

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council : 24 March 2010

Subject: Standing Orders - Review

1. Purpose

1.1 This report recommends certain changes to Standing Orders as a result of issues which have arisen during the last year. On 22 February 2010 a seminar was held for Members in relation to Standing Order issues and proposed changes. As a result of that seminar the proposed changes are divided into two categories, being:-

- a) Changes where there was agreement at the seminar that change is needed; and
- b) Where there were opposing views on whether a change was needed.

Where Members unanimously agreed that no change be made, no changes are suggested

1.2 A copy of the report to the seminar is attached as Appendix 1.

2. Background

2.1 In February 2009 Council made changes to Parts I and II of Standing Orders. Part I relates to the Standing Orders for meetings and Part II relates to the Standing Orders for Committees and Committee remits. Subsequently certain changes to the remit of the Planning Committee were agreed to reflect the new Planning Legislation which provides that certain decisions have to be taken by Council. Further changes were agreed by Council to the composition of the Community Participation Committee.

2.2 In February 2009 Council also agreed that the Standing Orders would be subject to a review after one year. Thereafter, Standing Orders would only be subject to review every two years unless Standing Orders were suspended by a two thirds majority.

3. Main Issues

3.1 As previously detailed, the issues are divided into two categories, being those where there was unanimous agreement that a change was needed, and where there were differing views.

3.2 Agreed changes:

3.2.1 Front page – it has been suggested that this should include the dates when the various parts of the Standing Orders were last revised. This would appear sensible and is recommended.

3.2.2 Open Forum – an Open Forum should be possible at each Ordinary Meeting of the Council. Standing Orders presently provide for a forum session at each second Ordinary Meeting.

3.2.3 There is a question as to whether “working days” in Standing Order 4 includes public holidays. The definition in 43(b) states that the term “working days” will mean Monday to Saturday inclusive whereas 43(c) states that where the last day falls on a public holiday it will be deemed to relate to the first day thereafter. There is a little contradiction in this and it is suggested that the definition of ‘working days’ 43(b) specifically excludes public holidays.

3.2.4 Standing Order 6(a)(v) – provides that the Council approves the Minutes of the previous Council Meeting and Advisory Committees unless these are reported for information only. Strictly speaking the Council approves the accuracy of the Minutes of previous Council Meetings and decides whether to ratify the decisions of Advisory Committees which do not have delegated powers. The accuracy of Advisory Committee Minutes are considered by the next meeting of the Advisory Committee. (See also Standing Order 30 which deals with approval and signing of Minutes.) It is suggested that 6(a)(v) is reworded as “approval of the Minutes of the previous Council Meetings and approval of the decisions of Advisory Committee or Committees which do not have delegated powers unless reported for information only”.

3.2.5 Standing Order 8(d): Reference of Motions to Committees – provides that motions which relate to the business of a committee will automatically be referred to that committee. The argument was that if Council had decided that certain business is to be determined by a committee, that the role of that committee should not be usurped by the expedient of a motion to Council. The counter argument is that not all Members sit at every committee and Members with a particular interest in any matter would not necessarily be able to vote on that matter at committee. Moreover, Members sometime feel that certain matters are sufficiently important that the view of Council is canvassed. The unanimous view of the seminar was that this Standing Order should be revoked and to revert to previous practice that motions on any subject matter can come to Council.

- 3.2.5.1** The seminar also considered that Standing Orders should make provision for motions to be made to committees. Any Members, not merely Members of the Committee should be entitled to make such motions. It was appreciated that Members who did not serve on a committee would have no entitlement to move the motion, vote on it or to address the committee. However, given that the present practice of Committee Chairs is to allow outside Members to address the committee it was recommended that no additional powers were granted to an outside Member who wished to address the committee.
- 3.2.6** Standing Order 8(e) gives the Monitoring Officer power to refer an illegal motion to the Convener for a decision as to whether it should be accepted or placed on the agenda. It should be noted that as presently worded this only gives the Monitoring Officer this power, not the Legal Officer. The Monitoring Officer only sits on Council and one Committee and other Solicitors sit on other Committees. Accordingly it is suggested that “the Monitoring Officer” is replaced by “the Legal Officer”.
- 3.2.7** Standing Order 17: Deputations – the Community Council Forum has raised an issue regarding the timescale for requesting a deputation. Deputations need to be requested under 17(a) at least 11 days before the meeting, the intention being that this would allow the deputation’s subject matter to appear on the agenda which is issued nine clear days in advance of the meeting. The Community Council Forum are concerned that on occasions the first that they know of a proposal is when it appears on a Council/Committee agenda. At that stage they have insufficient time to request a deputation. There are two competing arguments here. On the one hand the aim is to have all business clearly detailed on the agenda in advance, to allow Members to discuss issues with officers and other political groups. On the other hand there is the desire to enhance community engagement by allowing Community Councils in particular to have a meaningful input into decisions prior to taking them. It should be noted that if a shorter period is allowed for deputations, that the supplementary agenda containing the deputation will need to be issued three working days in advance.
- 3.2.7.1** The seminar agreed that:-
- In relation to items on the agenda, community councils would be entitled to request a deputation within five clear working days of the Council or committee. This would allow a supplementary agenda to be issued three clear working days in advance.
 - In relation to other items which did not appear on the agenda, the timescale for deputations would remain at eleven clear working days.
 - Standing Order 17(a) presently provides that deputation needs to be lodged at least eleven days before the meeting, rather than

“clear days”. It needs to provide for clear working days to be consistent with the nine clear working days for issue of agendas.

- 3.2.8** Standing Order 19: Alteration, Deletion and Rescission of Decisions of Council – there are two issues here. Firstly, can a Council or Committee decision be reconsidered without suspension of Standing Orders within the next six months when setting the Council’s budget for the next year? While there are conflicting arguments about this the Monitoring Officer’s view is that if a Committee has made a decision, this cannot be altered by Council within 6 months, even when setting the budget, without suspension of Standing Orders. Members at the seminar agreed with this interpretation. While no change to Standing Orders is required, this point is made for clarification purposes.
- 3.2.9** Standing Order 20: Order of Debate – Questions. Standing Order 12(a) provides that any Member may put a question to the Convener, Service Spokesperson, Leader of the Council or any Senior Officer concerning any relevant competent business arising upon the agenda. However, once under debate, Standing Order 20(j) provides only for questions immediately after a speech by another Member. The intention appears clear that this is the only circumstance in which Members can ask questions once in debate. Members agreed that minor amendments should be made to Standing Orders 12(a) and 20 to make this crystal clear.
- 3.2.10** Standing Order 20(h) – this provides that no Member will be at liberty to move or second more than one amendment to any motion and the mover and seconder of the motion will not move an amendment or second an amendment. What is the position where someone moves a motion or amendment which does not find a seconder? Are they still entitled to attempt to raise a further motion or amendment? This is not a big issue for the main parties who have a number of Members who can raise motions or amendments. However it is an issue for the Independents and SSP Member. On balance it is felt that where Members have failed to find a seconder, that they should be entitled to move another motion or amendment. The Standing Order seminar agreed with this and agreed that Standing Order 20(h) should be slightly amended to make this clear.
- 3.2.11** Standing Order 27 – When Standing Orders are suspended it is generally understood that only the Standing Order in question is suspended, not all Standing Orders. To suspend all Standing Orders would not leave a complete void as some Standing Orders are required under the Local Government (Scotland) Act 1973 and can never be removed, while there are also common law rules on fair notice etc. It would be good practice to refer to the specific Standing Order which is being suspended. The seminar agreed with this and was content that minor changes were made to make this clear in Standing Orders.
- 3.2.12** Standing Order 29 (c) – Proceedings of Committees and Sub-Committees. This allows the Convener of a Committee to rearrange the date, time and

place of a Committee or Sub-Committee in cases of urgency, subject to obtaining the agreement of the Council Leader and the Leader of the Opposition. The seminar was of the view that complete cancellation should not be allowed. There is also the issue of whether this Standing Order allows rearrangement of meetings where the agenda has already gone out and public notice has been given. The seminar did not specifically deal with this point and Council's view is invited.

- 3.2.13** Appendix 3(a) – Appeals Committee – the seminar was in favour of membership of the Appeals Committee being extended and that Council appoint a Vice Chair who could chair meetings if the Chair was unavailable. No firm conclusion was reached on the number of Members of the new Appeals Committee. Clearly there is a need to increase the membership to improve availability. This needs to be balanced against a need to ensure that all Members on the committee receive a sufficient amount of Appeals to enable them to develop expertise in this often complex area. One suggestion was that all Members of Council were on the committee and that invites were sent to the Chair and a further five Members. If those Members were unavailable it would be their responsibility to arrange a substitute from the remaining Members. Council's views are invited on this.
- 3.2.14** Appendix 3 (d) – Corporate and Efficient Governance Committee. Items relating to the Chief Executive's Section are not listed as being referable to any Committee, other than Best Value, Performance Review and Audit which are referred to the Audit and Performance Review Committee. Otherwise for remaining functions such as Communications it is thought that Corporate and Efficient Governance Committee should deal with the Chief Executive's Section.
- 3.2.15** Scheme of Delegation to Officers (Part III) – In broad terms the Scheme of Delegation to Officers remains fit for purpose, albeit one or two minor matters have been noted as does the new Planning Scheme of Delegation approved during 2009. Would members wish Officers to bring forward a further report dealing with a revised Scheme of Delegation if and when there are any departmental changes which require it?
- 3.2.15.1** Once change is suggested immediately. The delegation to the Director of Corporate Services under the Legal, Administrative and Regulatory Services Section allows the Director to act as Proper Officer and to appoint designated other officers of the Council as Proper Officers for certain functions of the Local Government (Scotland) Act 1973. The next paragraph allows the Director to sign all Deeds on behalf of the Council. At present Deeds are signed by the Head of Legal, Administrative and Regulatory Services, Manager of Legal Services and Senior Solicitors in Conveyancing/Contracts and Litigation. Occasionally outside solicitors ask for evidence that they have authority to sign Deeds. The present delegation is not absolutely clear and it is therefore proposed that the delegation to appoint/designate other officers of the Council as Proper Officers should also include allowing such officers to sign all Deeds and

other documents which are required to be sealed and executed on behalf of the Council. This makes it clear that the presently authorised officers have such authority and avoids challenge. No change is proposed to existing practices.

- 3.2.16** Standing Orders for Contracts (Part IV) – The Standing Orders governing the letting and operation of Council contracts were not examined in any detail by the report of February 2009. It is considered appropriate that these are reviewed in light of emerging procurement practice, and to address specific issues which have arisen.
- 3.2.17** Paragraph 3.3.4 suggests that review of the Contract Standing Orders is not limited to a once or twice yearly review. This is particularly important in the case of Contract Standing Orders as the development of procurement legislation, technology in procurement, co-operative procurement options and shared service delivery are all likely to have significant impact on how we go to the market.
- 3.2.18** A further consideration in terms of the Contract Standing Orders is how to deal with contracts involving a degree of social care, including those for residential schools. For such contracts, which may be open ended in nature and may alter substantially during their lifetime, the general approach of specifying in detail our requirements, our contractual arrangements and strict financial limits, may not deliver an appropriate outcome for the client, although it is recognised that they cannot be totally unregulated. This problem is being examined in other authorities, and also there is currently a consultation document on Scottish Government Guidelines for such procurements in circulation. It would be intended that following further discussions with other authorities and taking into account the final guidance issued, a further report would be submitted to Council detailing amendments to the Contract Standing Orders to allow commissioning officers to ensure that they are both working within an agreed Council framework for procurement, and meeting statutory and social responsibilities to address particular client needs on an ongoing basis.
- 3.2.19** The following changes to current Contract Standing Orders are suggested:-
- 3.2.19.1** Standing Order 32.4 delete the words “The following are the methods by which the Council may invite tenders”, in the first paragraph and replace with the following wording:-

“The Council invite tenders in one of the following methods, always having regard to the legal obligations to ensure adequate publicity for contracting opportunities:”

Purpose – to make it clear that the methods and timescales within the Standing Orders are minimum requirements and that where legal

requirements require longer or more extensively advertised opportunities, such requirements will be met.

3.2.19.2 Standing Order 32.4 (a) renumber and add a new paragraph (i) – (iv) as follows:-

“(a) Ad Hoc or Open Tenders

- i) Ad hoc tenders may be invited directly by advertisement or by utilising the processes established in any framework, consortium, partnership or collaborative agreement which the Council is a member of, or which the Council is legally entitled to access, including those operated by the Scottish Government, Scotland Excel, the Office of Government Commerce (OGC) or through the eProcurement Scotl@nd (ePS) Electronic Tendering Service. In all cases, no less than fourteen days notice of such tender opportunity will be given.
- ii) Where invited directly by the Council, or as lead authority for any collaborative agreement, public notice will if considered desirable, be given in at least one local newspaper and in any specialist journals providing sufficient details to identify the nature of the opportunity, identify the method of applying to tender, and indicating the final date for application.
- iii) For contracts having a value in excess of £50,000 but less than the EU Procurement Threshold for the time being in force, and not previously advertised as part of a framework agreement, the contract will additionally either be advertised through the Public Contracts Scotland Portal or through the Official Journal of the European Union (OJEU).
- iv) Contracts having a value in excess the EU Procurement Threshold for the time being in force, and not previously advertised as part of a framework agreement, will require to be advertised through the Official Journal of the European Union (OJEU).”

These changes make it clear that the methods and timescales within the Standing Orders are minimum requirements and that where legal requirements determine longer or more extensively advertised opportunities, such requirements will be met.

3.2.19.3 Standing Order 32.4(b) substitute the following for the existing paragraphs (i) to (iv)

- “i) Executive Directors have full powers to draw up and amend standing lists of Tenderers having regard to national and European

requirements for publicity and procedure.

- ii) The list will indicate whether a person has been included in it for all contracts, or for certain contracts of specified values or amounts or categories and will confirm that his/her technical capability and financial standing have been satisfactorily investigated.
- iii) The list will be reviewed periodically by the Executive Director of the Department concerned and any review or renewal will likewise take account of national and European requirements for publicity and procedure.
- iv) Executive Directors will have full powers to permit any body, as may be approved by Council, to draw up a list of tenderers on terms similar to the foregoing provided always that such arrangement is compliant with National and European Law and provided that the appropriate Executive Director is satisfied that the arrangement represents Best Value.

These changes ensure that the use of standing lists of tenderers is compliant with national and European legislation.

3.2.19.4 Standing Order 35, delete the existing paragraph (c) and substitute the following:

- “(c) Between the closing date and time for the receipt of tenders and the date on which a decision is taken regarding acceptance thereof, the appropriate Executive Director may instruct members of his staff or consultants to contact any tenderer to clarify or verify the terms of the tender but not otherwise for any reason and in particular this provision shall not be used in any way to put other tenderers at a disadvantage or to distort competition. A full written record will be kept of all such contacts and will be retained with the original tender together with written confirmation from the tenderer regarding any changes. “

The change reflects the wording of the EU Procurement rules and clarifies that no discussion which could distort competition would be allowed.

3.2.19.5 Standing Order 36, delete the existing paragraphs (e) and (f) and substitute the following:

- “(e) Where the contract consists of repairs to or the supply of parts for existing proprietary plant or machinery and provided such repair or supply represents Best Value and is legally compliant.
- (f) Where tenders have been invited through any framework,

consortium or partnership agreements of which the Council is a member or entitled to participate, in accordance with any method adopted by that body, provided always that such arrangement is compliant with National and European Law and provided that the appropriate Executive Director is satisfied that the arrangement represents Best Value.

These changes ensure that exceptions to Standing Orders under these provisions represent Best Value, that the full range of bodies through which we may seek contracts are represented and that National and European Legislation is complied with.

3.2.19.6 Standing Order 4), delete 37. (c)(iii), (e), (g) and (h) and substitute the following:

- “(c)(iii)The appropriate officers of such consortia, or collaborative partner as may be approved by Council, for issuing and receiving tenders on the Council’s behalf; or”
- “(e) Tenders invited through eProcurement Scotl@nd (ePS) Electronic Tendering Service will follow the rules and procedures provided for participation in the system, such rules to substitute for Standing Orders 37(a) to (d) hereof. Following receipt of tenders by such method, a Tender Record Sheet will be prepared containing the same information as would accord with Standing Order 37(d) above. No electronic auctions are to be permitted.”
- “(g) All successful tenders will be notified in writing by the relevant Executive Director following approval by Council, or the appropriate Committee or in exercise of prior existing, or specifically granted, delegated authority. “
- “(h) Subject to statutory requirements, any tender submitted after the specified time or not complying with these Standing Orders will not be considered and will be returned promptly to the tenderer by the Head of Legal, Administrative and Regulatory Services, save where it would, in the opinion of the of the Head of Legal, Administrative and Regulatory Services, be unreasonable not to accept such tender.”

These changes reflect the provisions of the scheme of delegation, new tendering methods, the requirement for approval of Committee or the existence of delegated authority and case law on the acceptance of late tenders.

3.2.20 The Standing Order seminar agreed with these changes which are largely technical. The only point which was raised was in relation to the proposed

substitution of Standing Order 35.4(b)(i) (paragraph 3.2.19.3). This provided that:-

- i) Executive Directors have full powers to draw up and amend list of tenderers having regard to national and European requirements for publicity and procedure.

3.2.20.1 Members were happy if this related to standing lists of tenderers and wished this to be made clear. The start of Standing Order 32.4(b) is not amended and this makes it clear that these sections apply to the list of contractors. Accordingly no change is needed but to avoid any doubt a change has been suggested that in the new paragraph (i) there is reference to standing lists of tenderers.

3.3 Areas where there were differing views on Standing Order changes:-

3.3.1 Time of Council Meetings – Standing Order 2(a) provides that Ordinary Council Meetings will start at 6 p.m. and Standing Order 6(c) provides that no business shall be introduced after 10 p.m. If any business remains, the Council Meeting will reconvene at 10 a.m. on the following day. At the seminar one Member proposed that a start time moved to 7 p.m. and that the 10 p.m. guillotine be removed. He had concerns that a 6 p.m. start was too early to accommodate members of the public who might have been at work during the day or having an evening meal. The remaining Members of the seminar were of the view that the 6 p.m. start and 10 p.m. guillotine had worked well and should remain in place. There was also discussion regarding adjournment of meetings and the effect of this on the 10 p.m. guillotine. At present the Provost does not have the power to adjourn Council Meetings and this requires to be the subject of agreement, which failing, a vote. A point was made that any Member can leave the Chamber for a toilet break etc with the exception of the Provost. Should the Provost be allowed to have say two adjournments not exceeding a certain time? Should periods of Adjournment be added on to the 10 p.m. as “injury time”? It is recommended that both of these suggestions could get overly complex, particularly the second one. It would be very difficult to any certainty as to when the guillotine would come into place. Accordingly no change is recommended.

3.3.2 Standing Order 2(d): Open Forum – there is also the issue as to whether motions, amendments and debate are competent at Open Forum sessions. Appendix 2 provides the procedure to be adopted during Open Forum sessions. From looking at Standing Order 2(d) and Appendix 2 it appears clear that the intention is that there is a question, an answer and a supplementary question with answer, but no debate or motions. However there is no specific prohibition of motions and as the Open Forum question is an item on the agenda, strictly speaking motions and debate are competent. It had been recommended that the Standing Orders were changed to specifically to exclude this possibility and to reflect the intention behind the present Standing Orders. The majority of Members

present at the seminar agreed with this. The minority view was that Open Forum items should allow for motions and debate.

3.3.3 Urgent Motions - Over the last year there have been issues as to when urgent motions are considered. On the one hand there is an argument that as the urgent motion is the last item on the agenda it should therefore be considered at the end, thus avoiding any other item being subject to the guillotine due to consideration of the urgent item. On the other hand, if, as has happened on one occasion, the urgent item has not yet been accepted by 10 p.m. then it will not be capable of being carried over to the next day and could fall completely. To balance the competing issues the present advice from the Monitoring Officer is that:-

- a) Members are advised of the terms of the urgent motion at the beginning of the meeting. This means that they are aware of the terms of the motion and have some time to prepare for it. However as it is the last item on the agenda it is not considered at this stage.
- b) At the start of the motions the Provost considers whether the motion is urgent and if there are special circumstances which mean that it should be heard. If the Provost agrees then the motion goes onto the agenda. If there is subsequently a guillotine it will then carry forward into the next day.
- c) The motion, being the last item on the agenda, is then considered at the very end of the meeting.

3.3.3.1 It is appreciated that this three stage process is cumbersome for a motion where special circumstances and urgency obviously apply and which is uncontroversial. On the other hand, for a motion that is controversial it avoids this last item on the agenda getting undeserved precedence over items lodged on time, while still ensuring that the competence of the motion can hopefully be considered prior to the guillotine.

3.3.3.2 The majority of views of Members at the seminar was that all urgent motions should be submitted to the Provost in advance of a Council Meeting. There should be no urgent motions arising during a Council Meeting. The Provost should advise the Council at the start of the meeting if he was willing to accept the motion as Urgent and specify special circumstances. The reason for accepting this would have to be given to Council as this is required in terms of the Local Government (Scotland) Act 1973. The urgent motion would only be read out to Council by the Provost if he accepted it. It is recommended that Standing Orders are amended to provide for this.

3.3.4 Two Year Moratorium on changes to Standing Orders – Standing Order 19(c) provides that unless Council asks for a report to be brought back to Council on Standing Orders, that Standing Orders can only be changed within the next two years if Standing Orders are themselves suspended. The intention behind this was to introduce a measure of certainty and

avoid opportunistic attempts to change Standing Orders to suit particular cases or political aims. While this is to be commended, current advice on good practice in governance reflected in, for example, the CIPFA/SOLACE “Delivering Good Governance Framework” recommends regular reviews of Standing Orders. Holding a once yearly Member/Officer meeting to consider Standing Orders also provides an opportunity to review Standing Order issues which have arisen during the year. It provides a training opportunity, as well as an opportunity to resolve any issues and if necessary change Standing Orders. Accordingly it is recommended that Standing Orders provide for a once a year opportunity to change Standing Orders in the spring of each year. Secondly, it is likely that Standing Orders will need to be changed within a one year period to accommodate a number of developments. If the Council proceed to further integration with the NHS which involves a joint Community Health Partnership (which is a Committee of the Health Board) and Council Sub-Committee with the same Members meeting at the same time, there will be a need for the Standing Orders of the CHP/Sub-Committee to be the same. This will mean that these Standing Orders will need to be brought back before Council. It is recommended that authority is given to allow this particular matter to come back before Council without requiring suspension of Standing Orders. There is also the proposal for a Petitions Procedure. There are proposals relating to membership of the Education Committee which are discussed later on in this report and which will be the subject of a report to the Education Committee. Fourthly, there are likely to be changes to the Councillor’s Code of Conduct which require amendment of Standing Orders. In addition, it might be preferable if the restriction on review of Standing Orders only applied to Parts I and II, allowing the less controversial Scheme of Delegation, Contract and Standing Orders to be reviewed as necessary. See also paragraph 3.20 and 3.22. There were different views on this. In general it was accepted that if there was to be restriction on review of Standing Orders it should only apply to Parts I and II allowing the less controversial Scheme of Delegation and Contract Standing Orders to be reviewed as necessary. As regards Part I and II of the Standing Orders there were different views. One Member felt that there should be no restriction on reviewing Standing Orders other than the six month rule on altering or amending previous decisions. Others agreed with the recommendations of the report that there should be a once a year opportunity to review Standing Orders. The risk of allowing review of Standing Orders at any time was that these would be reviewed to meet the circumstances of individual cases, rather than to deal with issues of principle. Other Members were keen to debate the issue as a political group prior to expressing a view on the matter.

- 3.3.5** Standing Order 20: Order of Debate – 20(c) this provides that no Member, with the exception of the mover of the motion or amendment will speak supporting the motion or amendment until the same will have been seconded. Standing Order 21 provides that motions and amendments made but not seconded shall neither be discussed at the meeting nor recorded in the minutes. Standing Order 20(c) is quite clear and allows questions prior to a motion being seconded. This is logical as Members

may wish to ask questions of the mover of a motion prior to deciding whether to second the motion. The wording of Standing Order 21 in referring to “discussed” is less clear and the two Standing Orders need to have similar wording.

- 3.3.5.1** It is appreciated that Members have sometimes delayed in seconding motions and amendments to see whether there will be any addendum. On the other hand it is good practice that motions are seconded as soon as possible. The issue is whether members wish to alter Standing Order 20(c) to ensure that motions or amendments are seconded prior to inviting further amendments. On balance it is felt that this results in as many problems as it was meant to resolve. As such the only proposed change is to Standing Order 21 which would now read “while persons moving a motion or amendment can answer questions on that motion or amendment prior to it being seconded, all motions and amendments must be seconded prior to their being any debate on them. A motion or amendment made but not seconded shall not be recorded in the minutes”.
- 3.3.5.2** There were different views on this. Some Members were of the view that motions should be seconded immediately. Others felt that to ask questions in advance and to allow addendums resulted in a greater chance of consensus and gave the Independent Members a greater opportunity of input.
- 3.3.6** Standing Order: Working Groups – There are conflicting arguments as to the degree of procedural formality that should apply to working groups. On the one hand, such meetings are intended to maximise cross-party working and consensus and to allow minority parties and other Councillors an opportunity to influence proposals. To do this, the working group needs to be outwith the spotlight of the public political debate. On the other hand there is a need to ensure that decision making is seen to be transparent and that future decisions based on the recommendations of a working group are not seen as rubber stamping. The key questions are:-
- 3.3.6.1** Should a Working Group require a minimum number of Councillors to be quorate? Should such Working Groups be open to the public to attend in the same way as Committees? If so, should they be publicised on the Council’s Website and should reports and minutes appear on the Website. In some cases the recommendations and minutes of Working Groups are already reported back to the parent committee.
- 3.3.6.2** At the seminar there were differing views on this by Members. The majority view was that the Parent Committee which set up the Working Group should determine the remit of the Working Group. That would include determining whether the Working Group should be open to the public, whether all papers should be available to the public and whether minutes should appear on the Council website. They also noted that Working Group papers should be available to all Members, regardless of whether they served on the Working Group. They also raised the question as to whether every Elected Member should be able to attend a Working

Group, even if they were not part of it. The minority view was that all Working Groups should be subject to the same degree of public accessibility as committees.

3.3.7 Appendix 3 (m) – Corporate Cultural Sub-Committee. The powers of the Corporate Cultural Sub-Committee are not immediately obvious from looking at Standing Orders. Paragraph 2.3 provides that the Sub-Committee will have such delegated powers as are determined by the Corporate and Efficient Governance Committee or Council as appropriate. On 28 May 2008 the Corporate and Efficient Governance Committee agreed that the Corporate Cultural Sub-Committee be given delegated authority over its own budget and all cultural events. It has also been agreed at the Committee on 25 February 2009 that consideration of reports on town twinning be dealt with by the Corporate Cultural Sub-Committee in future. The minute does not explicitly record whether the Sub-Committee was to be given delegated powers, albeit that is the implication in the minute. It is recommended that rather than the Sub-Committee being given ad-hoc powers by the parent Committee, that Council clearly sets out the extent of delegated powers which it wishes to give to the Sub-Committee thus providing transparent.

3.3.7.1 There were two competing views on this at the seminar, one being that the Standing Orders should remain as at present, the other that the delegations already made by the Corporate and Efficient Governance Committee should be consolidated and become the delegated powers of the Cultural Sub-Committee.

3.3.7.2 Unusually Appendix 3(m) details the political composition of the Corporate Cultural Sub-Committee as comprising two SNP (Administration), two Labour (Opposition) and one other and the Council's Ambassador for Culture. However in February 2009 Council agreed that the membership of the Sub-Committee should comprise two SNP, one Labour, two others (Councillors' Black and McNair) with the Ambassador for Culture as Chair. It is recommended that, in common with the rest of Appendix 3, that Appendix 3(m) refers to the number of Members but not the political composition of the Sub-Committee.

3.3.8 Standing Orders for Contracts Part IV – the question was raised as to whether the £30,000 limit of officers delegated authority in relation to contacts should be raised. The Strategic Finance Working Group on 19 February 2010 had discussed the introduction of a local procurement policy. During that discussion it had been suggested that the £30,000 limit restricted the opportunities for local businesses to tender. This is an arguable point as tendering arrangements should be the same under Standing Orders, regardless of whether the tender needs to go to the Tendering Committee. However, this matter is put before Council for consideration.

3.3.9 Standing Order 12(d), Points of Order – this presently provides that Members raising a Question of Order shall state the Standing Order

considered to be infringed (e.g. '17'). The intention behind this was to ensure that Members adequately considered the basis for their challenge prior to making it. However, it has been obvious over the last year that while Members are usually aware of the basis of their challenge and the terms of the relevant Standing Orders, it can be difficult to find the number at short notice. There were two views on this. One was that the existing provision should be retained. The other was that it should be deleted. A compromise would be that a Members should indicate the terms of the Standing Order considered to be infringed, rather than the number.

Other Matters

- 3.4** Since the seminar, a couple of further items have transpired which may require amendment of Standing Orders. These are:-
- 3.4.1** On 25 February 2010 Council considered a report regarding Integration of Social Work with the NHS Community Health Partnership. Council agreed to recommend that a change was made to Standing Order Appendix 3(i) the Recruitment and Individual Performance Management Committee. The recommendation of Council was that:-
- “A Recruitment Panel comprising of the NHSGG&C Chair, NHSGG&C Chief Executive, West Dunbartonshire CHP Chair, Leader of the Council, Leader of the Opposition and Spokesperson for Social Work and Health will be formed. This panel will be given the authority to appoint a joint director, through an open recruitment process to take on the roles of Director of the Community Health Partnership and Executive Director of Social Work and Health.”
- 3.4.1.1** It is recommended that Standing Orders are changed to implement this arrangement for this post, subject to one amendment.
- 3.4.1.2** The resolution of Council attempts to ensure equality of representation at the Recruitment Panel. In the case of an equality of votes the casting vote of the Chair would normally determine the appointment. However where the NHS and Council are in a partnership body with equal rights there is a good argument that the Chair should not have a casting vote. In the case of other joint NHS/Council appointments in other Councils, there has sometimes been a deadlock with NHS representatives voting for one candidate and Council representatives voting for another (not always for a candidate from their own area). To avoid any such deadlock the model applied elsewhere is that there is a seventh member of the panel who is an independent member, mutually chosen in advance by the Health Board and the Council. It is recommended that provision is also made for such an independent member.
- 3.4.2** At its meeting on 10 March 2010 the Education and Life Long Learning Committee will consider proposals to amend the representation of that Committee. The committee has been asked to consider whether it wishes to recommend to Council that Standing Orders be amended to include a

requirement for two places to be allocated to parent representatives on the Education and Life Long Learning Committee from May 2010 onwards and, if so, whether it wishes to recommend to Council that Standing Orders be amended to create one or two additional places for Elected Members on this committee and, if so, to which political groupings such a place or placings should be allocated. Depending on the decision of the Education and Life Long Learning Committee on 10 March 2010 it is recommended that Council also consider this matter.

4. Personnel Issues

4.1 There are no personnel issues.

5. Financial Implications

5.1 The main financial impact is in Contract Standing Orders, where failure to reflect developing procurement methods and procurement law could result in a failure to achieve Best Value in contracts.

6. Risk Analysis

6.1 Good governance helps to deliver better decisions. The Standing Orders are a key component of the Council's Governance arrangements. Failure to regularly review them will produce uncertainty over procedures and result in decisions more open to challenge (e.g. contracts). It may also result in the Council failing to show good practice when self-assessing its governance arrangements.

7. Equalities Impact

7.1

8. Conclusions and Officers Recommendations

8.1 The recommendation is that:-

- i) Members agree the recommended changes to Standing Orders detailed in paragraph 3.2.
- ii) Members consider the options for changing Standing Orders detailed in paragraphs 3.3 and 3.4 and confirm the changes which are required.

- iii) That once a decision on 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's decision, subject to the Leader of the Council and the Leader of the Opposition agreeing the accuracy of the wording of the changes.
- iv) That the new Standing Orders would take effect from the April 2010 Ordinary Council Meeting.
- v) That Members agree to receive further reports on possible Standing Order changes resulting from NHS Integration proposals, the introduction of a Petitions Procedure and changes to the Councillor's Code of Conduct.

Joyce White
Executive Director of Corporate Services

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Appendices: Appendix 1 – Report to Member's Seminar

Background Papers: None

Wards Affected: All

APPENDIX 1

WEST DUNBARTONSHIRE COUNCIL

Report by the Head of Legal, Administrative and Regulatory Services

Date: 22 February 2010

Venue: Meeting Room 3, Garshake Road, Dumbarton

Subject: Standing Orders – Review

1. Purpose

1.1 This report reviews issues which have arisen in relation to Standing Orders during the course of the last year and in some cases recommends change. After the Member's seminar a report will come to Council detailing Standing Orders where:-

- a) There is broad agreement that a change is needed; and
- b) Where there are opposing views on whether a change is needed.

2. Background

2.1 In February 2009 Council made changes to Parts I and II of Standing Orders. Part I relates to the Standing Orders for meetings and Part II relates to the Standing Orders for Committees and Committee remits. Subsequently certain changes to the remit of the Planning Committee were agreed to reflect the new Planning Legislation which provides that certain decisions have to be taken by Council. Further changes were agreed by Council to the composition of the Community Participation Committee.

2.2 In February 2009 Council also agreed that the Standing Orders would be subject to a review after one year. Thereafter, Standing Orders would only be subject to review every two years unless Standing Orders were suspended by a two thirds majority.

3. Main Issues

3.1 The issues that have arisen in relation to Standing Orders are covered under each Standing Order, being ordered numerically. They are:-

3.2 Front page – it has been suggested that this should include the dates when the various parts of the Standing Orders were last revised. This would appear sensible and is recommended.

- 3.3** Standing Order 2(d): Open Forum – this provides that an Open Forum session will be held at every second Ordinary Meeting of the Council. Open Forum sessions are only requested infrequently and the question is asked.

Council wants to have an open forum at every meeting or at every second meeting.

- 3.3.1** Standing Order 2(d): Open Forum – there is also the issue as to whether motions, amendments and debate are competent at Open Forum sessions. Appendix 2 provides the procedure to be adopted during Open Forum sessions. From looking at Standing Order 2(d) and Appendix 2 it appears clear that the intention is that there is a question, an answer and a supplementary question with answer, but no debate or motions. However there is no specific prohibition of motions and as the Open Forum question is an item on the agenda, strictly speaking motions and debate are competent. It is recommended that the Standing Orders are changed to specifically to exclude this possibility and to reflect the intention behind the present Standing Orders.

- 3.4** Standing Order 3: Special Meetings of Council – what happens if the Convenor requests an urgent Special Meeting or six Members requisition a Council Meeting to debate an issue which is within the remit of another Committee? Standing Order 8(d) provides that motions for any meeting (including Requisition Meetings) go to the relevant Committee. There would then be no business for the Requisitioned Council Meeting which would simply not be called. However this creates a slight problem insofar as there is no facility for Members to requisition an urgent meeting of a Committee and this would remain at the Chair's discretion. It is recommended that Standing Order 3 be amended by the inclusion of:-

3(c) A Special Meeting shall only be called in relation to business which is not included in the terms of reference of any Committee of the authority. In the event that a written requisition is received under Standing Order 3(b) hereof in relation to a matter which is within the terms of reference of any Committee of the authority, that requisition shall be deemed to have been referred by that meeting to the next meeting of the Committee within whose terms of reference it falls. If any questions arise as to which Committee the requisition is to be referred, it shall be determined by the Convener. Where a requisition has been referred, or is deemed to have been referred to a meeting of the Committee, that Committee shall consider it at its next Ordinary meeting.

- 3.4.1** The issue then arises as to what is the “next Ordinary meeting”. This issue is discussed in paragraph 3.8.1.

- 3.5** Standing Order 4: Calling of Meeting – this Standing Order provides that the agenda should be issued not less than nine clear working days before the date of the meeting. It does not provide that all reports have to be issued nine clear working days before the date of the meeting. While every effort is made to ensure that reports are available in time for the agenda and it is good practice to do so, the strict legal position is that reports do not require to be

available until three clear days before the meeting. It is recommended that no change is made to this Standing Order for a number of reasons. Firstly there have only been a few cases where a report has been received after an agenda and it appears that in all such cases the report could not have been produced any earlier. If Members are unhappy at receiving a late report then it is open to them to simply continue the matter to the next meeting. While it is unlikely that this will become a problem in the future, Members could revisit this Standing Order if it became a problem.

- 3.5.1** There is a question as to whether “working days” in Standing Order 4 includes public holidays. The definition in 43(b) states that the term “working days” will mean Monday to Saturday inclusive whereas 43(c) states that where the last day falls on a public holiday it will be deemed to relate to the first day thereafter. There is a little contradiction in this and it is suggested that the definition of ‘working days’ 43(b) specifically excludes public holidays.
- 3.5.2** There is also the issue as to whether the nine clear working days for agendas should apply to all Committees. In particular should the timescale be shortened for the Planning and Licensing Committees to allow urgent regulatory matters to be brought to these Committees.
- 3.6** Standing Order 6: Order of Business for the Ordinary Meeting of the Council – Standing Order 6(a) provides for the order of business. The effect of the 10 p.m. guillotine has been that on two occasions business has transferred to the next day. On one of these occasions if the order of business had been re-arranged, then all business could have been disposed prior to 10 p.m. with the exception of one item which would have been underway before 10 p.m. The Provost has no power to alter the order of business and would need to get the support of Council to take this step, if necessary by vote. On balance it is recommended that this position remains unaltered.
- 3.6.1** Standing Order 6(a)(v) – provides that the Council approves the Minutes of the previous Council Meeting and Advisory Committees unless these are reported for information only. Strictly speaking the Council approves the accuracy of the Minutes of previous Council Meetings and decides whether to ratify the decisions of Advisory Committees which do not have delegated powers. The accuracy of Advisory Committee Minutes are considered by the next meeting of the Advisory Committee. (See also Standing Order 30 which deals with approval and signing of Minutes.) It is suggested that 6(a)(v) is reworded as “approval of the Minutes of the previous Council Meetings and approval of the decisions of Advisory Committee or Committees which do not have delegated powers unless reported for information only”.

There is also the issue that Council may be asked to approve the implementation of a committee decision before that committee has approved the accuracy of its minute. This is not dissimilar to the normal position which arises when a committee with delegated authority (or the Council itself) implements decisions before approval of the accuracy of its minutes. As such no change is recommended.

- 3.6.2** In relation to the guillotine it should be noted that in terms of Standing Order 20(i) that any Member who has not already spoken in a debate can move the closure of debate. There is then a vote on whether debate is closed, subject to the right of the mover of the motion and amendment to reply. Thus, if Members are concerned that overly lengthy debates are occurring on particular items, Standing Order 20(i) could be used.
- 3.7** Standing Order 7: Matters of Urgency – it should be noted that it is a statutory requirement under Section 50B of the Local Government (Scotland) Act 1973 that three clear days notice is given of agenda items and no urgent matters should be considered by Council except “where by reason of special circumstances which shall be specified in the Minutes, the Convener is of the opinion that the item should be considered at the meeting as a matter of urgency”. Accordingly it should only be in exceptional circumstances that urgent items are allowed. As Members will be aware the Monitoring Officer’s view is that a matter is not urgent if it can wait to another meeting of the Council, Special or otherwise.
- 3.7.1** Over the last year there have been issues as to when urgent motions are considered. On the one hand there is an argument that as the urgent motion is the last item on the agenda it should therefore be considered at the end, thus avoiding any other item being subject to the guillotine due to consideration of the urgent item. On the other hand, if, as has happened on one occasion, the urgent item has not yet been accepted by 10 p.m. then it will not be capable of being carried over to the next day and could fall completely. To balance the competing issues the present advice from the Monitoring Officer is that:-
- a) Members are advised of the terms of the urgent motion at the beginning of the meeting. This means that they are aware of the terms of the motion and have some time to prepare for it. However as it is essentially the last item on the agenda it is not considered at this stage.
 - b) At the start of the motions the Provost considers whether the motion is urgent and if there are special circumstances which mean that it should be heard. If the Provost agrees then the motion goes onto the agenda. If there is subsequently a guillotine it will then carry forward into the next day.
 - c) The motion, being the last item on the agenda, is then considered at the very end of the meeting.
- 3.7.2** It is appreciated that this three stage process is cumbersome for a motion where special circumstances and urgency obviously apply and which is uncontroversial. On the other hand, for a motion that is controversial it avoids this last item on the agenda getting undeserved precedence over items lodged on time, while still ensuring that the competence of the motion can hopefully be considered prior to the guillotine. Member’s views are however invited on the best solution and whether this issue should be explicitly covered in Standing Orders.

- 3.8** Standing Order 8(d): Reference of Motions to Committee – as Members will be aware this Standing Order provides that motions which relate to the business of a Committee would automatically be referred to that Committee. The argument was that if Council has decided that certain business is to be determined by a Committee, that the role of that Committee should not be usurped by the expedient of a motion to Council. The counter argument is that not all Members sit at every Committee and Members with a particular interest in any matter would not necessarily be able to vote on that matter at Committee, albeit they can still ask questions at Council. In practice Committee Conveners have been willing to allow Members from outwith the Committee to address the Committee. On balance it is recommended that no change is made to this Standing Order.
- 3.8.1** If a motion is referred to the ‘next’ Ordinary meeting of a Committee, which Committee is meant where the agenda has already been issued and public notice given, is it the next Committee or the next Committee agenda?
- 3.8.2** Standing Order 8(e) gives the Monitoring Officer power to refer a legal motion to the Convener for a decision as to whether it should be accepted or placed on the agenda. It should be noted that as presently worded this only gives the Monitoring Officer this power, not the Legal Officer. The Monitoring Officer only sits on Council and one Committee and other Solicitors sit on other Committees. Accordingly it is suggested that “the Monitoring Officer” is replaced by “the Legal Officer”.
- 3.9** Standing Order 9: Declaration of Interest – it should be noted that revisions are proposed to Section 5 of the Code of Conduct for Councillors. A separate report on this will go to the January 2010 Council.
- 3.10** Standing Order 14 – A new Standing Order 14(j) is suggested that there should be no interruptions to a Member while speaking except with the Conveners agreement.
- 3.11** Standing Order 17: Deputations – the Community Council Forum has raised an issue regarding the timescale for requesting a deputation. Deputations need to be requested under 17(a) at least 11 days before the meeting, the intention being that this would allow the deputation’s subject matter to appear on the agenda which is issued nine clear days in advance of the meeting. The Community Council Forum are concerned that on occasions the first that they know of a proposal is when it appears on a Council/Committee agenda. At that stage they have insufficient time to request a deputation. There are two competing arguments here. On the one hand the aim is to have all business clearly detailed on the agenda in advance, to allow Members to discuss issues with officers and other political groups. On the other hand there is the desire to enhance community engagement by allowing Community Councils in particular to have a meaningful input into decisions prior to taking them. Member’s views are invited on this.

- 3.11.1** Standing Order 17(a) provides that deputations need to be lodged at least 11 days before the meeting, rather than “clear days”. Whatever timescale is detailed, it needs to provide for “clear” working days to be consistent with Standing Order 4. It also needs to ensure that notice of the deputation can be included on a supplementary Council agenda which is required to be issued under the 1973 Act no later than three working days before the meeting.
- 3.12** Standing Order 19: Alteration, Deletion and Rescission of Decisions of Council – there are two issues here. Firstly, can a Council or Committee decision be reconsidered without suspension of Standing Orders within the next six months when setting the Council’s budget for the next year? While there are conflicting arguments about this the Monitoring Officer’s view is that if a Committee has made a decision, this cannot be altered by Council within 6 months, even when setting the budget, without suspension of Standing Orders. If Members wish the position to be otherwise it would be better that this point is clearly covered in Standing Orders.
- 3.12.1** Secondly Standing Order 19(c) provides that unless Council asks for a report to be brought back to Council on Standing Orders, that Standing Orders can only be changed within the next two years if Standing Orders are themselves suspended. There are three issues. The intention behind this was to introduce a measure of certainty and avoid opportunistic attempts to change Standing Orders to suit particular cases or political aims. While this is to be commended, current advice or good practice in governance reflected in, for example, the CIPFA/SOLACE “Delivering Good Governance Framework” recommends regular reviews of Standing Orders. Holding a once yearly Member/Officer meeting to consider Standing Orders also provides an opportunity to review Standing Order issues which have arisen during the year. It provides a training opportunity, as well as an opportunity to resolve any issues and if necessary change Standing Orders. Accordingly it is recommended that Standing Orders provide for a once a year opportunity to change Standing Orders in the spring of each year. Secondly, it should be noted that if the Council proceed to further integration with the NHS which involves a joint Community Health Partnership (which is a Committee of the Health Board) and Council Sub-Committee with the same Members meeting at the same time, there will be a need for the Standing Orders of the CHP/Sub-Committee to be the same. This will mean that these Standing Orders will need to be brought back before Council. It is recommended that authority is given to allow this particular matter to come back before Council within the two year period without requiring suspension of Standing Orders. Thirdly, it might be preferable if the restriction on review of Standing Orders only applied to Parts I and II, allowing the less controversial Scheme of Delegation, Contract and Standing Orders to be reviewed as necessary. See also paragraph 3.20 and 3.22.
- 3.13** Standing Order 20: Order of Debate – 20(c) this provides that no Member, with the exception of the mover of the motion or amendment will speak supporting the motion or amendment until the same will have been seconded. Standing Order 21 provides that motions and amendments made but not seconded shall neither be discussed at the meeting nor recorded in the

minutes. Standing Order 20(c) is quite clear and allows questions prior to a motion being seconded. This is logical as Members may wish to ask questions of the mover of a motion prior to deciding whether to second the motion. The wording of Standing Order 21 in referring to “discussed” is less clear and the two Standing Orders need to have similar wording.

It is appreciated that Members have sometimes delayed in seconding motions and amendments to see whether there will be any addendum. On the other hand it is good practice that motions are seconded as soon as possible. The issue is whether members wish to alter Standing Order 20(c) to ensure that motions or amendments are seconded prior to inviting further amendments. On balance it is felt that this results in as many problems as it was meant to resolve. As such the only proposed change is to Standing Order 21 which would now read “while persons moving a motion or amendment can answer questions on that motion or amendment prior to it being seconded, all motions and amendments must be seconded prior to their being any debate on them. A motion or amendment made but not seconded shall not be recorded in the minutes”.

3.13.1 Standing Order 20: Order of Debate – Questions. Standing Order 12(a) provides that any Member may put a question to the Convener, Service Spokesperson, Leader of the Council or any Senior Officer concerning any relevant competent business arising upon the agenda. However, once under debate, Standing Order 20(j) provides only for questions immediately after a speech by another Member. The intention appears clear that this is the only circumstance in which Members can ask questions once in debate. Do Members agree with this? If so, some minor amendments could perhaps be made to Standing Order 20 in order to make this crystal clear.

3.13.2 Standing Order 20(h) – this provides that no Member will at liberty to move or second more than one amendment to any motion and the mover and seconder of the motion will not move an amendment or second an amendment. What is the position where someone moves a motion or amendment which does not find a seconder? Are they still entitled to attempt to raise a further motion or amendment? This is not a big issue for the main parties who have a number of Members who can raise motions or amendments. However it is an issue for the Independents and SSP Member. On balance it is felt that where Members have failed to find a seconder, that they should be entitled to move another motion or amendment. If Members agree with this, Standing Order 20(h) will need to be slightly amended to make this clear.

3.13.3 Standing Order 20(k) – this provides that once a motion is under debate no other motion or amendment will be moved except to suspend a Member, adjourn the debate or close the debate. The reason for this is that it avoids amendments appearing at the last minute when Members who have already spoken do not have the opportunity to comment on the amendment. It is recommended that no change is made to this Standing Order. If a last minute amendment is desired in order to achieve consensus it would, of course, be

open to Council to suspend Standing Orders to allow such an amendment to come forward.

- 3.14** Standing Order 26: Casting Vote – this provides that the Convener will not have a casting vote in the case of appointment of a Member of the Council to any particular Office or Committee. Office Holder is defined in Standing Order 40 as meaning Elected Members who have been appointed to the positions of Convener of the Council, Depute Convener of the Council, Committee Convener, Service Spokesperson, Council Leader, Depute Leader and Leader of the Opposition. The Convener still has a casting vote in relation to appointment to outside bodies. Does Council wish this to continue?
- 3.15** Standing Order 27 – When Standing Orders are suspended it is generally understood that only the Standing Order in question is suspended, not all Standing Orders. To suspend all Standing Orders would not leave a complete void as some Standing Orders are required under the Local Government (Scotland) Act 1973 and can never be removed, while there are also common law rules on fair notice etc. It would be good practice to refer to the specific Standing Order which is being suspended.
- 3.16** Standing Order 29 (c) – Proceedings of Committees and Sub-Committees. This allows the Convener of a Committee to rearrange the date, time and place of a Committee or Sub-Committee in cases of urgency, subject to obtaining the agreement of the Council Leader and the Leader of the Opposition. The question is whether rearranging includes cancellation. It is recommended that cancellation is also allowed subject to the same agreement. There is also the issue of whether this Standing Order allows the rearrangement of meetings where the agenda has already gone out and public notice has been given. Again, views are invited.
- 3.17** Standing Order 30 – Approval and signing of Minutes. It would be helpful if Members could provide the Committee Administration Section with any suggested changes to the accuracy of the Minutes in advance of the meeting. This allows the Committee Clerks notes to be checked in advance. However no change to Standing Orders is proposed.
- 3.18** Standing Order: Working Groups – There are conflicting arguments as to the degree of procedural formality that should apply to working groups. On the one hand, such meetings are intended to maximise cross-party working and consensus and to allow minority parties and other Councillors an opportunity to influence proposals. To do this, the working group needs to be outwith the spotlight of the public political debate. On the other hand there is a need to ensure that decision making is seen to be transparent and that future decisions based on the recommendations of a working group are not seen as rubber stamping. The key questions are:-
- 3.18.1** Should a Working Group require a minimum number of Councillors to be quorate? Should such Working Groups be open to the public to attend in the same way as Committees? If so, should they be publicised on the Council's Website and should reports and minutes appear on the Website. In some

cases the recommendations and minutes of Working Groups are already reported back to the parent committee.

- 3.18.2** Appendix 3 (a) – do Members wish to extend the membership of the Appeals Committee to create a larger pool of elected Members from whom an Appeals Committee could be drawn. Would Members also wish to appoint a Vice-Chair in case the Chair was unavailable for any particular meetings? If Council wished to extend the membership, would all Members of the extended Appeals Committee still be invited to each hearing or would a rota system be applied. If so, would Members wish to give guidance on how any rota should be selected?
- 3.19** Appendix 3 (d) – Corporate and Efficient Governance Committee. Items relating to the Chief Executive’s Section are not listed as being referable to any Committee, other than Best Value, Performance Review and Audit which are referred to the Audit and Performance Review Committee. Otherwise for remaining functions such as Communications it is thought that Corporate and Efficient Governance Committee should deal with the Chief Executive’s Section.
- 3.20** Appendix 3 (e) – Education and Lifelong Learning Committee. It is understood that the Committee is to consider the number of religious and other representatives on the Committee. Accordingly it is recommended that Council permit this to be brought back to Council within the 2 year period if so recommended by the Education and Lifelong Learning Committee.
- 3.21** Appendix 3 (m) – Corporate Cultural Sub-Committee. The powers of the Corporate Cultural Sub-Committee are not immediately obvious from looking at Standing Orders. Paragraph 2.3 provides that the Sub-Committee will have such delegated powers as are determined by the Corporate and Efficient Governance Committee or Council as appropriate. On 28 May 2008 the Corporate and Efficient Governance Committee agreed that the Corporate Cultural Sub-Committee be given delegated authority over its own budget and all cultural events. It has also been agreed at the Committee on 25 February 2009 that consideration of reports on town twinning be dealt with by the Corporate Cultural Sub-Committee in future. The minute does not explicitly record whether the Sub-Committee was to be given delegated powers, albeit that is the implication in the minute. It is recommended that rather than the Sub-Committee being given ad-hoc powers by the parent Committee, that Council clearly sets out the extent of delegated powers which it wishes to give to the Sub-Committee thus providing transparency as to the Sub-Committee’s powers.
- 3.22** Council has asked for a report dealing with the introduction of a procedure whereby public petitions can be brought to Council or a Committee. This will be considered separately by Council, probably in March 2010. At this stage it should merely be noted that this decision of Council may require a change to Standing Orders.

3.23 Ad-hoc meetings/Member training. Members have occasionally faced difficulties in accommodating special Committee meetings or Member training. It has been suggested that a Wednesday in every second month be kept clear for ad-hoc meetings or Member training. Presumably this would be on Wednesdays on which the Corporate and Efficient Governance Committee did not meet. Member's views are invited on this proposal.

3.24 Scheme of Delegation to Officers (Part III) – In broad terms the Scheme of Delegation to Officers remains fit for purpose, albeit one or two minor matters have been noted and the new Planning Scheme of Delegation approved during 2009. Would members wish Officers to bring forward a further report dealing with a revised Scheme of Delegation if and when there are any departmental changes which require it?

Once change is suggested immediately. The delegation to the Director of Corporate Services under the Legal, Administrative and Regulatory Services Section allows the Director to act as Proper Officer and to appoint designated other officers of the Council as Proper Officers for certain functions of the Local Government (Scotland) Act 1973. The next paragraph allows the Director to sign all Deeds on behalf of the Council. At present Deeds are signed by the Head of Legal, Administrative and Regulatory Services, Manager of Legal Services and Team Leaders in Conveyancing/Contracts and Litigation. Occasionally outside solicitors ask for evidence that they have authority to sign Deeds. The present delegation is not absolutely clear and it is therefore proposed that the delegation to appoint/designate other officers of the Council as Proper Officers should also include allowing such officers to sign all Deeds and other documents which are required to be sealed and executed on behalf of the Council. This makes it clear that the presently authorised officers have such authority and avoids challenge. No change is proposed to existing practices.

3.25 Standing Orders for Contracts (Part IV) – The Standing Orders governing the letting and operation of Council contracts were not examined in any detail by the report of February 2009. It is considered appropriate that these are reviewed in light of emerging procurement practice, and to address specific issues which have arisen.

3.26 Paragraph 3.12 suggests that review of the Contract Standing Orders is not limited to a once or twice yearly review. This is particularly important in the case of Contract Standing Orders as the development of procurement legislation, technology in procurement, co-operative procurement options and shared service delivery are all likely to have significant impact on how we go to the market.

3.27 A further consideration in terms of the Contract Standing Orders is how to deal with contracts involving a degree of social care, including those for residential schools. For such contracts, which may be open ended in nature and may alter substantially during their lifetime, the general approach of specifying in detail our requirements, our contractual arrangements and strict financial limits, may not deliver an appropriate outcome for the client, although

it is recognised that they cannot be totally unregulated. This problem is being examined in other authorities, and also there is currently a consultation document on Scottish Government Guidelines for such procurements in circulation. It would be intended that following further discussions with other authorities and taking into account the final guidance issued, a further report would be submitted to Council detailing amendments to the Contract Standing Orders to allow commissioning officers to ensure that they are both working within an agreed Council framework for procurement, and meeting statutory and social responsibilities to address particular client needs on an ongoing basis.

3.28 The following changes to current Contract Standing Orders are suggested:-

3.28.1 Proposal:

In standing Order 35.4 delete the words “The following are the methods by which the Council may invite tenders”, in the first paragraph and replace with the following wording:-

“The Council invite tenders in one of the following methods, always having regard to the legal obligations to ensure adequate publicity for contracting opportunities:”

Purpose:

To make it clear that the methods and timescales within the Standing Orders are minimum requirements and that where legal requirements determine longer or more extensively advertised opportunities, such requirements will be met.

3.28.2 Proposal:

In standing Order 35.4 (a) renumber and add a new paragraph (i) – (iv) as follows:-

“(a) Ad Hoc or Open Tenders

- i) Ad hoc tenders may be invited directly by advertisement or by utilising the processes established in any framework, consortium, partnership or collaborative agreement which the Council is a member of, or which the Council is legally entitled to access, including those operated by the Scottish Government, Scotland Excel, the Office of Government Commerce (OGC) or through the eProcurement Scotl@nd (ePS) Electronic Tendering Service. In all cases, no less than fourteen days notice of such tender opportunity will be given.
- ii) Where invited directly by the Council, or as lead authority for any collaborative agreement, public notice will if considered desirable, be given in at least one local newspaper and in any specialist journals providing sufficient details to identify the nature of the opportunity, identify the method of applying to tender, and indicating

the final date for application.

- iii) For contracts having a value in excess of £50,000 but less than the EU Procurement Threshold for the time being in force, and not previously advertised as part of a framework agreement, the contract will additionally either be advertised through the Public Contracts Scotland Portal or through the Official Journal of the European Union (OJEU).
- iv) Contracts having a value in excess the EU Procurement Threshold for the time being in force, and not previously advertised as part of a framework agreement, will require to be advertised through the Official Journal of the European Union (OJEU).”

Purpose:

To make it clear that the methods and timescales within the Standing Orders are minimum requirements and that where legal requirements determine longer or more extensively advertised opportunities, such requirements will be met.

3.28.3 Proposal:

In standing Order 35.4(b) substitute the following for the existing paragraphs (i) to (iv)

- “i) Executive Directors have full powers to draw up and amend lists of Tenderers having regard to national and European requirements for publicity and procedure.
- ii) The list will indicate whether a person has been included in it for all contracts, or for certain contracts of specified values or amounts or categories and will confirm that his/her technical capability and financial standing have been satisfactorily investigated.
- iii) The list will be reviewed periodically by the Executive Director of the Department concerned and any review or renewal will likewise take account of national and European requirements for publicity and procedure.
- iv) Executive Directors will have full powers to permit any body, as may be approved by Council, to draw up a list of tenderers on terms similar to the foregoing provided always that such arrangement is compliant with National and European Law and provided that the appropriate Executive Director is satisfied that the arrangement represents Best Value.

Purpose:

To ensure that the use of standing lists of tenderers is compliant with national and European legislation.

3.28.4 Proposal:

In Standing Order 38, delete the existing paragraph (c) and substitute the following:

“(c) Between the closing date and time for the receipt of tenders and the date on which a decision is taken regarding acceptance thereof, the appropriate Executive Director may instruct members of his staff or consultants to contact any tenderer to clarify or verify the terms of the tender but not otherwise for any reason and in particular this provision shall not be used in any way to put other tenderers at a disadvantage or to distort competition. A full written record will be kept of all such contacts and will be retained with the original tender together with written confirmation from the tenderer regarding any changes. “

Purpose:

The change reflects the wording of the EU Procurement rules and clarifies that no discussion which could distort competition would be allowed.

3.28.5 Proposal:

In Standing Order 39, delete the existing paragraphs (e) and (f) and substitute the following:

“(e) Where the contract consists of repairs to or the supply of parts for existing proprietary plant or machinery and provided such repair or supply represents Best Value and is legally compliant.

(f) Where tenders have been invited through any framework, consortium or partnership agreements of which the Council is a member or entitled to participate, in accordance with any method adopted by that body, provided always that such arrangement is compliant with National and European Law and provided that the appropriate Executive Director is satisfied that the arrangement represents Best Value.

Purpose:

To ensure that exceptions to Standing Orders under these provisions represent Best Value, that the full range of bodies through which we may seek contracts are represented and that National and European Legislation is complied with.

3.28.6 Proposal:

In Standing Order 4), delete 40. (c)(iii), (e), (g) and (h) and substitute the following:

“(c)(iii)The appropriate officers of such consortia, or collaborative partner as may be approved by Council, for issuing and receiving tenders on the

Council's behalf; or”

- “(e) Tenders invited through eProcurement Scotl@nd (ePS) Electronic Tendering Service will follow the rules and procedures provided for participation in the system, such rules to substitute for Standing Orders 40(a) to (d) hereof. Following receipt of tenders by such method, a Tender Record Sheet will be prepared containing the same information as would accord with Standing Order 40(d) above. No electronic auctions are to be permitted.”

- “(g) All successful tenders will be notified in writing by the relevant Executive Director following approval by Council, or the appropriate Committee or in exercise of prior existing, or specifically granted, delegated authority. “

- “(h) Subject to statutory requirements, any tender submitted after the specified time or not complying with these Standing Orders will not be considered and will be returned promptly to the tenderer by the Head of Legal, Administrative and Regulatory Services, save where it would, in the opinion of the of the Head of Legal, Administrative and Regulatory Services, be unreasonable not to accept such tender.”

Purpose:

These changes reflect the provisions of the scheme of delegation, new tendering methods, the requirement for approval of Committee or the existence of delegated authority and case law on the acceptance of late tenders.

4. Personnel Issues

- 4.1 There are no personnel issues.

5. Financial Implications

- 5.1 The main financial impact is in Contract Standing Orders, where failure to reflect developing procurement methods and procurement law could result in a failure to achieve Best Value in contracts.

6. Risk Analysis

- 6.1 Good governance helps to deliver better decisions. The Standing Orders are a key component of the Council's Governance arrangements. Failure to regularly review them will produce uncertainty over procedures and decisions more open to challenge (e.g. contracts). It may also result in the Council failing to show good practice when self-assessing its governance arrangements.

7. Conclusions and Officers Recommendations

7.1 The recommendation is that:

- a) Members consider the issues and try to reach consensus agreement on:
 - i) Those Standing Order changes where change is needed, and the form of that change is broadly agreed
 - ii) Those Standing Orders where Members are broadly agreed that no changes should be made and
 - iii) Those Standing Orders where there are different views
- b) Thereafter a report will come back to the March meeting of Council, which would separate the proposed changes into those where there was broad consensus and those where there was not.



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Appendices:

Background Papers:

Wards Affected: