

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council Meeting 25 June 2008

Subject: Scottish Government Consultation on Community Councils

1. Purpose

- 1.1 This report deals with the Scottish Government Consultation on Draft Model Scheme of Establishment of Community Councils and Draft Code of Conduct for Community Councillors.
- 1.2 The proposed response to the consultation was previously submitted to the Community Participation Committee on 18 June 2008 for comment.

2. Background

- 2.1 Community Councils were created by the Local Government (Scotland) Act 1973 to bridge the gap between local authorities and communities and to help make councils and other public bodies aware of their communities' opinions, needs and preferences.
- 2.2 The primary purpose of community councils is to ascertain and express the views of the community they represent. However, many are also involved in a wide range of other community activities, including the management of projects and of community properties.
- 2.3 The local position is that there are 10 community councils currently active out of a possible total of 17.
- 2.4 In November 2005, the Scottish Executive issued a discussion paper entitled "What can we do to help Community Councils fulfil their role?" This was part of a wider information gathering exercise and identified specific obstacles faced by Community Councils, as well as examples of good practice. The Council's response to that consultation was agreed at its meeting of 22 February 2006 after consultation with the Community Participation Committee.
- 2.5 The current consultation builds on that discussion paper with a draft model scheme of establishment, constitution and code of conduct for community councillors for use throughout Scotland. A copy of the consultation document has previously been issued to all members.

3. Main Issues

- 3.1 The consultation is made up of the following documents:
 - Model scheme of establishment of Community Councils (includes a model constitution)
 - Code of Conduct for Community Councillors

- 3.2 The consultation is prompted by a desire on behalf of the Scottish Government to review and reinforce the role of community councils within local democratic systems.
- 3.3 The challenge is to achieve that aim within the wider community engagement infrastructure, given that this infrastructure differs between council areas.
- 3.4 All 31 questions from the consultation are detailed, with proposed responses, in the Appendix to this report.
- 3.5 The comments of the Community Participation Committee on the proposed response came mainly from Community Council Forum representatives, who largely endorse the content, but wished to comment in relation to point 7.2 that many community councils work in partnership very effectively with other groupings and organisations in their communities.
- 3.6 Responses are due by 1 August 2008, which means that the issues must be considered and conclusions drawn before the summer recess. Community Councils are encouraged to respond directly to the consultation.

4. Personnel Issues

- 4.1 The Council will require additional staffing if legislation gives it additional responsibilities in relation to the funding, elections, development and monitoring of community councils. It is not possible to quantify these implications at this stage.

5. Financial Implications

- 5.1 Similarly, changes in the system will have financial implications which it is not possible to quantify at this stage.

6. Risk Analysis

- 6.1 The review of community councils in isolation poses risks of an increasing fragmentation of community representation structures, particularly in relation to developing community engagement initiatives.
- 6.2 If a far reaching review is implemented it will have to be adequately resourced or it will be ineffective.

7. Conclusions

- 7.1 The administration, funding and support of community councils require urgent modernisation. The role and operation of community councils has failed to keep pace with the development of other structures of community engagement.

7.2 Community councils have an important role to play and community councillors are to be commended on their dedication in representing their local communities. However, it is important that the system is reviewed to ensure that community councils can work in partnership with other community engagement initiatives rather than in isolation.

7.3 While initiatives to reinforce the role of community councils are welcome, local authorities will inevitably require additional resources to implement the kind of changes proposed in the consultation.

8. Recommendations

8.1 It is recommended as follows:-

- 1) that the Council considers the proposed responses to the consultation together with comments thereon by the Community Participation Committee; and
- 2) that, in making its response, the Council emphasises to the Scottish Government the importance of adequately resourcing any additional requirements on local authorities to support, develop and monitor community councils.

Joyce White,
Executive Director of Corporate Services

Background Papers

Scottish Executive discussion paper "What can we do to help Community Councils fulfil their Role?" 2005

Reports by the Director of Corporate Services to the Community Participation Committee and to the Council on 15 Feb 2006 and 22 Feb 2006 respectively and minutes thereof.

Report by the Executive Director of Corporate Services to the Community Planning Committee on 18 June 2008 and minute thereof.

Wards Affected: All wards

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Model Scheme of Establishment of Community Councils

Question 1

To what extent do you agree or disagree that the framework for creating, supporting and regulating community councils across Scotland is in need of modernisation and change?

No major review of the operation and support of community councils across Scotland has taken place since they were first created by statute in 1973. However, since the re-organisation of local government in 1996, significant changes have taken place in the way community engagement is managed, through Community Planning. The framework for creating, supporting and regulating community councils should be thoroughly reviewed with a view to integrating them into the wider environment of Community Planning and related community planning engagement structures.

Question 2

a) To what extent do you agree or disagree that there is a need to establish a common framework for the creation and support of community councils across Scotland?

There should be a common basis for the creation and support of community councils across Scotland, however, this basis has to allow sufficient flexibility to adapt to local circumstances, which differ greatly between authorities.

b) To what extent are you satisfied or dissatisfied with this existing legislative description of the statutory purpose of community councils?

As well as permitting community councils to ascertain and express the views of communities that they represent, scope should be given for the community councils to take action in support of those communities within prescribed limits. It has to be recognised, however, that there could be tensions between community councils and other community planning engagement structures and inbuilt flexibility is essential to minimise such problems.

Question 3

What scope for improvement can you suggest?

It is important to establish and define a range of activities which community councils can fulfil in support of their communities, including clarity on how they can use their grant funding on support initiatives. This would have to be determined locally in order to fit in with the local community engagement strategy.

Question 4

In your opinion, what level of difficulty or ease is associated with the requirement for community councils to be “accurately representative of the community”?

It is extremely difficult for community councils to be accurately representative of their communities. Not every area is covered by a community council, so many residents have no representation at this level. In West Dunbartonshire, only 10 out of 17 community councils are functional. Some of these areas are covered by other kinds of representative groups, such as Neighbourhood Forums or Tenants’ and Residents’ Associations, but not all, and these other groups do not have the statutory entitlements of community councils.

Another issue is the demographic of community council membership. While existing community councillors do endeavour to act on behalf of all local residents, there is no doubt that young people and ethnic groups are under-represented on community councils.

Question 5

To what extent are you satisfied or dissatisfied with the model constitution?

In what ways, if any, would you like to see the model constitution amended?

By and large, the model constitution is satisfactory. The following amendments are suggested.

7 Casual Vacancies

If all casual vacancies are to be filled by election and given that many community councils currently operate below full membership capacity, there would be a constant requirement for by-elections.

Rather than proceeding automatically to elections for casual vacancies, it would be preferable that the normal means of filling a casual vacancy was by co-option and by first considering any unsuccessful candidates at the last community council elections. It is also acceptable for community councils to operate while there are a number of vacancies, unless the membership falls below the stipulated minimum. For the local authority to administer interim elections in all its community councils would lead to almost continuous by-elections and would drain resources which could otherwise be used in support of the community councils.

Only where co-option fails, or the leaving the vacancy unfilled will reduce the number of community councillors to below the acceptable minimum, should an election be initiated.

11. Meetings of the Community Council

(d) It is difficult to envisage circumstances in which an officer of the council could call a meeting of the community council, other than for an initial post election meeting. (Note the provision in para 10 for a Deputy Returning Officer “approved by the local authority” to call the inaugural meeting or the first meeting after the election. This does not stipulate that the DRO should be an officer of the local authority.) The circumstances in which an officer of the council can call a meeting should be clearly defined as should the function of the officer empowered to call a meeting. This would have to refer to exceptional circumstances.

(e) Producing a minute within 7 days is an onerous requirement for a community organisation. Who is going to monitor and enforce this? It would be more reasonable to require the minute to be prepared for circulation with the agenda for the next meeting, which shall be circulated not less than 10 days before that meeting

(g) line 1 – amend to “a duty **to** be responsive”

(h) This paragraph urgently requires amendment. Otherwise, it could lead to public community council meetings being more the exception than the rule. Transparency is just as important for community councils as for local authorities whose proceedings are governed by Access to Information legislation. Meetings of the community council should be presumed to be public unless involving issues of employing staff or as otherwise sanctioned by the local authority.

Control of Finance

(c) Suggest amendment to read that “authorised signatories should not be cohabitantes or close relatives.”

Dissolution

This section should state at the outset that there are two ways of achieving dissolution, either voluntarily by the community council or by local authority intervention.

There is an inconsistency in the last paragraph with the earlier suggestion that a community council be dissolved where its membership has fallen beneath the required minimum for 3 months. This should be addressed.

In addition, there are other circumstances where a local authority may dissolve a community council and provision should be made to allow a local authority to take this action if it has reasonable grounds to believe that the community council is significantly diverging from the scheme.

Public notice should be given of any dissolution.

Question 6

Co-opting individuals on to the community council is cited as a means of broadening both representation and expertise.

To what extent do you agree or disagree that filling a vacancy by co-option is an appropriate means of achieving this?

Agree. Co-option can be a very useful way of recruiting interested individuals to community councils to fill a casual vacancy or to bring necessary skills, perhaps for a particular project. This council's scheme of establishment makes provision for co-options from local groups and organisations not otherwise represented on the community council as well as for associate members co-opted for their skills and expertise. However, members co-opted for such reasons should not have not have the same status as members elected to the community council or as those co-opted to fill vacancies. In particular, associate members should not have voting rights.

Question 7

In your opinion, how appropriate or inappropriate are the current boundaries for your local community council?

The boundaries for community councils in this area were established in 1996 with the original scheme of establishment and have been the subject of minor amendments since with a view to improving their appropriateness. The current community council boundaries reflect the actual communities within the area better than the current local government boundaries which were driven by numerical equality rather than community identity.

Question 8

Do they fit with your understanding of the boundaries of your community?

They are designed to reflect local communities as far as reasonably possible.

Question 9

To what extent do you agree or disagree that community council boundaries should nest within existing ward boundaries?

Community council boundaries should always reflect community identity. While it is administratively preferable for community councils to nest within existing ward boundaries, this could create artificial community boundaries which divide existing communities. This is not desirable, although it is recognised that there are practical difficulties involved where community council areas cross ward boundaries. The issue of determining community council boundaries should remain with the local authority in consultation with its local communities.

Question 10

In your opinion, what should be the minimum number of elected community councillors in a community council?

Please state number and give reason(s) for your answer:

8. The number of community councillors should be assessed on a sliding scale relative to the population or electorate of the individual communities. It should be high enough to ensure that the number of active community councillors is sufficient to be able to network with the whole of its community, but low enough to ensure that the number to be elected is reasonably attainable for a community of that size. Otherwise small communities could be prejudiced by the rule which provides that, if the number of candidates is less than 50% of the vacant seats, the community council falls. The minimum number for community councils in this area is currently 8.

Question 11

In your opinion should local authorities continue to define a maximum and minimum number of community council members, or should agreed National Guidance be provided for this?

Local authorities should continue to define the numbers in accordance with local circumstances. However, there is no reason why the Scottish Government should not issue best practice guidelines.

Question 12

Do you agree or disagree with the age of 16 being established as the minimum age to stand for election as a community councillor?

Disagree. The minimum age should be the same as that for local elections. It is immediately apparent that community councils are not attractive to young people, so even reducing the age for candidates and electors is unlikely to make community councils representative of these younger age groups. It is likely to be more effective to create links with existing youth organisations such as youth forums, youth action groups and pupil councils. This will require additional resources.

It should be noted that there are practical electoral registration issues to consider in compiling an electoral register to include young people who reach their 16th birthday during the life of the register. While this should not rule out a change in voting age for community councils, it should be recognised it might not be desirable to have an expanded register where a much higher proportion of the entries thereon did not have the right to vote in other elections.

Question 13

Option 1 - Subsequent elections will always be held in the year following Local Government elections, during a national date-range to be agreed between local authorities, in consultation with the Scottish Government.

Option 2 - Subsequent elections will always be held in the year following Local Government elections in the months of September and October, on dates to be set by the local authority.

Option 3 – Subsequent elections will be held on a four-yearly-cycle, outwith Local Government election year, on dates to be determined by the local authority.

All elections will be administered by the local authority.

Given the choice, which of the above 3 options would be your preference for election frequency?

Option 3 is preferable, because it would allow Councils to schedule the community council elections ahead so as not to compete with other major polls. If local councils are to administer the elections, they should benefit from the maximum possible flexibility in the choice of dates to suit local circumstances (such as dates of by-elections).

Question 14

Option 1:

Community councils should be elected on a simple majority basis.

OR

Option 2:

Where the electorate of a community council area is greater than X, the Single Transferable Vote system will be utilised to elect community council members. Where the electorate of a community council area is less than X, election will be by simple majority. Where there are sub-divisions of electoral areas within a community council area, the method of election will be determined by the local authority.

In your opinion, which of the above 2 options do you think is the most appropriate method of election for community councils in Scotland?

Simple majority. To maximise participation, the system should be transparent and easy to understand for the electors.

Question 15

It is proposed that the Single Transferable Vote (STV) should be encouraged to elect community council members.

To what extent do you support or oppose the use of STV for community council elections?

Strongly oppose. The system of election should be simple, accessible and transparent. Scotland already has a number of different voting systems – First past the post (Scottish Parliament constituency, Westminster Parliament); Additional Member System (Scottish Parliament regional); STV -Regional List System – (European Parliament elections) STV Weighted Inclusive Gregory – (Local authorities).

The STV system used for local authorities is one of the most complex systems which, ideally, requires electronic counting. It would not be practical to apply the same system to community council elections because of the complexity of the system and the financial and staff resources which would be required to implement it. Nor would it be practical to introduce yet another STV system for community councils.

Question 16

To what extent do you support or oppose the suggestions for elections described as follows?

Secret postal ballot:

Common election day/period:

If 'none' can you suggest an alternative?

If you oppose this proposal, please state why.

Support an all postal ballot which achieves a better turnout of electors on the understanding that the new rules for the introduction of personal identifiers of postal voters would not apply to this kind of poll. The new electoral provisions for other elections require the collection of personal identifiers – signature and date of birth – being collected and checked for postal voters. It would be totally impracticable for this to be done for all postal ballots.

Election dates should be at the discretion of the local authority.

Question 17

What in your opinion should be the maximum level of co-opted members within a community council?

This council's scheme allows three different kinds of co-option:

- 1) to fill casual vacancies (in which case the co-opted member has full voting rights)
- 2) to represent local groups or organisations not otherwise represented on the community council (voting rights but unable to hold office)

- 3) to bring special skills or technical advice to the community council (no voting rights)

The maximum number of co-opted members should not exceed one third of the total elected membership. Members co-opted to fill vacancies should not be included in this calculation.

Question 18

To what extent do you agree or disagree that local authorities should be able to prescribe the extent to which co-option is permissible?

Local authorities should be able to prescribe levels of co-option in order to suit local circumstances, within national guidelines.

Question 19

Please provide any specific examples of successful efforts to involve young people/under-represented groups in community council business? It would be helpful if you could provide us with the name of the community council and local authority area, where appropriate.

To be answered by community councils

Question 20

It is proposed that community councils may terminate membership for non attendance of meetings, in a 6 month period, with or without apologies.

Do you agree or disagree that the proposed period of time for possible termination of membership is appropriate?

Suggest three months without apologies and six months otherwise.

Question 21

Do you have any comments on the proposed quorum for meetings or when the annual meeting should be held?

Quorum - we would suggest the addition that one of the members present must be an office bearer.

Question 22

It is proposed that the local authority may take action to dissolve a community council, should it fail to hold a meeting for a period of three consecutive meeting dates, or its membership falls below the prescribed minimum for a period of three consecutive prescribed meeting dates.

To what extent do you agree or disagree with this provision to dissolve a community council?

Agree with this provision, subject to efforts having been made to increase the membership by co-option having failed.

Question 23

Other comments:

Please use the space below for any other comments you may have about the Model Scheme for Community Councils (continue on a separate sheet of paper if necessary).

Para 13 – Clarification of the national insurance liability cover is required. This council currently meets the cost of insurance for all functioning community councils from the community council grants budget which effectively means that the individual grants are top-sliced.

National Code of Conduct for Community Councillors

Consultation Question 24

To what extent do you support or oppose proposals that there should be a standard National Code of Conduct for Community Councillors?

Support the introduction of a model National Code of Conduct for Community Councillors, subject to adequate training and resources being made available to support, implement and enforce the Code.

Consultation Question 25

In your opinion, should there be a standard national process for adjudicating on issues relating to a national Code of Conduct?

There should be a standard national process, but it should be simple to administer.

Consultation Question 26

In your opinion, should individual community councils be able to attach additional sanctions, if they wish to do so?

If there is a national code with nationally agreed sanctions, it would not be appropriate for individual community councils to attach additional sanctions.

Consultation Question 27

In your opinion, should individual local authorities be able to attach additional sanctions, if they wish to do so?

If there is a national code with nationally agreed sanctions, it would not be appropriate for individual local authorities to attach additional sanctions.

Consultation Question 28

Who, in your opinion, should make the decision on whether a breach of a national Code of Conduct has occurred?

It would be appropriate for cases should be referred to a forum of peers made up from other community councils in the area. This would require a significant input of training and resources, which should be administered nationally to ensure consistency across Scotland.

Consultation Question 29

Who, in your opinion, should enforce sanctions, resultant from any decisions that a breach of a national Code of Conduct has occurred?

The forum would **impose** the sanctions – suspension, disqualification etc and advise the individual and the community council accordingly. Enforcement of the sanctions would be for the community council.

Consultation Question 30

Who, in your opinion, is best placed to deal with appeals on sanctions resulting from the application of a national Code of Conduct?

Appeals should be handled by a single body to ensure consistency. It may be appropriate to involve the Association of Scottish Community Councils and to train and resource it to handle all appeals. This would minimise parochialism and promote consistency.

Consultation Question 31

Please use the following space for any other comments you would like to make regarding the proposed Code of Conduct:

While it is desirable for a National Code of Conduct to be introduced for community councillors, it is essential that it is simple to administer. There is a high number of community councils in Scotland and potentially a high number of disputes arising. For this reason, the offences worthy of sanction must be clearly defined: the procedures must be clearly described and easily followed and the sanctions must be reasonable and enforceable at grass roots level.

It would be counterproductive if the introduction of a National Code was to result in large numbers of trivial complaints. It must be recognised that the introduction of such a system will require to be adequately resourced and applied at a national level to ensure effectiveness and consistency.