



Agenda Item 7

Decision Making Structure

Falkirk Council

Title: Decision Making Structure

Meeting: Falkirk Council

Date: 9 May 2018

Submitted By: Chief Executive

1. Purpose of Report

1.1 The purpose of the report is to set out the implications of the decision taken by Council on 6 April 2018 to change the political composition of the Executive and the Education Executive and that the convenership of both bodies is no longer *ex officio* the Leader of the Council. The report suggests some further changes which require to be made in light of this decision that are informed by discussions with the Group Leaders.

2. Recommendations

2.1 It is recommended that Council considers:-

- (1) changing the arrangements for portfolio holders allowing flexibility on the number that can be appointed and their remits;
- (2) making provision for members appointed to the Executive and Education Executive to be different if groups so determine;
- (3) providing that where a portfolio holder is not appointed to the Executive or the Education Executive, they may attend a meeting of that body where the meeting is considering an item of business within their portfolio and speak at that item but not vote;
- (4) relaxing the bar on members of an Executive serving on a scrutiny panel where the subject matter is not within the remit of the Executive on which that member serves and on portfolio holders so serving where the subject matter does not fall within their remit;
- (5) extending the remit of the Education Executive to include the non-education functions within the remit of the Children's Services;
- (6) politically balancing the scrutiny committees;
- (7) removing the current requirement that the convenership of both Scrutiny Committees is held by the largest opposition group and, in place of that requirement adopt the proposal to share convenerships as described in para 4.9;

- (8) agreeing that any decision to pursue recommendations 4.7 and 4.9 be subject to an explicit commitment that Council would review this in the event that a majority administration formed;
 - (9) extending the membership of the business meeting held prior to Council to include the leaders (or their substitute) of each of the main groups;
 - (10) whether any changes adopted will have effect from the date of the meeting; and
- 2.2 request the Chief Governance Officer make the necessary amendments to the Standing Orders of the Council to give effect to the decisions made to be reported to the June meeting of Council.

3. Background

- 3.1 At its meeting on 6 April 2018, Council agreed to change the political composition of the Executive and the Education Executive to reflect the balance between political groups within the Council. Council also sought a report from me on the implication of its decision in particular, on the role and number of portfolio holders and the composition and convenership of the Scrutiny Committees. These issues are addressed later in the report. In compliance with the Council's decision, I also consulted with each of the Group Leaders and issues raised by them have assisted in forming the report.
- 3.2 It is important to acknowledge at this stage that the decision taken by Council marks a significant departure from the decision making structure which has been in place since 2013. At the heart of that structure was a strong Executive balanced in favour of the Administration with the counter balance of two Scrutiny Committees equally balanced between the opposition and administration but with the convenership reserved to the opposition. The purpose of adopting this structure was broadly to streamline decision making and make lines of accountability for the political administration clear. In contrast to the other committees of the Council, neither the Executives nor the Scrutiny Committees were politically balanced.
- 3.3 The decision of Council on 6 April expressly notes a changed political environment and has changed some aspects of the decision making structure. Council asked me to consider what implications arose from this decision. In doing so, I have given consideration to whether it was necessary or desirable to revert to a more traditional committee structure, I have reached the view, helpfully informed by discussions with the Group Leaders, that there is no such a need nor, indeed, an appetite for such radical change. Rather, it is open to the Council to make some further revision to the current structure to create some flexibility and maintain consistency with the decision in April on the Executives while maintaining the benefits of clear decision making to be found in the current structure.

4. Considerations

- 4.1 I will first address the issues set out by Council in its decision. The first of these was the role and number of portfolio holders. It is instructive to return to the Standing Orders to consider the role of portfolio holders. They are created to ensure greater political accountability, to *inter alia* exercise strategic and political leadership and to lead on policy development (for instance, by leading Policy Development Panels (PDPs)). The Leader exercises strategic leadership of the Council. From this it is clear that the leader and the portfolio holders form the political core of the Council accountable to the wider Council membership.
- 4.2 At the same time, the decision of Council poses a practical difficulty with the current number fixed in the Standing Orders of the Leader plus eight portfolio holders. The current main administration party is allocated 5 members on the Executives, the next biggest party has 4 places. Considering both the practical issue and the role and purpose of portfolio holders, my suggestion to Council is that a different approach is adopted in relation to the number and role of portfolio holders and is to place the decision with the Leader of the Council with the proviso that all responsibilities currently falling within the remit of the portfolio holders would require to be covered irrespective of the number appointed. It would be for the Leader to determine which portfolio holder was a member of the Executives. The decision of the Leader would require to be intimated to the Chief Governance Officer and thereafter reported to Council for noting.
- 4.3 In its April decision, Council made some interim arrangements for the position of a portfolio holder who was not a member of the Executives, ie, that the portfolio holder was entitled to attend and speak to a item of business falling within their remit. I would suggest that this continues and that it be further clarified that a portfolio holder in that position be entitled to speak during that item in the same way as a member of the committee but not vote or move a motion or amendment.
- 4.4 A further issue in relation to the Executives has arisen in discussion with the Group Leaders. This relates to the question of the membership of the Executives and whether it can be different between each. Thus far the Standing Orders have been read to exclude that possibility but it would be open to Council to make that change and, in my view, that would be consistent with the approach of adopting some flexibility on the number and remit of portfolio holders. The issue has also arisen of whether there would be some benefit in expanding the remit of the Education Executive to include services to children beyond education. This may assist in rebalancing the volume of business and would be consistent with the creation of a unified Children's Service in the Council. It would involve non councillors participating within the decision making in the same way as they do for education matters.

- 4.5 It should be noted however, that if a differing membership between the Executives was applied Groups would need to ensure that they retained sufficient resource to effectively cover all scrutiny positions available to them. This reflects the current position that precludes a member of the Executives from sitting on either a scrutiny committee or panel. It would be open to Council to relax this to the extent of applying it only to a scrutiny panel where the decision is made by the Executive on which the member serves and for any portfolio holder where the subject matter of the panel relates to their area of responsibility.
- 4.6 Portfolio Holders will continue to be the Council's strategic and political leadership and as stated in paragraph 4.1. They should therefore continue to convene Policy Development Panels on areas within their remits. I would propose that to ensure that political ownership of the development of policies is retained that the balance of members on PDPs is enshrined in Standing Orders as constituting 3 members of the Administration and 2 of the Opposition. For Scrutiny Panels I would propose that the following provision is applied that the membership would be up to 5 with 3 or 2 members of the Opposition and 2 or 1 member(s) of the Administration.
- 4.7 I turn to the issue of the Scrutiny Committees and their convenership. These were created as a balance to the Administration controlled Executives with half the membership and the convenership reserved for the Opposition. As these committees would now be unique in not being consistent with the political balance of the Council, there is a strong presumption that they should also be so balanced unless there was a strong reason to the contrary. At present, there is not such a reason in that the current political balance would give a majority to the opposition parties. The implications of political balance on a committee of 8 are:-

Number of Councillors to be appointed	Allocation	
8	SNP	3.20
	Labour	2.40
	Con	1.87
	Ind	0.53

The table includes the fraction for independent members who are not part of any group. This has been the custom within the Council in relation to political balance although this was departed from in the April decision in that it focussed on the balance between groups. This has some support in the uncommenced provisions of the Local Government and Housing Act 1989 as previously advised to Council. The decision taken by Council at its Statutory Meeting in May 2017 was to allocate places on 8 member bodies as:-

SNP 3
Labour 2
Con 2
Ind 1

If Council was minded to balance between groups, the result would be to increase the allocation to Labour by one.

- 4.8 On the question of convenership, the normal approach would be for the chair of the decision making committee to lie with the Administration and those of the scrutiny committees to be taken by the opposition. As that situation no longer applies (an opposition member chairs the Executives) and the Administration no longer has control of the decision making committees, it is doubtful whether the convenership needs to be reserved to the Opposition groups. It is important to note at this stage that in contrast to earlier decision making structures the role of convener does not give the holder of that role a political or policy role; the role is very much to chair the meeting. In recognition of this (the decoupling of the political and chairing role), there will need to be some administrative changes in arrangements prior to meetings of the Executives, with a policy focussed meeting taking place prior to the pre agenda meeting with the convener.
- 4.9 One potential approach to this issue that emerged in discussion with the Group Leaders was that Council allocates the chair on the basis of one for each group ie as the chair of the Executives is now held by a member of the Labour Group, that the chair of the two scrutiny committees be allocated to members of the SNP and Conservative groups.
- 4.10 I am generally satisfied that this arrangement could form a fair balance between the Executives and Scrutiny Committees in the situation described by Council of three large groups with no coalition forming an Administration. I would sound a note of caution, however, in relation to the robustness of such an arrangement were the situation to change and an Administration form from two groups. It would not be desirable for a majority Administration to chair to a scrutiny committee. I would advise that if the proposals at 4.7 and 4.9 were to be adopted that the Council expressly recognises that this would need to be revisited in the event of a majority Administration forming.
- 4.11 I am not recommending that there is any change in the role and remit of the Scrutiny Committees or in the balance of responsibilities between the Executives and the Council. In relation to the Council business meeting that takes place prior to each Council meeting Standing Orders provide that the Provost, Leader of the Council and Leader of the Opposition attend. I would recommend that the business meeting comprises the Provost and leader of each of the main political groups.

5. Consultation

- 5.1 Meetings have taken place with each of the group leaders.

6. Implications

Financial

6.1 No financial implications arise.

Resources

6.2 There are no significant resource implications.

Legal

6.3 There are no legal issues.

Risk

6.4 No risk is identified from the proposal revisions under consideration. Reference is made, however, to para 4.10.

Equalities

6.5 No equality issues have been identified

Sustainability/Environmental Impact

6.6 No sustainability issues arise.

7. Conclusions

7.1 The Council has already agreed a significant change to its decision making structure. The report attempts to identify the most significant of the implications arising from that decision and to make recommendations informed by discussion with group leaders on addressing the implications of the earlier decision.

Chief Executive

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Appendices

None.

List of Background Papers:

No background papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973.