

PETITION SCHEME

1. Executive Summary

- 1.1 This report sets out the new statutory duty on local authorities to have a scheme for handling petitions and presents a draft for consideration by the Cabinet, the Chair of the Scrutiny Programme Board, the Chairs of the Overview and Scrutiny Committees and the Audit and Risk Management Committee, with a view to it being recommended to the Council on 19 April 2010 for immediate implementation.
- 1.2 The purpose of this report is to ensure that the Council's governance arrangements comply with the changing law.

2. Background

- 2.1 The Local Democracy Economic Development and Construction Act 2009 ('the 2009 Act') was given Royal Assent in November 2009. Section 14 of the 2009 Act imposes a new statutory duty on local authorities to adopt a scheme for handling petitions, including electronic petitions. This scheme must be approved by full Council and published on the Council's website (and by any other methods appropriate for bringing it to the attention of those who live, work or study in the Borough). A draft statutory instrument and draft statutory guidance have been issued for consultation.
- 2.2 The draft statutory guidance states that:
- Petitions are a valuable opportunity for local authorities to demonstrate strong leadership on issues of concern to their community;
 - As community leaders and place shapers local authorities have a key interest in issues which, although wider than their functions, affect the local area; and
 - In view of this, and their role in the local area agreement process, the 2009 Act requires councils to respond to petitions which relate to an improvement in the economic, social or environmental well-being of the authority's area to which any of its partner authorities could contribute.

This means that local authorities must deal with petitions which relate to the functions of partner authorities as well as petitions which relate to their own functions, including petitions on matters which are sub-regional and cross-authority.

- 2.3 The draft guidance recognises that, in practice, this may mean: acting as an advocate for the local community; working with partners to resolve an issue;

lobbying a partner organisation on behalf of the community; or, instigating an Overview and Scrutiny review of the issue.

2.4 Where a petition calls for something which goes against Council policy, the draft guidance acknowledges that a local authority may choose to say 'no' to the request. However, when doing so, a local authority must give its reasons.

2.5 The 2009 Act requires petition schemes to meet some minimum standards. Beyond these requirements, local authorities have discretion about how they approach the duty – leaving scope for local determination.

2.6 The requirements are:

- anyone who lives, works or studies in the local authority area, including under 18's, can sign or organise a petition and trigger a response;
- a facility for making electronic petitions is provided by the local authority;
- petitions must be acknowledged within a time period specified by the local authority
- among the many possible steps that the principal local authority may choose to take in response to a petition, the following steps must be included in the scheme:
 - taking the action requested in the petition;
 - considering the petition at a meeting of the authority;
 - holding an inquiry;
 - holding a public meeting;
 - commissioning research;
 - a written response to the petition organiser setting out the authority's views on the request in the petition;
 - referring the petition to an overview and scrutiny committee

2.7 Petition organisers who are dissatisfied with the Council's response can ask for a review.

2.8 Where petitions have a significant degree of support they will trigger a Council debate. It will be for the Council to determine the number of signatures required to trigger a Council debate but the draft statutory instrument states that the number should not exceed five per cent of the Borough's population according to the Office for National Statistics. This is described as 'an absolute maximum' in the draft guidance which goes on to state (paragraph 53) that the government expects that 'in most cases a much lower figure will be considered locally appropriate'.

2.9 The estimated population of Wirral in 2006 was 311,200 and 15,560 equates to approximately five per cent. The draft model petition scheme ('the Model Scheme') attached to the consultation draft guidance allows one percent of residents (equivalent to approximately 3,100 in Wirral) to trigger a Council debate. A figure of 3000 signatures is suggested as the trigger number in the recommended Wirral Petition Scheme which is attached at Appendix 1.

2.10 Local authorities will also have to provide in their petition scheme that petitions with the requisite support (again set by Council) will trigger a requirement that senior officers give evidence to Overview and Scrutiny Committees. This will normally be in public unless confidential information would be disclosed, in which case the

meeting will take place in private. The Model Scheme allows half of one percent of residents (equivalent to approximately 1,550 in Wirral) to trigger the requirement for senior officers to give evidence to Overview and Scrutiny. A figure of 1500 signatures is suggested as the trigger number in the recommended Wirral Petition Scheme which is attached at Appendix 1.

- 2.11 The consultation draft guidance makes clear that the Government expects the petition thresholds which local authorities decide to set to be 'locally achievable'. The expectation is that, where practical, councils will set low thresholds, such as those used in the Model Scheme. The Model Scheme adopts the approach already used by some local authorities of setting no threshold for triggering a response to a petition. This means the 'model' local authority responds to all the petitions it receives, providing that the petition follows the guidelines set out in the scheme i.e. the petition is not discriminatory or about an excluded matter such as a planning decision.
- 2.12 Local authorities should also consider whether variable thresholds might be appropriate to their local circumstances. The Government expects local authorities' petition schemes to ensure that petitions on very local issues, such as anti-social behaviour in a particular street, will receive a response from the Council. Setting no threshold or thresholds which vary depending on the issue or geographic location affected might be one method of achieving this.
- 2.13 Thresholds can be reviewed after a period of activity and amended if necessary, provided the correct process set out in the 2009 Act is followed.
- 2.14 If necessary, the Secretary of State has the power to direct a local authority to amend its petition scheme.

3 Application of a Petition Scheme

- 3.1 The petition scheme will apply to a petition made to the Council which:
- Asks for action to be taken or ceased
 - Is signed by the requisite number
 - Is not under another enactment
 - If electronic, uses the Council's facility.

4 The Subject Matter of Petitions

- 4.1 A petition must relate to a relevant matter i.e. a Council function or an improvement in the economic, social or environmental wellbeing of the area to which a partner authority can contribute.
- 4.2 The draft statutory instrument makes it clear that planning and licensing decisions are to be excluded, as are matters where there is another appeal (e.g. Council tax banding). However, these matters are not excluded if the petition relates to an alleged systematic failure in service provision.
- 4.3 In deciding whether to allow the petition scheme to be used, the Council can take into account data protection issues and such matters as equalities law, libel and whether the petition is vexatious, abusive or inappropriate. If the Council refuses to allow the petition facility to be used it must give reasons.

- 4.4 The draft guidance says that in deciding whether a petition is vexatious or abusive, a Council should base its decision on the same test that would be used for Freedom of Information (FOI) requests: namely, "Is the request likely to cause distress, disruption or irritation without any proper or justified cause?". The test must be applied to the topic and not the petition organiser. The guidance also states that a petition may be inappropriate where legal proceedings are possible or the petition relates to an individual member of the community.

5 E-Petitions

- 5.1 It will be a new statutory duty for the Council to provide an e-petition facility. This duty will not be satisfied simply by a declaration that the Council will accept petitions by email. A local authority's e-petition facility must allow citizens to create a petition which can be published online and made available to others for their electronic signature to be added to the petition. The Council must create a facility for such e-petitions and incorporate it into its on-line information. The Council may decline to host an e-petition, but must give reasons for doing so (to give the petition organiser the opportunity to amend their petition).
- 5.2 The Council will need an e-Petition facility linked to its website as soon as practical after Council approves its Petition Scheme. The electronic committee reporting system currently used, Modern.gov, already has an e-Petition facility and officers in Democratic Services will work with colleagues in IT and Communications to ensure this facility is fully exploited at minimal cost.

6 Signatures

- 6.1 A signature will count only if the name and address are given and if the petition is electronic with such means of authentication as the Council requires. The model scheme suggests that this might be name, postcode and individual email address.

7 Acknowledgements

- 7.1 Petitions must be acknowledged within a specified time with an indication of what the Council has done or intends to do in respect of it. Notification must be sent to the organiser and must be posted on the Council's website.

8 Review

- 8.1 An organiser who is dissatisfied with the Council's response to a petition has the right of review. He/she may request an Overview and Scrutiny Committee to review the adequacy of the steps taken and or proposed. The outcome of the review must be published on the Council's website.
- 8.2 If the Overview and Scrutiny Committee is of the view that the Council's response is inadequate, having regard to the possible responses and matters of proportionality, they may use their existing powers to conduct their own review of the issue under the Local Government Act 2000.
- 8.3 If the Overview and Scrutiny Committee is of the opinion that the Council has seriously neglected its responsibility to listen to the local community in its response

to the petition, it may refer the matter to full Council to review. The outcome of that review will be communicated to the petition organiser and appear on the Council's website.

9 Calling Officers to Account

9.1 A petition may be submitted requiring an officer to be called to give account. The Council sets the threshold for the number of signatures required for such a petition. The grounds in the petition must relate to the officer's duties and not be personal.

9.2 Officers who can be called to account in this way are those set out in the scheme. These officers must include, as a minimum, the Chief Executive and all the Chief Officers. Petition schemes should apply to 'senior officers responsible for delivering council functions and public services and not junior members of staff'. The final decision as to which officer will attend will rest, as now, with the Overview and Scrutiny Committee.

9.3 If such a petition is received, the scheme must provide for :

- Attendance by the officer at an Overview and Scrutiny Committee to ask questions and
- The petitioner to receive any report/recommendations made by an Overview and Scrutiny Committee.

9.4 The Overview and Scrutiny Committee meeting will be held in public and the organiser of the petition is to be invited unless confidential information would be revealed. Notification of the meeting and any report or recommendations arising from it is to be communicated to the organiser and placed on the Council's website.

10 Petitions requiring debate

10.1 The Act requires that the scheme allow for petitions requiring a debate at Council provided it has sufficient signatures (set by the Council, as explained above). The possible responses must include or comprise referral to a meeting of the full Council. This does not apply to a petition to hold an officer to account. As before, the petition organiser must be told of the arrangements and notice of the debate must be placed on the Council's website. The draft guidance states that the Council debate could lead to a decision to take the action sought by the full Council. However, this will only be possible where the action sought falls within the powers of the full Council to make the decision. The guidance goes on to state that the organiser might be given the opportunity to address Council and maybe answer questions.

11 Reserved Powers

11.1 The Secretary of State has wide reserve powers to make orders about a range of matters e.g. the number specified as a threshold for petitions, the identity of officers to be called to account and as to the contents of the scheme.

12 The Draft Model Petition Scheme

- 12.1 As mentioned above, the Department for Communities and Local Government has issued the draft Model Scheme. This is based on an authority with a population of 150,000. The thresholds in that scheme for petitions requiring a debate by full Council (1500) and those for petitions which call for evidence from a senior officer (750) have in the proposed scheme appearing at Appendix 1 been upgraded to reflect Wirral's larger population.

13 Legal Implications

- 13.1 These are broadly set out in the body of the Report. The legal requirement to have a petition scheme is already embodied in statutory provisions. It will be given force by statutory instrument which is currently in draft form. If and when the statutory instrument is in force, the duty will arise in accordance with the date set out therein. Currently the proposal is that ideally councils should have their petition schemes in place by April 2010, though this may change if the draft statutory instrument is amended in any way. Currently, the Department of Communities and Local Government are consulting on the draft statutory guidance on the duty to respond to petitions. This report is based upon the draft statutory guidance as the timetable for implementing the scheme is short if the April this year is to be the operative month.
- 13.2 In finalising the petition scheme the Council will be under a statutory duty to have regard to the statutory guidance issued in relation to this duty and any amendments which would impact on the proposals set out in this report will be reported to full Council in due course. It is because the statutory framework has not yet fully been put in place that this report suggests that the Council delegate to the Director of Law, HR and Asset Management any minor amendments to the scheme which might arise as a result of a change to the final statutory instrument and/or guidance.

14 Financial implications

- 14.1 The Director of Finance will closely monitor the impact of the new petitions duty. The cost of introducing electronic petitions can be met from existing budgets. Any staffing implications will be considered as part of the overall budgetary process.

15 Staffing implications

- 15.1 See above

16 Equal Opportunities implications

- 16.1 The Petition Scheme will need to be accessible to all users. It would appear that the proposals for petition schemes seek to give access to local government to the broadest possible range of groups.

17 Community Safety implications

- 17.1 None

18 Local Agenda 21 implications

18.1 None

19 Planning implications

19.1 None

20 Anti-poverty implications

20.1 None

21 Human Rights implications

21.1 None

22 Social Inclusion implications

22.1 None

23 Local Member Support implications

23.1 Ward Members can be asked to present petitions at Council meetings.

24. Background Papers

24.1 The Local Democracy Economic Development and Construction Act 2009; Communities and Local Government – Listening to Communities: Consultation on Draft Statutory Guidance on the Duty to Respond to Petitions December 2009.

25 Recommendation:

25.1 That Cabinet consider any views expressed by the Audit and Risk Management Committee and the Chairs of the Scrutiny Programme Board and the Overview and Scrutiny Committees and, in the light of those views, recommends Council to:

- (i) Adopt the draft Petition Scheme appearing at Appendix 1 to this report, to be effective from 20 April 2010;
- (ii) Append the Petition Scheme to the Council's Constitution; and
- (iii) Delegate to the Director of Law, HR and Asset Management in consultation with the three Group Leaders the authority to make any minor amendments to the Petition Scheme reasonably required to comply with the legislative framework as it emerges.

Bill Norman
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