

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council : 29 October 2008

Subject: Review of Parts 1 and 2 Standing Orders

1. Purpose

- 1.1 This report asks the Council to approve changes to Parts 1 and 2 of the Standing Orders which relate to the Standing Orders for Meetings of Council, Committees and other bodies.

2. Background

- 2.1 The current Standing Orders were originally approved by Council on 29 August 2007 for a six month period. Changes were proposed in a report to Council on 27 February 2008 but these were not approved.
- 2.2 While the present Standing Orders are robust and function effectively, various issues have arisen which have highlighted gaps in the Standing Orders. This report attempts to deal with such issues, in the interests of achieving certainty. The report also suggests amendments to the Standing Orders which bring them into line with the Councillor's Code of Conduct and best governance practice elsewhere. However, it is appreciated that members and officers are familiar with the workings of the present Standing Orders and accordingly an attempt has been made to resist suggesting changes to the core provisions, unless necessary.
- 2.3 The report only deals with Parts 1 and 2 of the Standing Orders. In early 2009 it is proposed to bring to Council a further review relating to Part 3 (delegated powers), Part 4 (contracts) and the financial regulations. It is also proposed to submit a report to the Planning Committee regarding procedures for deputations before that committee and in due course that may result in a further report to Council.
- 2.4 Some of the proposed changes may undoubtedly be controversial, whereas others are more routine. To avoid the entire proposals being rejected due to one particular issue it may be that members would wish to discuss and vote on each individual change, rather than considering the report as one item.

3. Main Issues

- 3.1 The changes proposed have been listed under the numbering of the present Standing Orders, with any new Standing Orders appearing at the end.

3.2 Heading

It is proposed that Parts 1 and 2 of the Standing Orders should be headed up "Standing Orders for Meetings". This makes it clear that the Standing Orders relate to meetings and avoids the Standing Orders being misapplied to other situations.

3.3 Standing Order 3 (a) – Special Meetings

This Standing Order relates to the power of the Convener to convene a special meeting. This does not cover the situation if the Office of Convener or Vice Convener is vacant. Accordingly to the end of Standing Order 3 (a) should be added the following:-

"If the office of Convener is vacant, or if the Convener is unable to act for any reason, the Depute-Convener of the Council may at any time call such a meeting. If the Offices of Convener and Depute Convener are both vacant or if neither the Convener nor the Depute Convener are able to act for any reason the Leader of the Council may call such a meeting."

3.4 Standing Order 5 – Quorum

This Standing Order does not deal with the situation where no members of the Council attend and no Convener is appointed to chair the meeting. Nor does it deal with the issue of what happens to the business of a meeting which is inquorate. This was of course the situation at the Council meeting on 24 September. To avoid any future uncertainty the following is proposed:-

"5 (d) If the Convener and the Depute Convener are absent from a Council meeting and the Council fail to elect another member to chair that meeting, the meeting will not be convened and no minutes will be taken of the meeting.

5 (e) The consideration of all business which is on the agenda of a meeting which is not convened or inquorate or which has not been completed before the meeting is brought to an end shall be postponed to the next meeting of the Council, whether ordinary or special"

3.5 Standing Order 6 – Order of Business for the Ordinary Meeting of the Council

The present Standing Order omits the initial formal business and it is proposed that the following is inserted before approval of the minutes:-

"The chair shall be taken in accordance with the provisions of these Standing Orders.

The sederunt shall be taken.

Any apologies shall be tendered.

Any declaration of interest shall be tendered

Any declaration of whip shall be declared.” (see 3.21)

Some other Councils use a Declaration of Interest form which is submitted at the start of a meeting by members who have an interest to declare. This states whether the interest is financial or non-financial, the type of interest and contains guidance for members. Would members find use of such a form to be helpful?

3.6 Standing Order 8 – Notices of Motion

It is proposed that the following provisions are added to Standing Order 8 in relation to motions:-

3.6.1 Relevancy of Motions

“(d) Every motion shall be relevant to some matter in relation to which the authority has- functions, or which affect the area of the authority or part of it, or the inhabitants of that area, or some of them.”

3.6.2 Reference of Motions to appropriate Committee

“(e) Where a notice of motion has been given for any meeting and that motion is in the terms of reference of any committee of the authority, the motion shall be deemed to have been referred by that meeting to the next meeting of the committee or committees within whose terms of reference it falls. If any question arises as to which committee the motion is to be referred, it shall be determined by the Convener. Where a motion has been referred, or is deemed have been referred, to a meeting of a committee, that committee shall consider it at their next ordinary meeting.”

3.6.3 Motions contravening legislation etc

“(f) If notice is given of any motion that, in the opinion of the Monitoring Officer, if agreed is likely to give rise to a contravention by the Council of any enactment or rule of law or of any code of practice made or approved by or under any enactment, the Monitoring Officer shall immediately submit such notice of motion to the Convener and it shall not be accepted and placed on the agenda without his/her sanction. In the event of non-acceptance the Monitoring Officer shall so inform the member who submitted the notice of motion.”

3.7 Standing Order 9 – Questions

Council is asked to consider the following suggested amendments:-

3.7.1 Questions to Leader of Opposition

Under Standing Order 9 (b) any member may put a question to any office holder at any meeting. Strictly speaking the Leader of the Opposition is an office holder. If it is intended that the Leader of the Opposition should receive questions, then it is recommended that Standing Order 9 (a) and (b) be revised to include reference to the Leader of the Opposition to avoid any doubt over this matter.

3.7.2 Relevancy of Questions, reference to committees and questions contravening legislation

It is also proposed that the same changes proposed to Standing Order 8 (motions) should also apply to questions.

3.7.3 Standing Order 9(b) – Asking Questions. Standing Order 15 provides that it is competent for any member of the Council to move a motion, including motions which have been submitted by other members. The present Standing Orders do not cover the issue of whether questions lodged in advance under Standing Order 9 (b) can be asked by other members. For the sake of consistency it is suggested that once a question has been lodged under Standing Order 9 (b) any member will be entitled to ask it at Council.

3.7.4 Standing Order 9 (c) – Questions of Order

It is proposed that clarity be provided on the requirements for a question of order. The following revision to Standing Order 9 (c) is proposed:-

“A question of order shall relate only to an alleged breach of a specified Standing Order and the way in which the member raising it considers that it has been broken. Any member indicating a desire to raise a question of order shall state at the outset the Standing Order considered to be infringed.”

3.8 Standing Order 10 – Admission of Press and Public

3.8.1 Timetable for Committee Papers

The Local Government (Scotland) Act 1973 requires papers to be available not less than 3 days before the date of each meeting. Concern has been expressed by several members that this can be insufficient to allow consideration of papers by their political group. Members are asked to consider whether they would wish reports to be available say, 5 clear days before the date of the meeting. If papers were to be available on greater notice then the timescales for motions, questions and deputations would also have to be extended to accommodate this.

3.8.2 Typo Correction

The present Standing Order 10 contains a typographical error referring to Local Government (Scotland) 1973 Act, rather than the Local Government (Scotland) Act 1973. The opportunity should also be taken to correct this.

3.8.3 Disorder by Public

Neither this Standing Order, Standing Order 12 – (Suspension of Members) or Standing Order 13 - (Adjournment) expressly covers the issue of disorder by members of the Public. It is proposed that a further paragraph is added as follows:-

“10 (b) - Every meeting of the Council shall be open to the Public but these provisions shall be without prejudice to the Council’s powers of exclusion in order to suppress or prevent disorderly conduct or other misbehavior at a meeting. The Council may exclude or reject from a meeting a member or members of the Press and Public whose presence or conduct is impeding or , in the opinion of the Convener is likely to impede the work or proceedings of the Council.”

3.9 Standing Order 11 – Powers and Duties of Convener and Vice Convener

3.9.1 No provision in Standing Orders

Standing Order 11 (g) states that the Convener shall:-

“determine subject to the agreement of the Council, by majority of members present, all matters of procedure for which no provision is made within the Standing Orders”.

This is slightly misleading insofar as it refers to such matters being responsibility of both the Convener and the Council. It is proposed that this provision is deleted. The result would be that the Convener is still responsible under 11 (h) for determining issues which are presently within the Convener’s remit in terms of Standing Orders. In relation to matters where the Convener presently has no remit under Standing Orders, these would require the agreement of Council.

3.9.2 Address the Chair

While it is normal Council practice that Councillors will always address the chair, this is not explicitly detailed in the Standing Orders. It is recommended that a new Standing Order 11 (j) is inserted as follows:-

“Speakers shall at all times address the Convener.”

3.10 Standing Order 14 – Deputations

It is proposed to amend this Standing Order to provide that a deputation relating to matters which fall within the terms of reference to a committee would stand as referred to that committee.

It would be good practice to develop a bespoke deputations procedure relating to the Planning Committee and a report will be submitted to that committee in due course seeking their views. Depending on the decision of the committee, this may have to come back to Council.

3.11 Standing Order 15 – Motions and Amendments

The general legal principle is that motions are only competent if they arise directly out of an item of business or if 7 days notice has been given and the motion appears on the agenda. The general principle is one of fair notice, namely that a member who is considering whether to attend the meeting must be able to predict the business and decisions which can arise. There is a minor inconsistency between Standing Order 8 (a) and 15 (i) insofar as 8 (a) refers to motions being incompetent except if they directly arise out of a matter regularly before the meeting. 15 (i) does not include the word “directly” and it is proposed to insert this for the sake of consistency, and to bring Standing Order into line with the general law.

3.12 Standing Order 16 – Alteration, Deletion and Rescission of Decisions of Council

3.12.1 Illegal Decisions

There is a general legal principle that suspension of Standing Orders is not required where a previous decision is illegal or ultra vires (outwith the council’s powers). Advice by officers to this effect has been questioned in the past and it is proposed that certainty is introduced by inserting at the beginning of Standing Order 16 the words “Except where required by reason of illegality...”.

3.12.2 Removal of Provost or Depute Provost

Standing Order 1 (b) provides that the Provost and Depute Provost will remain in office until the next ordinary election and can only be removed on a two-thirds majority. However, this Standing Order can be amended by a simple majority, effectively meaning that the Provost and Depute Provost can be removed by a two stage process each requiring a simple majority. It is also appreciated that in light of the Provost’s casting vote, a change of administration often involves a change in Provost. This notwithstanding there is merit in attempting, in the interests of certainty and stability, to limit the number of occasions on which the Civic Head of the Council can be changed. Accordingly members are asked to consider an amendment to Standing Order 16 which would provide that:-

“No motion to alter, delete or rescind either this Standing Order or Standing Order 1 (b) hereof will be competent within 1 year from the date of the adoption of that resolution unless a decision is made prior to consideration of the matter to suspend this Standing Order in terms of Standing Order 24”.

The effect of this is to retain the Council’s ability to replace the Provost and Depute Provost at any time on two-thirds majority but limiting the removal by simple majority to yearly intervals.

3.13 Standing Order 26 – Proceedings of Committees and Sub Committees.

3.13.1 Rescheduling of Meetings

26 (c) provides that ordinary meetings of committees or sub committees will commence at such times as may be determined by the Council and will meet according to a timetable determined by Council from time to time. A number of issues have recently arisen in relation to cancellation of committee and Council meetings on strike days. The present position is that in relation to ordinary Council meetings, the basic legal position is that these cannot be cancelled except by the Council itself. There appears to be no way round this and it would require a special meeting to be convened to cancel a subsequent ordinary meeting. In relation to special meetings, the timing of these is determined by the Convener and the Convener can change the date of these. In relation to committees, the present position is that these can only be cancelled or rearranged by the Council. The issue is whether the Council would wish to amend Standing Order 26 (c) to provide that the Convener of the committee or sub-committee would have power to rearrange the date, time and place of committees and sub-committees in cases of urgency, subject to obtaining the agreement of the Council Leader and the Leader of the Opposition.

3.13.2 Rescheduling of Committees

26 (d) – Under this Standing Order the Convener of a committee can call a special meeting in any circumstances. This contrasts with the powers of the Provost who can only call a special meeting if there are items of urgent business to be considered. It is proposed that the powers of the committee Conveners are brought into line with that of the Provost and that they should only be entitled to call a special meeting if it appears to him/her that there are items of urgent business to be considered.

3.13.3 Substitution of Members

26 (i) – This provides that there will be no substitution of members of committees and sub-committees unless specific provision is made for the substitution of members of a particular committee or sub committee

within the Standing Orders or any relevant minute of agreement, constitution or similar document. However, it has been the practice of members to provide substitutes if they are unable to attend committees. The position needs to be regularised if substitutes are to be permitted. This is generally achieved in one of two ways; either by nominating a prescribed list of substitute members for each committee or by allowing individual members to nominate ad-hoc substitutes, subject to advance notice. While the latter provides more flexibility to political groups, the former has the advantage that the substitute members can build up some knowledge and expertise in the subject area of their particular committee. A revised Standing Order has not been drafted but members are asked to consider the following options:-

- a) Retain Standing Order 26 (i) which means no substitute members could attend committees; or
- b) Nominate a prescribed list of substitute members for each committee; or
- c) Substitute members are permitted subject to 7 days written notice being given to the Head of Legal Administrative and Regulatory Services. This would enable the identity of the substitute member to be shown on the committee papers which would be issued.

3.14 Standing Order 27 – Approval and Signing of Minutes

Strictly speaking, the approval of minutes serves solely to consider the accuracy of the minutes and the occasion is not one for resumption of debate on items recorded in the minutes. Thus the inclusion on an agenda of an item to the effect of “matters arising on the minutes” is bad practice and of doubtful legality. This is because in most cases the committee or Council has powers to implement its decision and the decision may already have been implemented prior to the accuracy of the minutes being confirmed. However it is noted that the practice in West Dunbartonshire Council is often to request factual information on the implementation of a decision. The danger is that this reopens debate and introduces a new matter. Any such new matter should, strictly speaking, require 7 days notice of a motion or require to be accepted by the Convener by virtue of special circumstances and urgency. To regularise the present situation the following additional Standing Order is proposed:-

27 (c) – No discussion shall take place upon the minutes, except upon their accuracy and any question on their accuracy shall be raised by motion. Members will be entitled to ask the Convener to provide an update on the implementation progress of any decision taken by a committee with delegated powers. However no member shall be entitled to propose a motion arising therefrom except if 7 days notice thereof has been given in terms of Standing Order 8.

3.15 Standing Order 30 – Working Groups

Standing Order 30 does not set any timetable for issue of committee papers for working groups. Should this be the same timetable as for Council committee meetings?

3.16 New Standing Order – Length of Council Meetings

The Council meeting on 27 February 2008 considered proposals regarding the length of Council meetings. As members will be aware, ordinary meetings of the Council often continue until after midnight. This is not good practice as the standard of debate, officer advice and minute taking are all hampered by tiredness, particularly for those members and officers who have already had a full day at work. However it is appreciated that that members may be unhappy at the prospect of business being adjourned to the next day when members may have other commitments. There are three ways to address to issue:-

- 1 Reduce the volume of business at Council meetings.
- 2 Rearrange the time of Council meetings.
- 3 Cut the length of Council meetings by a guillotine process – i.e. setting a maximum duration for the meeting.

In relation to 2, members will note earlier proposals which aim to cut Council business by ensuring that motions and questions which relate to the work of committees are referred to such committees.

Members are asked to consider the options. The recommended option is that for a trial period of 6 months the following is adopted:-

That the present business at Council meetings is unchanged, but that Council meetings commence at 6.30pm. The last item under consideration at 11.00pm will be the final item of business. The remaining business will be continued to the next ordinary Council meeting. If there are urgent matters outstanding then a special Council meeting could be called to consider these in terms of Standing Order 3. This would be reconsidered 6 months hence. A new Standing Order 6(c) would be inserted as follows: -

“6(c) No business, except business which requires to be dealt with by law or by these standing orders, shall be introduced after 23.00 hours”

3.17 New Standing Order – Declaration of Whip

In the interests of transparency and open government it is good practice that if the party whip is applied that this is declared at the start of a meeting. A standing order to this effect is contained within the standing orders of a number of other Councils and the following new Standing Order is proposed:-

“Declaration of Party Whip – when a political party group represented on the Council has applied the party whip binding party members to adhere to their

decision on an item of business before the Council, a declaration to this effect must be made by the Leader or Depute Leader of that political party, whom failing a member of that party at the commencement of the meeting.”

3.18 New Standing Order – Declaration of Interest

In terms of the code of conduct members are required to declare a financial or non financial interest. It would be helpful if this is also reflected in the Standing Orders and the following new Standing Order is proposed:-

“Declaration of Interest

If any member of the Council has a financial or non financial interest in any contract or any other matter as defined by section 5 of the Code of Conduct for Councillors and is present at any meeting at which the matter is to be considered, he/she must, as soon as practical, after the meeting starts, disclose that he/she has an interest and the nature of that interest and that he/she is precluded from taking part in consideration of that matter. In the case of a financial interest the member must leave the meeting whilst that matter is under discussion. In the case of a non-financial interest a member must leave the meeting unless in the particular circumstances of the item of business, and knowing all the relevant facts, a member of the Public acting reasonably would not consider that the member would be influenced by the interest in their role as a Councillor.

Where a member declares an interest and leaves the meeting in terms of this Standing Order the facts will be recorded in the minutes of the meeting.

All members of the Council must observe the Code of Conduct for Councillors and any guidance issued by the Standards Commission for Scotland.”

As mentioned in paragraph 3.5, use of a pro-forma declaration form may be something which the Council may wish to consider.

3.19 New Standing Order – Confidential Information

The Code of Conduct for Councillors also contains a prohibition on disclosure by councillors of confidential information. It would also be helpful, for the sake of clarity and good governance if this was incorporated in the Standing Orders. Again this appears in the Standing Orders of a number of other Councils. The following is proposed:-

“Disclosure of information

No member or Officer shall disclose to any person any information which falls into the following categories:-

- Confidential information within the meaning of Section 15 A(2) of the Local Government (Scotland) Act 1973.

- The full or any part of any document marked “not for publication by virtue of the appropriate paragraph of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973.
- Any information regarding proceedings of the Council from which the Public have been excluded unless or until disclosure has been authorised by the Council or the information has been made available to the Press or to the Public under Section 2 of the Local Government (Access to Information) Act 1985.

Without prejudice to the foregoing no member shall use or disclose to any person any confidential and/or exempt information coming to his/her knowledge by virtue of his/her office as a member where such disclosure would be to the advantage of the member or of anyone known to him/her or which would be to the disadvantage of the Council.”

3.20 New Standing Order - Recording of Proceedings

As there have been recent attempts to take unsanctioned photographs of Council meetings by members of the Public/Press it would be worthwhile to include a Standing Order to regulate the position. A similar Standing Order from other Councils would be in the following terms:-

“Recording of Proceedings

No sound, film, video tape, digital or photographic recording of the proceedings of any meeting shall be made without the prior approval of the Council.”

3.21 New Standing Order – Variation and Revocation of Standing Orders

It would be worthwhile to specifically state the majority required to vary or revoke Standing Orders. A similar Standing Order from other Councils would be in the following terms:-

“Variation and Revocation of Standing Orders

Any motion to vary or revoke these Standing Orders will when voted on, be approved by a majority of the members present and voting.”

4. Personnel Issues

There are no personnel issues.

5. Financial Implications

There are no financial implications.

6. Risk Analysis

Many of the changes reflect the introduction of the Councillors Code of Conduct and other legal requirements and bring the Standing Orders up to date with good corporate governance, as reflected in the Standing Orders of other Councils. It is important that the Council keeps its key corporate governance documents regularly reviewed and failure to do so might result in adverse criticism from Audit Scotland.

7. Conclusions

The Council is required to approve Standing Orders and regulate its procedures. The Council is being asked to approve variations to Standing Orders which update the existing Standing Orders.

8. Recommendations

The Council is recommended to make the foregoing changes to the Standing Orders. It is appreciated that some changes will be controversial, in particular the proposals relating to the length of the Council and to ensure that the appointment of Provost and Depute Provost can only be revisited once a year. However many of the changes are routine and bring the Standing Orders into line with the Councillors Code of Conduct and good corporate governance principles. To avoid the more routine items being rejected along with the more controversial items it is recommended that members consider each individual change one at a time. Once a decision on the changes has been made it is recommended that the Head of Legal, Administrative and Regulatory Services be instructed to amend the Standing Orders in light of the Council decision. Subject to the Leader of the Council and the Leader of the Opposition agreeing the accuracy of the wording of the changes, the new Standing Orders would take effect from the November 2008 Council meeting.

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Appendices: None

Background Papers: None

Wards Affected: All