

Body: **Scrutiny Committee**

Date: **8 February 2010**

Subject: **Petitions – Response to government consultation and implementation of new duty**

Report of: **Local Democracy Manager**

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Summary:

This report informs members of a new duty to respond to petitions from people who either live, work or study in the council's area. Councils must respond to 3 types of petition:

- An ordinary petition.
- A petition requiring full council debate.
- A petition calling for a senior officer to appear at a public session of an overview and scrutiny committee.

The council must set minimum signature thresholds for each type of petition. In addition councils must make provision for both paper and electronic petitions.

The Government are consulting on draft statutory guidance and timing of implementation of the new duty. The report suggests a response to the consultation and also makes recommendations to Council in respect of implementing the new duty.

In addition, the report outlines proposals for the East Sussex councils to collaborate on a shared e-petitions facility whereby people can submit and sign petitions electronically.

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Recommendations:

(1) Agree the response to government as set out in the appendix to this report.

(2) Note the likely timetable for implementation of the new duty.

(3) Endorse the joint approach being developed across East Sussex for a shared e-petitions facility and noting that this may require a common petitions scheme with the same signature thresholds.

(4) Note that the Local Democracy Manager and the Head of IT and T-Government in liaison with the Chairman and Deputy Chairman of the Scrutiny Committee and the lead Cabinet member will decide all matters in relation to the introduction of an e-petitions facility.

(5) Seek full Council approval to the Local Democracy Manager in liaison with the Chairman and Deputy Chairman of the Scrutiny Committee and the lead Cabinet member being given delegated authority to:-

(a) Agree revised wording of the Council's petitions scheme (section M in part 3 of the Council's Constitution) so as to comply with the requirements of the legislation and statutory guidance, including:-

- determining the signature thresholds for debates;
- specifying the senior officers who may be held to account at an open meeting of the Scrutiny Committee and the signature thresholds for such petitions; and
- determining the minimum number of signatures for an 'ordinary' petition.

(b) Review the petitions scheme and thresholds 12 months after implementation of the e-petitions facility and report to the Scrutiny Committee.

1.0 The legislation

1.1 The Local Democracy, Economic Development and Construction Act 2009 includes requirements for every principal local authority in respect of petitions. These provisions have yet to be brought into force, and the Government is now consulting on the implementation of these provisions.

1.2 The main statutory requirements are as follows:-

1. To have an on-line petition facility which allows anyone to set up a

petition on the authority's system, and allows anyone to "sign" the petition on-line.

2. To adopt a petition scheme which sets out how the authority will acknowledge receipt of petitions and advise the petition organiser how the petition will be dealt with. The Act requires that the petition scheme define three categories of petition, and set a minimum number of signatures for each type of petition.
3. To come within the scheme, the petition must relate to a function of the authority or, for all authorities other than non-unitary District Councils, to "an improvement in the economic, social or environmental well-being of the authority's area to which any of the authority's partner authorities could contribute".
4. The authority can delegate to an appropriate officer the power to reject petitions which he/she considers to be vexatious, abusive or otherwise inappropriate.
5. The new petition scheme does not apply to petitions received under other statutory procedures, such as petitions for a mayoral constitution or a community governance petition, and the Secretary of State proposes to make provision that petitions in response to some statutory consultations, such as on planning or licensing applications, should also remain outside the new system.
6. For "ordinary petitions", the authority is given wide flexibility to set the threshold number of signatures as high or low as it wishes, and to determine how such petitions will be dealt with. The Act provides that a petition may be signed by anyone who lives, works or studies in the authority's area.
7. "Petitions requiring Debate" must be reported to full Council for debate, and the Council can set a higher number of signatures as the threshold for such "petitions requiring debate".
8. "Petitions to hold an officer to account" must name a senior officer and will trigger an open meeting of the appropriate Overview and Scrutiny Committee at which the officer may be questioned by the Committee in relation to his actions on a particular matter. The authority can set a different threshold number of signatures for "petitions to hold an officer to account".
9. Where the petition organiser is not satisfied by the actions taken by the authority in response to a petition, the petition scheme must give a right of appeal to a relevant Overview and Scrutiny Committee.

2.0 Background

2.1 Scrutiny Committee previously received a report at their meeting on 6 April 2009. Apart from the new petitions duty, this report covered a range of topics including Councillor Call for Action, a range of Scrutiny initiatives and other recently implemented or proposed new powers and duties. One of the outcomes of this report was a recommendation to full Council to adopt a petitions scheme as an interim measure, recognising that once the new legislation had been enacted that revisions would be necessary. The Council's current scheme also omitted provision for e-petitions and did not provide for debates at Council or for senior officers to be held to account. These issues were deliberately left in abeyance pending legislation and the final wording of any statutory guidance.

3.0 The consultation

3.1 The Government proposes to make statutory orders, bringing the provisions described in section 1 above into force and detailing some aspects of the legislation, and to provide guidance on how authorities should discharge their new responsibilities in respect of petitions. The full draft guidance and the consultation paper is listed as a background paper to this report. Comments must be submitted to the Department for Communities and Local Government by 24 February 2010.

3.2 The consultation paper incorporates a draft model petition scheme which authorities may adapt for their own use (this is reproduced at **appendix 2**), and sets out 12 questions on which the Government seeks responses. The questions and a draft response to each is set out as **appendix 1** to this report. *(Note: If viewing this report on the Council's website, the appendix comprises the full consultation paper and the model scheme is at page 30.)*

4.0 General comment

4.1 The Act sets out a general framework for local authorities to deal with petitions. Despite criticism during the passage of the Act, these provisions have not changed significantly and their implementation in their present form is likely to give rise to some difficulties for local authorities, as discussed in the following paragraphs.

4.2 Debate in Council

4.2.1 The consultation paper states that "a systematic review of evidence on empowerment found that when petitions are linked with decision making there are increased levels of empowerment". However, many petitions will relate to matters which are the responsibility of the Cabinet, rather than Council. The Act still requires that each such petition is debated at Council, but Council will have no power to take an effective decision on the matter.

Council can refer the matter to the Cabinet for decision, and it can refer the matter to Scrutiny Committee for review, but it cannot take an operative decision on the matter. Accordingly, for many petitions, there will be no direct link between the petition and the decision-maker.

- 4.2.2 The model petition scheme states that the petition organiser will be given 5 minutes to present the petition, and Councillors will debate the matter for 15 minutes. In practice, Councillors cannot be forced to debate a petition, especially where the petition relates to a matter over which they have no decision-making powers. Accordingly, Council should have the power in appropriate cases simply to refer the petition to the body or person who has the power to respond constructively to the petition, even if this means that no debate occurs at Council.

4.3 **Petitions to hold officers to account**

- 4.3.1 The Act requires that the petition name the officer to be held to account and give grounds for the request which relate to the functions for which the officer is responsible. In practice, it is likely that in many cases the officer's actions will be in the implementation of a member decision, whether a decision of Council, a Committee, a Sub-Committee, Cabinet or an individual Cabinet member. In such cases, if the discussion at the Scrutiny Committee is to be meaningful, it will be necessary for someone (perhaps an appropriate officer after consultation with the Chairman of the Scrutiny Committee) to have delegated powers to require appropriate members to attend and to answer questions on the matter alongside the named officer.

- 4.3.2 Where any member of the Scrutiny Committee is of the opinion that the conduct of the named officer may amount to a disciplinary matter (either as misconduct or for lack of capability), the appropriate course would be to refer the matter immediately to the Chief Executive for disciplinary investigation, and it would then be inappropriate for the Scrutiny Committee to continue its consideration of the officer's conduct until any disciplinary process were completed.

- 4.3.3 The Act provides that the Chief Executive and Chief Officers must be open to "petitions to hold officers to account", but that each authority may extend this list of "relevant officers". The draft guidance correctly states that in practice this should be extended to heads of service.

4.4 **Appeal to Scrutiny Committee**

- 4.4.1 In receiving an appeal by a petition organiser that the action taken by the authority on a petition has been inadequate, the Scrutiny Committee has no power to take an operative decision. It can make a recommendation to Council, a Committee, the Cabinet or an individual Cabinet member (as appropriate) but it cannot over-ride the original decision.

4.5 **Signatures**

- 4.5.1 The Act provides that petitions may be signed by persons who live, work or study in the authority's area. Had signatures for this purpose been limited to registered electors, it would have been very easy for authorities to verify signatures. As the Act is drafted, and given that a number of people may share a common E-mail address, verification is now all but impossible.

4.6 **Satisfaction with Council Services**

- 4.6.1 The transition from Comprehensive Performance Assessment (CPA) to Comprehensive Area Assessment (CAA) includes measurement of public satisfaction with Council services. The number of standards complaints has already been taken as a proxy measure for the council's ethical performance, even though this figure can be determined by matters outside the Council's control, such as local political tensions. Given the scope for different signature thresholds between authorities, and the use of petitions as a means of campaigning on particular issues, it is important that the number of petitions and appeals should not be taken as a proxy measure for public satisfaction with Council services.

5.0 Implementation

- 5.1 Originally it was believed that the Government would seek to implement the legislation as early as 1 April 2010. They have now suggested in the consultation paper that a delay, at least in respect of e-petitions would be favourably considered and appear open to the idea that e-petitions facility should come into being no later than 12 months after the main provisions are commenced. Although some local authorities will be making representations that all aspects of the petitioning legislation are delayed until May 2011, this I believe is unlikely to be agreed by Government and it may be appropriate to provide some flexibility and delegate authority for the necessary changes in case the Government seeks to rush through implementation in advance of the forthcoming general election.
- 5.2 A likely scenario is that the final guidance and regulations will be published by late March/early April with petitions scheme mandated from the date the Council's annual meeting (in our case in May 2010) and a further 12 months allowed to bring in the e-petitions facility.
- 5.3 The recommendations therefore ask that the Local Democracy Manager in liaison with the Chairman and Deputy Chairman of the Scrutiny Committee and the lead Cabinet member is given delegated authority to agree revised wording of the Council's petitions scheme, including:-
- determining the signature thresholds for debates;
 - specifying the senior officers who may be held to account at an open meeting of the Scrutiny Committee; and
 - determining the minimum number of signatures for an 'ordinary'

petition.

- 5.4 It is also proposed to review the petitions scheme and thresholds 12 months after implementation of the e-petitions facility and report to the Scrutiny Committee.
- 5.5 At this stage it is also proposed to base the new petitions scheme on the Government model and incorporate local additions or amendments as deemed appropriate. It should be noted that for a county-wide e-petitions facility to operate it would be necessary for all the participating councils to have the same or at least a fundamentally similar scheme. We will need to agree common thresholds for the 3 types of petition across the county. A local feature which we would wish to retain in our scheme will be the right of the Chairman and Deputy Chairman of the Scrutiny Committee to receive regular updates on petitions received and the progress in handling and responding to petitions.

6.0 E-petitions facility

- 6.1 A local authority's petition scheme must allow citizens to create a petition which can be published online and made available to others for electronic signature. The Government does not consider that mere acceptance of emailed petitions meets this requirement. A small number of companies are marketing petitions software. In discussion with colleagues in the other East Sussex councils we have identified one company who we believe will offer us a cost effective and fully compliant system. The company have given presentations to both Democratic Services and IT officer groups in the county.
- 6.2 Public-i Ltd <http://www.public-i.info/index.php> have offered East Sussex councils a pilot arrangement at much reduced cost. Public-i are keen to demonstrate the opportunities of shared systems. Eastbourne's share of the initial cost will be c.£1,000. This is much less than the cost of going alone. Costs would however increase if the councils cannot agree common approach and require different "front ends", albeit with a harmonised "back office" for all 6 systems. East Sussex County Council will host and provide central admin support (e.g. directing petitions to the relevant council for action) and this is not expected to cost us unless the numbers of petitions becomes very large.
- 6.3 The software package can manage both paper and online petitions and allows for multiple officers to be involved in moderation and management of the petition as well as by providing important management information. The public can sign and/or create petitions. The Council is able to enter background information or allow the petitioner to do so if desired. The Council can communicate with the petitioners about progress and impact of the petition. The link to the petitions site will be via Council's website.
- 6.4 The Council's Head of Infrastructure and the IT team are involved and

support the proposed approach.

7.0 Public consultation

7.1 No public consultation has been undertaken beyond that undertaken by the Government nationally.

8.0 Policy and performance implications

8.1 The introduction of an updated petitions scheme and an e-petitions facility can be seen as linked to the "Thriving Communities" priority in the draft Corporate Plan 2010/15 (due to come before Council on 24 February for adoption). Affording citizens greater opportunities to make representations should be seen as a positive move and in line with the Council's aspirations to improve services and responsiveness to residents and stakeholders.

8.2 The idea of a group of people asking their local public service for action via a petition is an important form of community engagement. One difference from a council's own consultation efforts is that petitions **start** with residents or other communities of interest as opposed to being initiated by the council.

9.0 Legal implications/risk assessment

9.1 There will be a danger that arguments will arise as to the legitimacy of petitions whether as to the subject matter, validity of signatories or, and most likely, that the Council has failed to adequately respond to the petition and that this could have significant implications for the Council's lawyers.

9.2 The consultation response draws attention to a number of flaws and weaknesses in the draft guidance. Unless these can be satisfactorily resolved the process for dealing with petitions may become unnecessarily bureaucratic.

10.0 Financial and resourcing implications

10.1 As mentioned in paragraph 6.2 above the likely initial cost will be in the region of £1,000 subject to the caveat that all 6 councils can agree a common approach to petitioning. Some annual running costs are expected but these should be minimal (£100's not £1,000's).

10.2 It is expected that this cost will fall to be met sometime in the 2010/11 financial year. Until now this has been an unknown factor and hence not provided for in the budget, although it was flagged as a risk in the service and financial planning process. It may be possible to meet this cost from any in-year under-spends elsewhere in Local Democracy budgets; otherwise it will result in an over-spend.

- 10.3 Evidence to date from other Council already offering an e-petitions facility is that the number of petitions will be manageable. For example, at the time of drafting this report (18 January) the number of active petitions in selected councils is as follows:

Bristol – 10

<http://epetitions.bristol.gov.uk/activepetitions.php>

Birmingham – 4

<http://epetition.birmingham.public-i.tv/activepetitions.php>

Lambeth – 5

<http://www.lambeth.gov.uk/Services/CouncilDemocracy/DemocracyElectio ns/ePetitions.htm>

Royal Borough of Kingston upon Thames – 2

<http://epetition.kingston.public-i.tv/activepetitions.php>

North Lincolnshire – 1

http://epetition.northlincs.public-i.tv/epetition_core/community/activepetitions/

Hartsmere Borough Council – None.

- 10.3 At present, petitions may be addressed either to a senior officer (e.g. the head of the relevant service area) or to a Councillor (such as a ward member, the lead Cabinet member for the service, to a committee chairman or to the Mayor). In future, it may be appropriate to request that all petitions within the scope of the petitions scheme are submitted to a single point which could be described as the Council's "petitions office". This is likely to be undertaken within the Local Democracy team and assigned to the Scrutiny Co-ordinator.

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Background papers (used in writing this report):

Local Democracy, Economic Development and Construction Act 2009

http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090020_en.pdf

Listening to communities: Consultation on draft statutory guidance on the duty to respond to petitions published by the Department for Communities and Local Government December 2009

<http://www.communities.gov.uk/documents/communities/pdf/1400283.pdf>

Democratic participation - Report to Scrutiny Committee, 6 April 2009

<http://www.eastbourne.gov.uk/council/meetings/scrutiny/?category=7975>

Petitions scheme – Section m, Part 4 of the Council’s Constitution
<http://www.eastbourne.gov.uk/council/constitution/?assetdet=72760&p=3>

To inspect or obtain copies of the background papers, please refer to the contact officers listed on page 1 of this report or use the weblinks provided.

Consultation questions and draft responses

Question 1:

Does the guidance clearly set out the key principles and requirements of the petitions duty?

Answer 1:

The Act does not define what a "petition" is. So it would be useful if it said very simply that a petition is a communication in writing or using an electronic facility which is "signed" by at least the appropriate number of qualifying persons as may have been determined for the purpose by the authority concerned.

Question 2:

Are there any existing areas in the guidance which require further clarification?

Answer 2:

- A. The draft Guidance does not suggest a minimum threshold number of signatures for "ordinary petitions". Whilst this should be for determination by each authority, it is not suggested that a letter bearing a single signature, or just two signatures, should be treated as a petition. It would therefore be useful if the Guidance suggested that authorities which set a very low threshold (say, below 25) risk having to deal with an excessive number of petitions under the procedure laid down in their petition scheme, rather than responding more rapidly and flexibly as might be possible in respect of ordinary correspondence.
- B. The Guidance does not advise what degree of consideration is appropriate for Councils in respect of "petitions requiring debate" which relate to executive functions. Given that Council has no power to discharge such functions, the Guidance should say that it would be acceptable simply formally to refer the petition to the Executive for consideration.
- C. County Councils have no power to prescribe signature thresholds for District Councils, and Paragraph 19 of the Consultation should make it clear that there is no intention that County Councils should seek to do so.
- D. The suggestion (Paragraph 19) that authorities might set different signature thresholds for different subject matters, including lower thresholds for "very local issues" (however such matters might be defined) demonstrates the difficulties of translating the general principle behind the legislation into a simple practical set of rules. The danger is that the petition scheme becomes so complicated that it frustrates its overall purpose of providing the public with simple access to decision making on matters of general concern.

Question 3:

Are there any additional areas which you feel this statutory guidance should cover? If so, please state what they are and why you feel they should be included.

Answer 3:

- A. Section 12(1)(c) provides that a petition does not fall to be dealt with under the 2009 Act where it has been made in accordance with any other enactment. The Guidance cites the provisions for mayoral petitions under the Local Government Act 2000. However, this is an example where the legislation specifically refers to "petitions". It would be helpful if the Guidance made it clear that the Government views this exclusion as applicable wherever where the petition is received in response to any statutory consultation, even though the relevant statutory provision does not specify that the response to consultation has to be in the form of a petition. This would apply, for example, where petitions are received in response to consultation on traffic orders.
- B. The Guidance should state that where a "petition requiring debate" is received, this should not preclude consideration of the subject matter of the petition by the Cabinet, a Cabinet Member, a Committee or Sub-Committee with responsibility for the matter, in advance of the Council meeting. Where such a person or body is able to take a decision on the matter in advance of the debate in Council, and the petition organiser agrees that the matter has now been satisfactorily resolved, there should no longer be a requirement for a 20-minute debate in Council.
- C. The Guidance might usefully suggest that, where a "higher tier authority" receives a "petition requiring debate" relating to a matter which is within the statutory responsibility of a partner authority, it might usefully invite a representative of the partner authority to attend and speak at Council in response to the petition.
- D. The Guidance could usefully cover the position where an authority receives two or more petitions on the same issue, and advise that where the import of such petitions are similar, the authority should treat those petitions as if they in aggregate amounted to a "petition requiring debate".

Question 4:

Are there any additional areas which, while not appropriate for statutory guidance, you would like to see covered by the expert practitioners in their sector-led guidance?

No comment.

Question 5:

Are there any areas covered in this statutory guidance which you feel would be more appropriately covered by the expert practitioners in their sector-led guidance? If so, please state what they are and why you feel they should be addressed in this way.

No comment.

Model scheme

Question 6:

Do you think the model scheme is clearly expressed and easy for people to use? Please explain your reasons.

No comment.

Question 7:

Do you think the standards set out in the model scheme are achievable and appropriate to citizens' expectations?

- A. Is reference to a "a meeting of the council" (page 30) intended to refer to any one of the different bodies that exercise council functions such as Cabinet or Planning Committee or just full Council. This should be made clear.
- B. The model scheme in relation to reporting petitions to a council meeting appears to make the assumption that all councils hold monthly meetings which is rarely the case. Many councils now only hold full council meetings every 2 to 3 months with the bulk of council business either being delegated to committees or the responsibility of the executive. Some of these may only meet at 6 weekly or longer intervals. It is also considered that the suggested requirement for petition organisers to give the council only 5 days notice of their wish to present their petition to a meeting should be modified to refer to the next ordinary meeting of the body concerned and provide that this be within a minimum of 10 working days before the date of the meeting allowing for the need to include the item on the agenda and the legal requirement for the agenda to be published at least 5 clear days (i.e. not including the day of the meeting or day of despatch).
- C. The requirement for a review of how the council has dealt with a petition to be considered by an overview and scrutiny committee within 30 days of receipt of the request (page 36) is unrealistic. It should not be necessary to convene extra meetings solely for the purpose of carrying out a review. The Guidance should simply state that the matter will be reviewed at the next available meeting of the relevant overview and scrutiny committee. It is also worth noting the many councils, particularly larger authorities, have more than one overview and scrutiny committee covering different services.

Question 8:

Do you think there is anything that should be added to the model scheme?

No comment.

Draft order

It is our intention to ensure that the petitions duty enables people to express their views on issues of local concern and to know that their views have been listened to. It is also our intention to ensure there is a balance between this aim and the requirements placed on local authorities by the duty. On this basis ministers have set out the Government's intention to exclude from the duty matters for which there are already established processes in place for people to have their say. The aim of the draft order at Annex B is to achieve this intention, however we are aware that there may be other matters which

we should consider excluding for other reasons. We would therefore value your views on the following:

Question 9:

Do you agree with the categories we have excluded in the order? If you do not agree with the categories please explain why you do not think they should be excluded.

Answer 9:

Section 12(1)(c) provides that a petition does not fall to be dealt with under the 2009 Act where it has been made in accordance with any other enactment. The ambit of this exclusion is not absolutely clear. Guidance cites the provisions for mayoral petitions under the Local Government Act 2000. However, this is an example where the legislation specifically refers to "petitions". If the Government feels that it is unable to express a view in the Guidance that this exclusion as applicable wherever where the petition is received in response to any statutory consultation, even though the relevant statutory provision does not specify that the response to consultation has to be in the form of a petition, then it would be appropriate to include such a general exclusion in the order. This would apply, for example, where petitions are received in response to consultation on traffic orders, school closures, compulsory purchase orders and so on. If the Government feels unable to include such a general exclusion, then it is incumbent upon Government to do the work to produce a comprehensive list of such statutory consultations.

Question 10:

Do you think there should be additional categories excluded? If so, please state what they are and why you feel they should be excluded.

Answer 10:

- A. The purpose of the new system is to provide citizens with direct access to the decision-making process. However, many petitions will relate to executive functions over which the Council has no decision-making powers. In such cases, where the number of signatures exceeds the threshold for "petitions requiring debate", it would be more effective if the petition were reported to an early meeting of the Cabinet or of the relevant Cabinet Member, so that an operative decision can be taken on the matter. Once that has been done, the petition organiser may reasonably agree that the debate at Council becomes redundant. Accordingly, it would be sensible to provide that a "petition requiring debate" should be an excluded matter where the petition organiser has agreed that the authority has already taken a satisfactory decision in response to the petition.
- B. Matters relating to complaints made under the Code of Conduct and Ombudsman complaints. It would not be appropriate for such matters to be subject to a petition and there is no logic in omitting complaints to the Local Government Ombudsman from the other exceptions set out in the draft order.

Additional questions – Next steps

Question 11:

Following on from this consultation, what do you consider the most appropriate timescale for bringing the petitions duty into force? Please explain your reasons.

Answer 11:

Ideally, such new provisions should be introduced after allowing for proper consideration by the Government of any responses received, after stakeholder consultation on a revised draft order, and to take effect so as to enable Councils to consider a draft petition scheme properly and then for Councils to adopt a new petition scheme at or immediately following its Annual Meeting in May/June 2010. This makes it very tight to implement for May 2010. There would be merit in enabling authorities to introduce both petition scheme and e-petition facility at the same time. So there is merit in publishing the final order and Guidance before May 2010, but not bringing in the requirement to implement until May 2011.

Question 12:

Initial discussions with both the local government and technology sector indicate that it would be wise to stagger the implementation of the e-petition element of the duty, bringing the e-petition requirements into force 12 months after the other elements of the duty are commenced. Do you agree? Please explain your reasons.

Answer 12:

No statutory e-petition scheme could be finalised until after fine-tuning following the publication of the final order and Guidance. Accordingly, a 12-month period within which to implement an e-petitions facility would be sensible. Eastbourne are looking to collaborate with the other districts and the county council in East Sussex on a county-wide shared scheme and this will require time to develop and implement.