

To: Joint Committee

On: 29 June 2018

**Report
by
Director Scotland Excel**

Review of Governance Structure of Scotland Excel

1 Introduction

At the last meeting of the Joint Committee on 8 December 2017, the Committee approved further exploration of options for future governance structures. This paper provides an update on the review and makes recommendations for approval of the Joint Committee.

The purpose of the review was to consider possible governance options and identify the most appropriate governance structure for generating sustainable future revenue streams to support new service development and minimise potential increases to member requisitions. As part of the review, a number of scenarios were tested and these are detailed in Appendix 1.

The current Governance model is outlined below:

Scotland Excel is a Joint Committee constituted under sections 56 and 57 of the Local Government (Scotland) Act 1973. The arrangements for the operation of Scotland Excel are set out in member terms and conditions agreed between Renfrewshire Council (as the lead authority) and the other 31 Scottish local authorities (“Terms and Conditions”). These Terms and Conditions regulate the joint discharge of certain functions by all of the Scottish local authorities by delegation to Scotland Excel.

Scotland Excel Member Terms and Conditions are the Terms and Conditions that each member council commits to when they join Scotland Excel. They cover the arrangements that a Council will adhere to with reference to the Joint Committee and other management and financial arrangements, including the commitment to participate in Scotland Excel contracts.

The Joint Committee is Scotland Excel's governing body, which is managed by a set of Standing Orders. These Standing Orders formally prescribe full details of the governance to apply to Scotland Excel.

The Scheme of Delegations is the formal document that outlines the responsibilities and delegated authorities that apply to the management (Director) of Scotland Excel and have been delegated by the Joint Committee.

2 Review of options

The following options were considered as part of the review:

1. maintaining the current model;
2. widening the powers available under the current model;
3. adding a trading company to the current or amended model; or
4. converting the current model into an arm's length external organisation (ALEO) of Scotland Excel's local authority members with a trading subsidiary.

Option 1 – Maintaining the current model

The review of this option established that Scotland Excel is limited to some degree in its ability to provide and charge for consultancy services to associates, other public bodies and private companies. In this regard the position is, and has historically been managed through seeking specific prior approval of the Joint Committee and is not seen as a significant issue.

As demonstrated in Appendix 1 most scenarios can be delivered within existing powers, without a change to Terms and Conditions. There is however a need to make some minor amendments to Scotland Excel's Scheme of Delegations as explained further in section 3, below.

Option 2 - Widening the powers available under the current model

This option involves local authorities amending the agreed Terms and Conditions to extend the delegated functions / powers of Scotland Excel, thus providing it with: wider, permanent powers to provide all types of consultancy services to both public and private bodies.

Given Option 1 is generally flexible enough to meet current and future needs this option is not deemed necessary.

Option 3 – Adding a trading company

This option involves splitting the operations of Scotland Excel between the existing Joint Committee (responsible for Scotland Excel's current core procurement activity) and a trading company with separate legal personality and full power to provide all other consultancy services.

Whilst it was confirmed that this option would address the limitations of the current model it was concluded that such material change to the constitutional structure would not provide any significant additional benefit to what is available within Option 1.

Option 4 – Creating an ALEO

This option involves the 32 Scottish local authorities converting the Joint Committee into an ALEO with a separate legal personality. The ALEO would (re)charge public bodies for access to its core framework-related activity and its consultancy services. The ALEO would likely be set up as a corporate body such as a private company or a limited liability partnership.

Review of this option determined that it was not worth pursuing given the complexities involved in the conversion process, the resources required to undertake the necessary changes and the limited additional benefits.

3 Recommended Option

During the consultation phase of the review, views were sought from the Chief Executive Officers Management Group (CEOMG) on 6th November 2017 and the Executive Sub- Committee on 17th November 2017. Both forums were of the view that, whilst none of the options should be ruled out without due consideration, the powers within the existing model should only be amended to address limitations that were adversely impacting on the efficient operation of Scotland Excel. Both forums also indicated that any changes should not dilute the focus on Scotland Excel's core activities and as such the governance model should not be unnecessarily amended for minor non-core areas. It was also the case that both groups believed that options that could be implemented with minimal change (Option 1 and Option 2) would in principle be more acceptable and would be more readily implemented.

Taking into account the factors outlined in the review of the options (in section 2 above), that the current model meets the substantial majority (4 from 5) of the scenarios tested and considering the respective feedback from the CEOMG and the Executive Sub Committee, the recommended option is Option 1 - to maintain the current governance model. In reaching this conclusion it was also determined

that the current Scheme of Delegations should be updated to correct some minor anomalies and better clarify and reflect current practice. The proposed amendments to the Scheme of Delegations are outlined in Appendix 2 and the revised Scheme of Delegations showing the changes is given at Appendix 3.

4 Conclusion/Recommendation

Committee members are requested to note the content of this report and approve the recommendation to maintain the current Joint Committee structure with an updated Scheme of Delegations as given at Appendix 3.

To ensure governance is fit for purpose on an on-going basis, we will continue to review governance as necessary.

Appendix 1 – Governance Scenarios

Scenario/Consideration	Determination
<p>1. Scotland Excel wants to bid for various grant opportunities (for example European/ UK funding, Big lottery funding) but has no legal status or bank account.</p>	<p>Achievable within existing powers</p> <p>Approval mechanism: Management Group (Scheme of Delegations para 5.3 h) and i).</p>
<p>2. The Ministry of Defence (MOD) has issued a tender for procurement consultancy services and Scotland Excel wishes to bid.</p>	<p>Review of this option has established that, both historically and for the forthcoming Business Plan, there has been extremely limited or no potential opportunities of this type. Additionally given Scotland Excel’s Strategic plan it is not anticipated that Scotland Excel would look to consider this type of area in the medium term.</p>
<p>3. Organisations like Access (a GCC shared service partially owned by the private sector) and West HubCo (a public/private partnership) wish to join Scotland Excel as Associate Members</p>	<p>Achievable within existing powers</p> <p>Scotland Excel associate membership applications are permitted by a wide range of organisations by way of the Local Authorities (Goods and Services) Act 1970. Access is permitted on a case by case review of the relevant constitutional documents of the applicant.</p>
<p>4. A council wants to commission Scotland Excel to provide procurement consultancy services; does this require approval? And is this related to the value of the contract?</p>	<p>Achievable within existing powers</p> <p>This is currently provided for – see Minute of Agreement (“Terms and Conditions”) para 6.10 (b).</p> <p>Approval mechanism – Unrelated to value. Terms and Conditions 6.10 (c) provides for report either to the Exec Sub or the Joint Committee IF it is considered that the work would impact on SXL ‘s resources.</p>
<p>5. A group of councils wish to commission Scotland Excel to provide a new framework that includes a rebate. Can any subsequent profit from the project be distributed to funding councils only?</p>	<p>Achievable within existing powers</p> <p>This is currently provided for – see Minute of Agreement (“Terms and Conditions”) para 6.10 (b).</p>

Appendix 2 – Proposed Amendments to Scheme of Delegations

CLAUSE	Outline of proposed amendment
2.1 (c)	Update the terminology – ‘procurement strategy’ should become the “Scotland Excel Strategic Plan”.
2.1(d)	Following on from the above, change to reference the “Annual Operating Plan”; Correction to remove the word ‘and’.
5.6	Review to clarify responsibility of the Management Group further to decision of June 2017 that it should have an overview of the strategic direction of Scotland Excel. The Joint Committee currently receives monitoring reports.
6.2(c)	After processes insert ‘efficiently and’ to clarify the role of the Director in this area.
6.2(f)	Hospitality limit to increase from current level of £1000 to £1,500. Current levels were set 10 years ago and revised level is necessary to allow effective management whilst maintaining an appropriate level of control.
6.2(q)	Amount for attendance of officers at conferences in the UK to be increased from current £1,500 to £2500 as current pricing for some conferences is in excess of £1500.
6.2(x)	Increase period of 13 weeks to 1 year for appointment of temporary staff subject to advice from lead authority HR.
6.2(aa)	Increase period for external secondments from existing 6 months to 1 year subject to advice from lead authority HR.
7(h)	Inclusion to allow for updating the Scheme of Delegations to reflect routine changes such as changes in job titles, etc. This provision permits those sorts of changes to be made.

Appendix 3 - Revised Scheme of Delegations

SCOTLAND EXCEL - SCHEME OF DELEGATIONS

1. General Principles

- 1.1 The exercise of delegations as described in this Scheme is subject always to the following:-
- a) the policies of Scotland Excel as embodied in any formal document which has been approved and issued and in particular, Standing Orders and any other Guidance issued in connection with the exercise of a particular function
 - b) appropriate provisions for financial outlays having been made in the estimates for the current financial year
 - c) the joint committee may choose to exercise any of the functions delegated in this Scheme where the joint committee believes it to be in the interests of Scotland Excel to do so
- 1.2 Where a word or expression is used in the Scheme that is a defined term in the Scotland Excel terms and conditions signed by each Member Authority, (“the terms and conditions”) that word or expression will be given to it the same meaning as in those terms and conditions.
- 1.3 Words imparting the masculine gender only shall include the feminine gender and vice versa.

2.0 Matters Reserved to the Joint Committee

- 2.1 The following matters shall be reserved for the decision of the Joint Committee:-
- a) the making of governance arrangements for the Joint Committee, the Executive Sub-committee and any other sub-committee;
 - b) the approval of the annual budget and any review or amendment of the budget;
 - c) approval of the Scotland Excel Strategic Plan;
 - d) the approval of the Annual Operating Plan.

3. Convener and Vice Convener of the Joint Committee

- 3.1 The Convener, whom failing the Vice-Convener, shall be authorised in furtherance of the duties of his office to undertake visits within the United

Kingdom.

- 3.2 The Convener, whom failing the Vice-Convener, shall be authorised to incur expenditure to meet the expenses of his office on the provision of reasonable hospitality, to representatives of Member Authorities or other organisations.

4. Executive Sub-Committee

- 4.1 Meetings of the Executive Sub-committee shall be convened and conducted in accordance with procedural standing orders approved by the joint committee.

- 4.2 The Executive Sub-committee shall consider such matters as are delegated to it by the joint committee.

- 4.3 The matters initially delegated to the Executive Sub-committee are as follows:-

- a) to consider and approve for signature the Audited Accounts of Scotland Excel
- b) to approve or endorse as appropriate executive actions recommended by the Director
- c) to deal with urgent matters relating to staffing or to the structure of Scotland Excel
- d) the selection process for appointments to the posts of Director or Heads of Service
- e) to approve the annual business plan
- f) to approve the award and extension of contracts or groups of contract in terms of the Standing Orders Relating to Contracts.
- g) to consider, and, where appropriate, approve applications by bodies to become Associate Members and shall agree/review/waive, as appropriate, the fees to be applied in respect of organisations applying for Associate Membership of Scotland Excel; and
- h) to consider and determine:-
 - (i) urgent matters relating to contract continuity which cannot be dealt with by the Joint Committee;
 - (ii) approval or homologation of matters where urgency precludes full Joint Committee consideration; and
 - (iii) any other matter referred to the Executive Sub-committee by the Joint Committee.

- 4.4 The Executive Sub-committee may delegate to the Director or such other suitably qualified person, the power to make decisions regarding the award and extension of any contract or group of contracts or contracts of an estimated value below a financial threshold fixed by them.
- 4.5 The Joint Committee may at its discretion add or remove matters from the list of delegations to the Executive Sub-committee.

5. The Management Group

- 5.1 The Management Group shall comprise such number of Chief Executives of Member Authorities as set out in the terms and conditions.
- 5.2 The Chair of the Management Group shall be the person appointed by the Joint Committee or his/her nominee.
- 5.3 The Management Group shall ensure delivery of Scotland Excel's overall business plan objectives and shall provide strategic direction for Scotland Excel, particularly on the following matters:-
- a) Portfolio priorities including new areas to be developed and areas to be amended or discontinued.
 - b) Social Policy including in the use of community benefits clauses, the living wage, and blacklisting.
 - c) Supporting local economic growth.
 - d) Opportunities for Scotland Excel to provide additional shared services to support member councils, in line with the drive for efficiency across the public sector.
 - e) National priorities, for example those arising from existing or new legislation and procurement reform.
 - f) Opportunities for increasing innovation in supply chains to improve efficiency and service delivery.
 - g) Opportunities for Scotland Excel to support councils in delivering their City Deal objectives.
 - h) Opportunities for additional funding sources, for example through the extension of the Associate Membership base.
 - i) Review of funding and governance models to ensure that these remain fit for purpose and competitive.
- 5.4 The Management Group shall monitor the use made by Member Authorities and Associate Members of contracts awarded on behalf of Scotland Excel.
- 5.5 The Management Group may request employees of Member Authorities or other persons to attend meetings of the Management Group to act as advisors to the Group or to prepare reports for consideration by the Management Group.

5.6 The Management Group shall have responsibility for the overall supervision of the performance of the Director and the Scotland Excel staff.

6 The Director

6.1 The delegations to the Director shall also be delegations to the Heads of Service but only in those circumstances where the Director is not available to exercise any of these delegations.

6.2 The Director is authorised:-

- a) In conjunction with the Joint Committee and the Management Group, to determine the business plan and strategic objectives for Scotland Excel.
- b) Subject to the Financial Regulations and subject to there being appropriate provision in the budget, to deploy resources as the Director thinks fit for the best execution of functions under the Director's management.
- c) To organise working processes efficiently and safely.
- d) To maintain proper security for staff, buildings, stock, stores, furniture, equipment and similar items under the Director's control. Where special arrangements are considered necessary the Director shall consult with the Treasurer.
- e) To ensure that all activities undertaken are within the legal powers of Scotland Excel and in the event of doubt to consult with the Clerk.
- f) Where thought to be in the interests of Scotland Excel to approve the provision of reasonable hospitality up to a maximum of £1,500 in relation to any one occasion. The Director shall maintain a register of hospitality approved under this delegation and shall provide a report to the Executive Sub-committee on request detailing the entries in the register.
- g) To sign all documents on behalf of Scotland Excel relevant to the functions for which the Director is responsible and to authorise other officers to do so, excluding always any specific provisions made for documents in terms of primary or subordinate legislation, statutory direction, the policies of Scotland Excel or in this or other administrative schemes.
- h) To terminate on behalf of Scotland Excel any contract which Scotland Excel is entitled to terminate under the appropriate conditions of contract after consultation with the Clerk, if satisfied that it is in the interests of Scotland Excel and of any Member Authority or other body on whose behalf the contract was entered into.
- i) To act in an emergency situation with the approval of the Clerk and where possible after consulting the Convener, or in his absence the Vice-

Convener of the joint committee and the Chair of the Management Group, and thereafter report on the action taken to the first available meeting of the joint committee.

- j) In consultation with the Clerk, to make decisions regarding complaints made under Scotland Excel's complaints procedure.
- k) To issue publicity, including pamphlets or other forms of publicity relating to the promotion of Scotland Excel's interests and to issue press releases on behalf of Scotland Excel. Before doing so, if the Director considers it to be necessary, the Director may consult with the Chair or Vice Chair of the Management Group.
- l) To deal with any operational matter not otherwise delegated in the period between the last meeting of the joint committee and prior to the setting up of a new joint committee following statutory elections.
- m) To submit responses to consultation documents which concern operational issues.
- n) To authorise the acceptance of gifts on behalf of Scotland Excel and acknowledge the acceptance of these gifts.
- o) To sign and issue (i) authorisation to Scotland Excel staff to exercise statutory powers; and (ii) identity cards.
- p) To take all necessary action of a routine nature in terms of the Director's appointment, to implement any policies, practices and procedures previously agreed by the Joint Committee, the Executive Sub-committee any other sub-committee and the Management Group and also to take such action implicitly in all matters ancillary thereto, including the incurring of expenditure of a minor or recurring nature and for which adequate provisions have been made in the budget.
- q) To approve the attendance of officers at conferences within the United Kingdom, where considered to be in the interests of Scotland Excel provided that the cost does not exceed £2,500 exclusive of VAT, subsistence travelling, or other ancillary expenses.
- r) To authorise the attendance of officers on full or part time courses of study or training and the payment of appropriate fees.
- s) To appoint all staff below the level of Head of Service within the authorised establishment except where the joint committee determines otherwise.
- t) To exercise the powers given to Chief Officers in the various conditions of service so far as discipline and efficiency are concerned.

- u) To apply the lead authority's Conditions of Service as affecting members of staff.
- v) To authorise the working of overtime by appropriate grades of officers and the payment of overtime or compensatory leave or honoraria in accordance with the criteria laid down by the lead authority.
- w) To permit any member of staff to absent themselves occasionally and temporarily during business hours to attend to duties or services of a civic honorary, charitable, academic or social nature provided that these do not interfere with the efficient discharge of the functions of Scotland Excel and to grant special leave in accordance with the lead authority's special leave policy. The Director shall maintain a register of occasional and temporary absences and special leave approved under this delegation and shall provide a report to the Executive Sub-committee on an annual basis detailing the entries in the register.
- x) To appoint temporary staff on appropriate grades additional to the formal establishment to address additional workload peaks, such appointments to be for periods not exceeding 12 months or such longer period as may be approved by the Management Group and subject to funding being met from existing budgets. The Director will take advice on these appointments from the lead authority's Human Resources and Organisational Development Team.
- y) In consultation with the lead authority's Head of Human Resources and Organisational Development, to amend the grading of posts and to make minor changes to the formal establishment below Head of Service level, provided that the grading of amended posts are in accordance with the lead authority's Pay and Grading structure and any increase in costs can be met from existing budgets;
- z) To allow reasonable unpaid leave of absence to any employee to attend to public duties as defined in section 50(1) of the Employment Rights Act 1996 on such conditions as the Director considers appropriate where this will not interfere with the efficient discharge of the functions of the Scotland Excel and in accordance with lead authority's special leave policy.
- aa) Subject to the exigencies of the service to approved the secondment of staff between Scotland Excel and other Member Authorities or other organisations such appointments to be for periods not exceeding twelve months. The Director will take advice on these appointments from the lead authority's Human Resources and Organisational Development Team.
- bb) To approve salary placings within the agreed salary scales in consultation with the lead authority's Human Resources and Organisational Development Team.

- cc) To approve the acceleration of increments within the existing salary scales to members of staff, following consultation with the lead authority's Human Resources and Organisational Development Team;
- dd) To determine the public holidays to be taken by Scotland Excel staff.
- ee) To exercise delegations in terms of the Standing Orders Relating to Contracts, including the issue of orders for the supply of goods and services required for normal working and for which there is provision in the estimates and in accordance with the Financial Regulations;
- ff) To authorise the payment of accounts due by Scotland Excel for goods and services properly supplied and for which there is adequate provision in the estimates.
- gg) To make recompense in respect of damage to, or loss of employees personal property in respect of any one incident up to an amount not exceeding £500 and up to £1000 with the agreement of the Treasurer.
- hh) To advise the Treasurer about any extraordinary financial obligation which will affect Scotland Excel.
- ii) To advise the Treasurer about any extraordinary risk which will affect the insurance held on behalf of Scotland Excel.
- kk) Following consultation with the Treasurer to decide in terms of the lead authority's procedures whether to refer any particular case to the Police.

7. The Clerk

The Clerk is empowered:-

- a) To act as adviser to the Joint Committee and the Management Group on procedural and administrative matters and in this capacity to ensure the provision of adequate administrative, legal and personnel support to the joint committee, the Executive Sub-committee and the Management Group.
- b) To act as proper officer to exclude reports containing exempt information from the public, and to provide documents to the press, in accordance with the provisions of section 50(B) of the Local Government (Scotland) Act 1973.
- c) To liaise and deal with any enquiries made by the Scottish Public Services Ombudsman. Should any investigation be carried out by the Scottish Public Services Ombudsman resulting from a complaint received, the necessary arrangements will be undertaken by the Clerk, within timescales specified within the guidance to local authorities in dealing with formal investigation involving the Scottish Public Services Ombudsman.

- d) Following consultation with the Director and the Treasurer, to authorise ex-gratia payments up to a maximum of £1,000 relative to recommendations of the Scottish Public Services Ombudsman.
- e) To exercise delegations in terms of the Standing Orders relating to Contracts.
- f) To exercise delegations in terms of the Financial Regulations.
- g) To maintain a register for inspection by the Surveillance Commissioner of authorisations for covert surveillance approved by the Director under sections 6 and 7 of the Regulation of Investigatory Powers (Scotland) Act 2000 and the appointment officer to act as investigation managers for the purposes of the Act.
- h) To vary this scheme, the Standing Orders relating to Contracts, Procedural Standing Orders and Financial Regulations, but only in the following circumstances:
 - (i) to reflect changes in job titles, reorganisations of services and vacancies in posts; or
 - (ii) to change references to any piece of legislation where the legislation is repealed and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of repealed legislation.

8 The Treasurer

The Treasurer is empowered:

- a) To co-ordinate the financial planning of Scotland Excel in terms of the Financial Regulations.
- b) To issue guidance for the control of all expenditure in terms of the Financial Regulations.
- c) To determine procedures for accounting and financial record keeping by Scotland Excel.
- d) In respect of insurance:
 - i) to make arrangements with insurance companies concerning the settlement of claims
 - (ii) In consultation with the Clerk, the Convener of the Joint Committee and the Director to settle without reference to the Joint Committee claims against Scotland Excel not otherwise covered by Scotland Excel's

insurance arrangements up to a maximum of £50,000 per claim and with the approval of the Chair, whom failing the Vice-Chair, of the Management Group up to maximum of £100,000 per claim.

- e) To make the necessary arrangements concerning the collection of debts owed to Scotland Excel and the terms and commissions payable for services rendered by other authorities and agents with regard to the collect of debt.
- f) To determine in consultation with the Director, the beneficiary of any payments to be made in terms of the lead authority's Group Life Assurance Scheme.
- g) To exercise delegations in terms of the Standing Orders relating to Contracts.
- h) To exercise delegations in terms of the Financial Regulations.