow for productive discussion with the Scottish Government and may allow a route map, at least, to be developed. The closing date for responses was 18 August and the outcome is not known.
- 5.4 Following the Executive in May 2014 a review was undertaken of the procedures currently in place in Scotland to enforce the code of conduct. Of the 32 local authorities, 6 have such procedures in place. A summary of the key stages in each is given at appendix 6
- 5.5 There is consistency in the approach adopted in that, in the first stage, any complaint is to be resolved locally by the community council. This is achieved in different ways. For example, Stirling Council permits its community councils to determine cases and apply sanctions. It does not however set out a mechanism for the community council to follow, leaving it to each to determine how best, given the local circumstances, to deal with a complaint. Notably, there is no opportunity to appeal any decision taken.

- 5.6 Where the authorities allow a further appeal there is no consistency in how these are heard. In both Edinburgh and Glasgow the matter is considered by a senior officer of the Council. In Glasgow and Fife (final stage) the appeal is determined by a panel of either community councillors (Glasgow) or community councillors and locally elected members (Fife).
- 5.7 There is limited information in the frequency in which appeals are submitted to local authorities. None of the authorities contacted were able to provide definitive information. This was because their mechanisms in allowing local resolution do not require feedback to the local authority.
- 5.8 In the Falkirk area since the election in 2013 there has been discussion between the Community Council Liaison Officer and a number of community councillors and, to a lesser extent, members of the public in regard to the code and the lack of enforcement. Local disputes have arisen which, it may be argued, could have been managed more effectively had an enforcement procedure been in place.

6. CONCLUSIONS

- 6.1 The panel met on 6 August 2013 to consider the feedback from community councillors in regard to the revised model constitution and standing orders and to discuss the various enforcement mechanisms currently in place across Scotland. The panel concluded that:-
- It was content with the proposed revisions to the model constitution and would recommend that the Executive agree to incorporate these, together with the revised standing orders within its draft Scheme;
 - There was a need for enforcement procedures to be put in place to ensure compliance with the model code of conduct and that enforcement procedures should be included in the draft Scheme;

In the first instance the responsibility for establishing such a framework should lie with the Scottish Government given that it has ownership of the model Scheme documentation. The panel therefore concluded that it would recommend to the Executive that it awaits the outcome of dialogue between the Scottish Government and the Improvement Service in regard to progressing a national procedures. However, in the event that the Scottish Government is not minded to develop model procedures the panel agreed that a local process should be put in place. The panel considered that if no progress is made by the Scottish Government in this regard within four months of this meeting a local process should be progressed and that it is included in the draft scheme. Officers should be asked, in the meantime to develop a workable process which includes initial determination by the community council and which allows an appeal to an independent panel. The sanctions available should be clear and fair.

- 6.2 The panel therefore agreed to recommend to the Executive that it:-
1. approves the revised model constitution and standing orders for incorporation within the draft scheme for consultation agreed in May 2014;
 2. agrees that there is a need for enforcement procedures to be put in place to ensure compliance with the model code of conduct;

3. receives a further report, at the Executive meeting on 2 December 2014, setting out the Scottish Government's position in regard to the introduction of a national mechanism and including proposals for a local mechanism as an alternative should the Scottish Government not be minded to introduce a national mechanism;
4. requests that officers develop a workable enforcement process, for the meeting on 2 December 2014. Any procedure should include initial determination by the community council and an appeal to an independent panel; and
5. agrees that any enforcement procedures should be set out in the final draft Scheme for consultation and as such does not initiate any formal consultation until the enforcement procedures are finalised.

7. NEXT STAGES

- 7.1 Section 53 of the Local Government (Scotland) Act 1973 sets out the process which must be followed by local authorities when amending their schemes. The decision to amend a scheme and to adopt an amended scheme lies with Council. The Act also requires that both decisions must be passed by not fewer than two thirds of the members voting at a meeting specially convened for the purpose.
- 7.2 The Executive will have, by the end of its review, developed a draft Scheme for the Establishment of Community Councils. This will include a code of conduct and a process for enforcing the code, a constitution and standing orders. There are further stages to be followed in advance of the Scheme being formally adopted by Council. In terms of process the Executive should formally recommend its proposed Scheme to a special meeting of Council. Council will be invited to amend its current Scheme and to consult on its proposals i.e to present the draft Scheme for comment.
- 7.3 A timetable, based upon the Act is set out below:-

1.	Special meeting of Council.	Approval to amend current Scheme for the Establishment of Community Councils
2.	Publish Public Notice.	Give public notice of the Council's intention to amend its Scheme for the Establishment of Community Councils and issue its proposals. Period of not less than 8 weeks.
3.	Special Council meeting	Council to consider representations. Council may (a) agree the Scheme as published; or (b) amend its proposed Scheme in light of representations made.

4.	Publish Public Notice. .	If (b) above - Give public notice of the Council's amended draft. Period of not less than 4 weeks
5.	Special Council meeting	Council to consider any further representations made. Council agrees its scheme.

8. RECOMMENDATIONS

It is recommended that the Executive considers the findings of the policy development panel and the recommendations set out in paragraph 6.2 of the report.

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CHIEF GOVERNANCE OFFICER

Date: 4 August 2014

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LIST OF BACKGROUND PAPERS

PDP file – CC/GN/9

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 506110 and ask for Brian Pirie.