

Scotland Excel

To: Joint Committee

On: 08 December 2017

Report by Director Scotland Excel

Initial options on the future governance structure of Scotland Excel

1 Introduction

Initial options for the future constitutional / governance structure of Scotland Excel have been under consideration for some time, with a view to generating sustainable future revenue streams to support new service development, and allow member requisitions to be protected from inflationary increases. In addition to Scotland Excel's current core functions, such sustainability may be created by enabling: 1. Scotland Excel's full commercialisation of its consultancy services to other bodies (presumably public but perhaps also private)¹; and, 2. Scotland Excel to access other funding streams to fund more short or longer term projects (in the model of the recent Seemis and current Housing Association projects).

Initial research identified four possible options:

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.
4. Converting the current model into an arm's length external organisation ("ALEO") of Scotland Excel's local authority members with a trading subsidiary.

The Executive Sub Committee and Chief Executives' Management Group ("CEOMG") have been consulted on this paper and provided initial comments, which will be fully considered as options appraisal continues. As a result of the initial research and comments, Scotland Excel will concentrate further investigation on the first, second and third models. It must be emphasized that these options are at the early stages of consideration, and as such no conclusions have been made.

¹ Scotland Excel consultancy services might include the charging for: the provision of advice etc by Scotland Excel staff to other public bodies¹; and, the placing in a public body of a consultant from an "approved Scotland Excel external consultants" list.

2 Anticipated limitations in the current model (Option 1)

Scotland Excel is a joint committee constituted under sections 56 and 57 of the Local Government (Scotland) Act 1973 by Minutes of Agreement between Renfrewshire Council and the other 31 Scottish local authorities (“**Minutes**”). These Minutes regulate the joint discharge of certain functions by all the Scottish local authorities by delegation to Scotland Excel.

On a strict interpretation of the Minutes, the main limitations in the current delegation of functions are:

1. Scotland Excel can neither provide to its associate members, other public bodies or private companies, nor charge for, the full gamut of its consultancy services without first seeking the prior approval of the joint committee. The Scotland Excel consultancy services to these bodies which are subject to prior approval include non-Scotland Excel framework related procurement consultancy, leadership and management consultancy and project management consultancy (“**consultancy services requiring prior approval**”). Requiring such prior approval arguably renders Scotland Excel undynamic to market demands. This is especially so given that at least half of Scotland Excel’s consultancy services requiring prior approval has been to associate members and other bodies, and that a large part of future opportunities is likely to come from such bodies;
2. Not having a separate legal identity from the 32 local authorities / Renfrewshire Council, it is unclear if Scotland Excel is able to apply independently for grant funding from other public-sector bodies; and,
3. Due to its lack of a legal personality and the lack of delegated powers in the Minutes, Scotland Excel does not appear to have the power to set up another entity to carry out its consultancy services (with the joint committee structure concentrating on the core procurement function).

Feedback from the Executive Sub Committee and CEOMG encouraged Scotland Excel to fully scope its present powers to ensure that its proposals for development definitely cannot be carried out within the powers granted by the current minutes. This will be undertaken as part of the future investigatory work.

3 Options 2 to 4

Options 2 to 4 seek to address these limitations and provide Scotland Excel with more freedom of action (within limits set by the 32 local authorities) to respond flexibly, dynamically and quickly to the consultancy services market and access grant funding.

Option 2 involves extending the delegated functions / powers of Scotland Excel, thus providing it with: wider, permanent powers to provide all types of consultancy services to public and private bodies; the ability to access grant

funding from other public and private sources; and, a separate legal personality, with full freedom of action within the delegated powers (which might include the power to set up a trading company). This might be achieved by the local authorities amending the Minutes to provide (all or some of) these powers to the Joint Committee, or a “blanket approval” (limited or unlimited in time) of the Joint Committee permitting Scotland Excel to carry out some of these activities.

Option 3 involves splitting the operations of Scotland Excel between:

- the joint committee, which would be responsible for Scotland Excel’s current core procurement activity (as well as ancillary consultancy services relating thereto). Depending upon the specifics of the model, the joint committee could be granted a separate legal personality from its founding local authorities; and
- a trading company with separate legal personality and full power to provide all other consultancy services to the 32 Scottish local authorities, Scotland Excel associate members, other public bodies and private bodies. This trading company is likely to be a form of subsidiary entity and may be a “shell” limited liability partnership to which Scotland Excel assets and staff are seconded when required.

Option 4 involves the 32 Scottish local authorities converting the joint committee into a full-function joint venture ALEO with a separate legal personality. The ALEO would (re)charge public bodies (or certain categories thereof) for access to its core framework-related activity and (some or all of) its consultancy services. The ALEO would likely be set up as a limited liability partnership. The ALEO would set up a trading subsidiary to provide services to the remainder of the public sector and private bodies. This subsidiary would likely be a “shell” company to which ALEO assets and staff would be seconded as necessary.

4 Next steps

Subject to approval of the Recommendation below, it is anticipated that in June 2018, the Joint Committee will be asked to consider a further paper on this matter with a view to approving the implementation of any change to Scotland Excel’s governance structure that may be recommended in that further paper.

5 Recommendation

The Joint Committee is asked to consider this paper and approve further investigation of possible future governance structures.