

REPORT TO: POLICY AND RESOURCES COMMITTEE - 25 SEPTEMBER 2000

REPORT ON: LEADERSHIP ISSUES AND PARTNERSHIP WORKING ARRANGEMENTS ARISING FROM THE McINTOSH RECOMMENDATIONS

REPORT BY: DIRECTOR OF CORPORATE PLANNING

REPORT NO: 612-2000

1 PURPOSE OF REPORT

To update the Council on the redrafted Partnership Agreement and draft paper on member/officer protocol and submit a response from Dundee City Council regarding the proposals therein.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Committee agrees the contents of this report and welcomes the Partnership Agreement and Member/Officer protocol.

3 FINANCIAL IMPLICATIONS

There are no financial implications arising from the contents of this report.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 There are no direct Local Agenda 21 implications arising from this report.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 The protocol for relations between members/officers complies with Equal Opportunities legislation.

6 BACKGROUND

- 6.1 The last meeting of the COSLA Officer/Member Task Group looking at Leadership Issues and Partnership Working arrangements arising from the McIntosh recommendations was held on 14 August. The Partnership Agreement between the Scottish Executive and Local Government and a draft paper on member/officer protocol were considered at that meeting. A fourth working draft of the Partnership Agreement (attached as Appendix 1) has now been circulated to all Member Councils along with a copy of a draft member/officer protocol (attached as Appendix 2). COSLA has asked for both of these papers to be considered by Member Councils with a view to having responses available for consideration at the Leaders' Meeting at the end of September.

7 PARTNERSHIP AGREEMENT

- 7.1 The McIntosh Commission in its report stated that a formal working agreement should be established between Local Government and the Scottish Executive and the Partnership Agreement is the fourth working draft of that framework document. The Partnership Agreement is based on a parity of esteem between the Scottish Executive and Local Government and built on the principles contained within the European Charter of Local Self Government.

- 7.2 The Partnership commits the parties to agreeing to work to a code of operational practice which is set out from paragraph 12 onwards. This covers areas of engagement and active involvement of Local Government and the procedures adopted by the Scottish Parliament for a high level of consultation and discussion at all stages of preparation and consideration of legislation. It is intended that consultation with Local Government will involve both COSLA and individual Councils on the understanding that COSLA will undertake to provide a co-ordinated response which takes account of the views of individual Councils.
- 7.3 In the area of public announcements and the exchange of information the Executive will always convey announcements directly concerning Local Government to COSLA as a representative body of Councils, and to all 32 Councils in advance if possible, but certainly no later than to the media. As a general rule, individual Councils will not be criticised in the media without receiving adequate advance warning and an opportunity to comment on the facts of the situation. However, it is understood on both sides that some public criticism or the policies of performance of particular local authorities, or of the Executive by local authorities, is only to be expected in the course of normal political debate.
- 7.4 The Partnership Agreement goes on to discuss meetings between the Executive and COSLA/Councils which basically confirms the present arrangements with a section on supporting Joint Working through actively supporting arrangements for secondments, job exchange as well as joint training and development activities between local government officers and civil servants.

8 PROTOCOL FOR RELATIONS BETWEEN MEMBERS AND OFFICERS

- 8.1 The protocol does not cover all the variety of circumstances which can arise within local Councils but the approach which it adopts serves as a guide dealing with issues as they come up. It establishes that the principles to follow are those outlined in the National Code of Local Government conduct which is outlined in paragraph 2 which emphasises that members and officers should seek to work in an atmosphere of mutual trust and respect, with neither party seeing to take unfair advantage of their position. It outlines members' roles, conveners' roles and the operation of political groups within Councils as well as the rights under local representation, access to information and correspondence and appointments. There is also a section on social relationships and public comment.
- 8.2 They are largely self-explanatory and contained within Appendix 2.

9 CONCLUSION

- 9.1 The McIntosh Report made a strong recommendation for the establishment of a concordat in regard to a Partnership Agreement between the Scottish Executive and Local Government. It also promoted the existence of a clear protocol for relations between members and officers working in local government and both these developments are to be welcomed.

Director of Corporate Planning

Date

WORKING DRAFT 4 21 AUGUST

**THE EXECUTIVE AND LOCAL GOVERNMENT
WORKING IN PARTNERSHIP**

“PARTNERSHIP AGREEMENT”

**FRAMEWORK WORK DOCUMENT DEFINING
WORKING**

**RELATIONSHIPS AND CONSULTATION
ARRANGEMENTS**

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INTRODUCTTON

1. This Partnership Agreement, which is adopted by the Executive and Local Government¹ (“the parties”), implements a recommendation from the Commission on Local Government and the Scottish Parliament (the McIntosh Commission) which stated that .

A formal working agreement should be established between local government and the Scottish Ministers

BACKGROUND

2. The recommendation above was made in the context of a consideration of the relationship which should subsist between local government and the Parliament recognising that Councils, like Parliament, are democratically elected and consequently have their own legitimacy as part of the whole system of governance.
3. It is therefore essential and entirely in keeping with the power sharing and participation principle~ of devolution that the Executive should develop a partnership agreement directly with local government.
4. In recognition of the common democratic mandate, detailed recommendations were made for the drawing up of a Covenant between the Parliament and local government, and the formation of a standing Joint Conference.
5. The Executive recognises that those are matters proper for local government and the Parliament to consider jointly and to determine as they jointly think best. It is a function of the Parliament, as legislature, to supervise and call to account as necessary the actions of the Executive; and in accordance with that, the Executive recognises that the Parliament may use machinery jointly set up with local government as a means to oversee the working relationship between local government and the Executive, including the operation of any Agreement such as this one.
6. It is also inherent in the McIntosh report that Parliament, Executive and local government have a shared responsibility to serve the people of Scotland; and it is the clear intention of the report’s recommendations that so far as possible these several institutions should work in partnership towards this common objective. The purpose of this Agreement is to set out the basis upon which local government and the Executive will seek to work together towards the objective.

1 In this document, “the Executive” means the Scottish Executive, ie Scottish Ministers and the civil service which supports them; and ‘local government’ means the 32 councils constituted under the Local Government Acts and COSLA as their representative organ.

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FOUNDATION OF PARTNERSHIP AGREEMENT

RESPECT

7. Based on parity of esteem and the principles underlying the European Charter of Local Self-Government, the parties recognise and respect each other's roles and functions, which are distinct and complementary .
 - The Executive is responsible for developing public policy at a national level, for bringing appropriate legislation before the Parliament as necessary, and for the discharge of the functions assigned to Ministers by legislation.
 - Councils have a democratic mandate to ascertain the needs of their communities and the priorities of their electorates; to plan, co-ordinate and ensure the delivery of local services accordingly, within the legal framework laid down by the Parliament.
8. The parties agree that effective and meaningful working relationships are necessary to achieve success in partnership working. Sharing information, experiences and views will be integral to the whole process.
9. The parties share a commitment to partnership working on strategic issues and in areas of joint concern. To this end they will work together to resolve differences of view, so far as possible, recognising that some differences will inevitably arise from time to time.
10. Noting that Her Majesty's Government has signed and ratified the European Charter of Local Self-Government, the parties agree to work within the framework established by the Charter. The text of the Charter is annexed to this Agreement.
11. The parties agree to work to the Code of Operational Practice set out below.

OPERATIONAL ASPECTS

12. This Code has at its core objective the establishment of clearly defined processes and procedures for engaging local government in all relevant aspects of the Executive's work.

ENGAGEMENT

13. There will be active involvement of local government at the formative stage on both the principle and practice of any proposals which impact upon local government.

CONSULTATION

14. The procedures adopted by the Scottish Parliament provide for a high level of consultation and discussion at all stages of the preparation and consideration of legislation, involving interested bodies and individuals, the Executive and committees of the Parliament. Within that framework .
- The Executive undertakes to facilitate consultation with local government on all proposals which affect or might affect the structure, role, functions and financing of local government. The financial effects of policy and legislative proposals on local government will be given specific attention; as will the impact of cross-cutting developments which span a number of service or policy areas.
 - Local government undertakes to provide a considered, co-ordinated and timely response to issues on which it is consulted.
 - Both parties undertake to respect confidentiality where that is required or requested; and otherwise to conduct their dialogue openly.
 - Consultation with local government will involve both COSLA and individual councils, on the understanding that CQSLA will undertake to provide a co-ordinated response which takes account of the views of the individual councils. On certain specialised topics some councils will have an interest and others will not: in these cases COSLA will facilitate more targeted consultation.
 - Where a policy proposal by the Executive is founded upon consultants' or research reports or other external evidence, the Executive will make available to COSLA, such reports, or at least summaries of such reports and evidence (but not advice based on them).
 - All legislative or policy development proposals issued for consultation and which impact on local government will include a description of any power contained in them which operates to constrain local discretion. Where the Executive proposes legislation or regulation which imposes new burdens on local government, the Executive will discuss with COSLA the estimated additional costs involved, to be incurred by local government, the basis of those costs and how they are to be funded.
 - A mechanism will be established to feedback findings from consultations.
 - The Executive will consult COSLA on the appointment of representatives of local government to other bodies, within the general framework established by the Commissioner for Public Appointments.

PUBLIC ANNOUNCEMENTS AND THE EXCHANGE OF INFORMATION

15. The Executive will always convey announcements directly concerning local government to COSLA, as the representative body of councils, and to all 32 councils in advance if possible, but certainly no later than to the media. Where such announcements relate specifically to one or a range of councils they will receive the announcements on the same basis as set out above. Likewise, announcements by local government concerning the Executive will always be conveyed to the Executive no later than to the media.
16. As a general rule, individual councils will not be criticised in the media without receiving adequate advance warning and an opportunity to comment on the facts of the situation. However, it is understood on both sides that some public criticism of the policies or performance of particular local authorities, or of the Executive by local authorities, is only to be expected in the course of normal political debate.
17. Where announcements are provided to the media on an embargoed basis they will be provided to COSLA and councils on the same terms. COSLA and councils will in turn provide announcements concerning the Executive on the same basis.

MEETINGS BETWEEN THE EXECUTIVE AND COSLA/COUNCILS

18. Throughout the year Scottish Ministers will meet COSLA on a regular basis for the purpose of exchanging views and information about matters affecting local government. At these meetings, policy issues affecting local government may be placed on the agenda by either side.
19. Ministers will meet with all council leaders at least once a year, and at other times by agreement with COSLA. Again agenda items may be placed on the agenda by either side.
20. Scottish Ministers responsible for major services such as education, social work and housing should meet COSLA on their subjects on a regular basis. In addition either may request an ad-hoc meeting on a specific subject at any time.
21. Ministers seeking to meet local government representatives collectively about services or specific issues will agree arrangements for such meetings with COSLA.
22. These meeting arrangements are in addition to the meetings which require to take place between Scottish Ministers and COSLA to fulfil statutory requirements such as consultation on finance.

23. Meetings between Scottish Ministers and COSLA will not be constrained by rigid and formal timetabling arrangements. Meetings will be conducted on a mutually agreed basis with a view to achieving, wherever possible, consensus on matters being discussed.
24. In addition to meetings a range of other options will be used to consult with COSLA and all councils, the establishment of the Leadership Forum being one such example of the type of additional arrangement that has been introduced.

SUPPORTING JOINT WORKING

25. The parties will actively support arrangements for secondments, job exchanges and joint training and development activities between local government officers and civil servants.

EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Strasbourg, 15.X.1985

Preamble

The member States of the Council of Europe. signatory hereto.

Considering

Have agreed as follows:

Article I

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter

Part 1

Article 2 . Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation and where practicable in the constitution.

Article 3 . Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 . Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 . Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence: to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or ~ ~ remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective ~
office shall be determined by statute or fundamental legal principles

Article 8- Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. An administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 - Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

A Protocol for Relations Between Members and Officers

Principles

1. This protocol sets out the way in which members and officers of councils should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up.
2. The relationship between members and officers is dealt with in the National Code of Local Government Conduct as follows – *“Both councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council’s work under the direction and control of the council, their committees and subcommittees.*

Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers.”
3. Members and officers should seek to work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

Who is affected?

4. The commonest contacts are between members and senior officers at Chief Executive, Director or Head of Service level, and this protocol is very largely about those contacts. There are also many contacts between members and other officers in their daily business, and the principles of this protocol also apply to them. The particular position of officers who provide support services for members is dealt with separately at paragraph

Members' roles

5. Within a council members have a number of different roles, all of which call for separate consideration. Some members are conveners, most members belong to political groups, and all members have a local constituency to represent.
6. Legally, officers are employed by the council and are accountable to it. They serve the council as a whole and not any particular political group, combination of groups or any individual member. Nonetheless, political groups are now recognised by the law and officers may properly be called upon to assist the deliberations of political groups and also to help individual members in their different roles.

Conveners

7. It is clearly important that there should be a close professional working relationship between the convener of a committee and the director and

other senior officers of any service which reports to that committee.

However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other members.

8. The convener will often be consulted on the preparation of agendas and reports. Officers will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members on their areas of professional competence. While officers will wish to listen to the views of conveners, they must retain final responsibility for the content of reports.

9. Conveners are recognised as the legitimate elected spokesperson on their committees' areas of responsibility. Where authority is delegated to officers they will often wish to consult conveners about the action which they propose to take but the responsibility for the final decision remains with the officer who is accountable for it. Conveners should bear this in mind when discussing proposed action with officers.

10. Conveners will have many dealings with officers within a service. Those officers should always seek to assist a convener but it must be remembered that they are ultimately responsible to the head of the service.

Groups

11. Most councils operate through a system of groups of councillors, many of them based on political affiliation. All officers must, in their dealings with political groups and individual members, treat them in a fair and evenhanded manner. Officers must at all times maintain political neutrality.

12. The support provided by officers can take many forms, ranging from the meeting with the convener and depute convener prior to a committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the council, such support should be available to all party groups. The advice given by officers to different party groups should be consistent.

13. Certain matters must, however, be clearly understood by all those participating in this type of process, members and officers alike. In particular:
 - Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of *council* business. The observance of this distinction will be assisted if officers are not expected to be present at meetings or parts of meetings, when matters of *party* business are to be discussed.

- Party group meetings, whilst they form part of the preliminaries to council decision-making, are not empowered to make decisions on behalf of the council. Conclusions reached at such meetings do not therefore rank as council decisions and it is essential that they are not interpreted or acted upon as such; and
 - Similarly, where officers provide information and advice to a party group meeting in relation to a matter of council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.
 - Political groups need to recognise that information and advice given by officers should be used to enhance discussion and debate at council and committee meetings. If such information is used for political advantage, for example media briefings beforehand, then the process could become devalued and place officers in a difficult position to give information and advice.
14. Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the council. Such persons will not be bound by the code of conduct for members and officers (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other

reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.

15. Any request for advice, together with the advice given to a political group or member, shall be treated with strict confidentiality by the officers concerned and shall not be accessible to any other political group. It is acknowledged however, that factual information upon which any advice is based will, if requested, be available to all political groups.
16. Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.

Local Representative

17. All members represent part of the area of the council. Within each council's rules about consultation and member involvement, officers must treat all councillors fairly and openly in their role as local representatives. When performing their local representative role, members will be seen by the public as representing the council and should act in accordance with the principles of the code of conduct for members and this protocol.

Access to information

18. Members have the right to information which they reasonably need in order to assist them in discharging their role as members of the council. Officers should deal equally and openly with all members' requirements for

information. Members should only use information for the purpose for which it was provided. The National Code of Local Government Conduct says –*“As a councillor or a committee or a sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else”*

Correspondence

19. Correspondence between an individual member and an officer should not normally be copied by the officer to any other member. Where it is necessary to copy the correspondence to another member, this should be made clear to the original member at the time.

Appointments

20. Where members are involved in the appointments of officers they must act fairly and openly and judge candidates solely on merit.

Social Relationships

21. The relationship between members and officers depends upon trust and this will be enhanced by the development of positive, friendly relationships. Members and officers will often be thrown together in social Situations within the community and they have a responsibility to project a positive image of the council. Nonetheless, close personal familiarity between individual officers and

members can damage the relationship of mutual respect and the belief that officers give objective and professional advice and commitment to the council. Members and officers should, therefore, be cautious in developing close personal friendships while they have an official relationship.

Public Comment

22. Members should not raise matters relating to the conduct or capability of officers in public. Officers must accord to members the respect and courtesy due to them in their various roles.

Staff supporting members

23. Where Councils arrange for officers to support members in carrying out their duties, particular considerations apply. Such staff are normally involved in administrative and practical support of members. While such staff may operate to the requirements of individual councillors in their daily business, it must be remembered that the staff are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.