

COUNCIL BUSINESS COMMITTEE

Consultation – Draft Guidance on the Duty to Respond to Petitions 14 January 2010

Report of the Head of Democratic Services

PURPOSE OF REPORT

To advise Members of draft guidance on implementing the duty to respond to petitions and suggest a response to the consultation paper.

This report is public

RECOMMENDATIONS

That the Committee approve or amend the draft response to the Government's consultation paper on the draft guidance on the duty to respond to petitions to enable a response to be submitted by the deadline of 24 February 2009.

1.0 Report

- 1.1 The Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) contains a duty on local authorities to respond to petitions.
- 1.2 The Government has now produced draft statutory guidance and secondary legislation to underpin this duty and is consulting on this guidance.
- 1.3 The consultation asks whether the guidance adequately explains the key principles and requirements of the duty, whether it is clear and easily understood with an appropriate level of detail. It also asks views on the matters to be excluded from the duty and on suitable timetables for implementation.
- 1.4 The consultation document, draft model scheme and draft petitions order can be viewed at www.communities.gov.uk. Specific questions have been posed and a draft response has therefore been prepared on the basis of responding to these questions.
- 1.5 The newly formed professional association, the Association of Democratic Services Officers has prepared a response to this consultation from a national perspective. The content of this has been referred to in preparing a draft response from the more specific viewpoint of Lancaster City Council.

2.0 Background

- 2.1 The purpose of the 2009 Act is to reinvigorate local democracy, and of this particular provision to allow citizens a way of expressing their concerns and priorities to their

local authority. The Citizenship Survey of 2007/08 showed that signing petitions was a popular and recognised form of civic action and whilst it has been recognised that some local authorities already have well developed processes for responding to petitions and approach them as an opportunity to listen to the community and demonstrate strong local leadership, this is not universally the case. In particular the DCLG found that on examining Local Authority websites in April 2008 only one in five councils made details about how to submit a petition publicly available. It is in this climate that the DCLG has included this new duty to respond to petitions and the guidance on implementing this to ensure that people can easily find out how to send their views on public services to local decision makers and encourage them to do so.

- 2.2 This duty in relation to petitions should be seen in combination with the duty to promote democracy also in that Act.

3. Position at Lancaster City Council

- 3.1 The proposal to include this duty in a future piece of legislation was highlighted by officers in a report to Audit Committee on Democratic Renewal Phase 2 earlier this year. As a result the Audit Committee recommended that it would be more appropriate for the Overview and Scrutiny to consider such petitions. Following consideration of the report, amongst other things, the Council Business Committee resolved: -

That the Council Procedure Rules in the Constitution be amended to state that petitions should be passed to Overview and Scrutiny Committee to consider and carry out any inquiry work, as appropriate, before reporting back to Cabinet or the relevant decision-making body.

Council Procedure Rules have now been amended - Rule 13.8 is set out below:

When a petition is received it shall be referred to Overview and Scrutiny Committee to consider and carry out any inquiry work as appropriate before reporting back to Cabinet or the relevant decision-making body.

- 3.2 It was also noted that there was an expectation that this duty would include a requirement for Councils to provide facilities for making petitions in electronic form and a duty to have a scheme for handling valid petitions. Enquiries have been made in anticipation and facilities for producing electronic petitions can be made available via the Modern.gov Committee Management System on the Council's website.
- 3.3 This guidance and draft model scheme on which the Council is being consulted will provide the parameters for establishing such a scheme and once approved Council will be required to finalise and then publicise its scheme.

4.0 Options and Options Appraisal

- 4.1 The Terms of Reference of the Council Business Committee provide for this committee to determine the method of response and where necessary ratify responses on behalf of full Council to consultations.

- 4.2 The Committee is therefore requested to consider the following options:

Option 1 – to approve the suggested response set out in appendix A to the report as the Council's response to the consultation on the implementation of the duty to respond to petitions.

Option 2 – to make any amendments or additions to the draft response.

Option 3 – to decide not to respond to the consultation.

Option 4 – if no agreement can be reached on the content of a response, Members may consider that no corporate response should be made, but that individual Groups should be asked to respond individually if they wish.

5.0 Officer Preferred Option

5.1 The Officer preference is option 1. The suggested response has been drafted to take into account the current position at Lancaster City Council and the previous views of Members as reflected in the Constitution as well as any potential problems which have been identified with implementing the proposals.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None directly as a result of this report.

FINANCIAL IMPLICATIONS

It is acknowledged by the Department of Communities and Local Government that the proposals set out in the consultation will impose costs on local authorities, although it also points out that they may deliver savings. In line with the Government's new burdens doctrine, the consultation document states that any net additional cost will be fully and properly funded by the DCLG so that no additional pressure is placed on council tax bills.

The proposed response refers to this and stresses the need for Government to take this into account.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

The draft response considers the implementation of new legislation relating to the Council's duty to respond to petitions. In due course the Council will be required to produce a Petitions Scheme and this will be subject to checking by Legal Services to ensure that it complies with the legislation and regulations.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Listening to communities: consultation on draft statutory guidance on the duty to respond to petitions - December 2009

Contact Officer: Gillian Noall
Telephone: 01524 582060
E-mail: gnoall@lancaster.gov.uk

**DRAFT RESPONSE TO CONSULTATION ON GUIDANCE ON THE
DUTY TO RESPOND TO PETITIONS**

GENERAL

Lancaster City Council has had in place since 2001 a system of allowing petitions and addresses from a single elector to be presented to full Council with a referral to an appropriate body to consider the issue raised. For the past few years this has included the facility for a relevant senior Councillor to respond at the meeting to the individual present to explain the Council's position and what will happen next. More recently the Council's Constitution has been refined to direct such matters for debate by the Overview & Scrutiny function in the first instance.

Whilst initially this facility may not have been well advertised or promoted, in line with other improvements in community engagement and promotion of democracy, leaflets are now available and information is on the Council website explaining how residents can make their views heard.

The requirement therefore to establish a scheme for handling petitions in the way outlined, whilst focussing the minds of Councillors and Officers on the need to respond to petitions will largely result in an added level of bureaucracy and paperwork without necessarily improving the actual level of response by the Council to its citizens.

Indeed there is a fear that the over prescription of what constitutes a petition and how this will be dealt with may result in a worsening of the level of response and engagement with small groups or individuals who have views they wish to be heard.

In the introduction it is acknowledged that the proposals set out in the consultation will impose costs on local authorities, although it also points out that they may deliver savings. It is also stated that any net additional cost will be fully and properly funded by the DCLG so that no additional pressure is placed on council tax bills. This Council would be interested to know how the Government feels that savings can be delivered given the additional layer of response which it clearly feels is currently lacking and should be provided. Furthermore it must be stressed that additional expenditure may be necessary in terms of publicity and promotion and particularly in the development of an on-line e-petition facility and further details of how this will be funded would be welcome.

Question 1:

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

It may be useful to include a definition of a 'petition' as referred to in the Scheme – that it is for example 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.

It would also be helpful if the guidance emphasised that 'petitions' that do not meet the qualifying standard for the 'Scheme' will still be valid petitions and Councils should make it clear that they will still receive appropriate consideration.

The Guidance refers to anyone living, working or studying in a local authority area, but does not refer to visitors – for areas when tourism is a relevant consideration, visitors are key stakeholders and their views on some issues should not be discounted.

The list of steps to be taken on receipt of a petition should include “referring the petition to the Executive, or other decision maker, for consideration and response” (see point below).

Question 2:

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

The draft Guidance appears to focus on the need for debate at full Council and referral to Overview & Scrutiny. Where a matter is for Executive decision no decision can be made at full Council and indeed if the matter is one which is already before the Executive for consideration, waiting for a Council meeting to debate the issue could even cause a delay. The Scheme should be able to include an option to present a petition to Cabinet in appropriate circumstances, thus allowing for debate and immediate decision on the matter.

Furthermore the insistence that every petition be debated at full Council for 15 minutes raises concerns at the time which could be spent at council meetings debating issues on which no decisions can be made in that forum. The Scheme could allow that where full Council is not able to make a decision the matter be referred elsewhere for debate, as is currently the case at Lancaster City Council.

The scheme should make it very clear that the full council has limited powers and therefore the chance that the council will be able to resolve the issue on the day the petition is presented is remote so that public expectation is not raised too high.

The suggestion in paragraph 19 that local 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 and 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 and a forum in which to have their views heard.

The idea of Councils debating matters which are functions of partner authorities, potentially resulting in the Council lobbying another body on behalf of petitioners raises some concerns and the guidance needs to be clearer in this respect. At the very least, a representative of the body concerned needs to be invited to contribute to the debate so that the Council is fully informed of the issues.

The Review of petitions could be an onerous duty on Overview & Scrutiny and Council and a simpler process of review is suggested, whereby there is a first stage review to consider if there is a case to answer, which could be assessed by the Monitoring Officer for example or Head of Democratic Services, possibly in consultation with the Chairman of Overview & Scrutiny and following a checklist of criteria against which to assess the handling of the petition. Only if at this point is it determined that there is a case to answer should a full scale review be launched.

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.

The model petition scheme suggests that the petition organiser should be given 5 minutes to present the petition and that the petition will then be discussed by councillors for 15 minutes. This would mean that 3 “petitions requiring debate” would take up a full hour, and 6 relevant petitions would take up 2 hours. Given the time available and the number of matters actually requiring decision at Council meetings, this could cause problems. It would therefore be

helpful if the regulations could provide for councils to specify a maximum period at any meeting to be taken up by petitions within their petition scheme (and the constitution), and that petitions which cannot be dealt with in the time available can then be dealt with in some other way specified within the scheme.

The draft Guidance does not suggest a minimum threshold number of signatures for 'petitions'. Whilst it is accepted that this should be for determination by each authority, it would be useful if the Guidance suggested that authorities should ensure that they provide for a minimum number within their schemes - otherwise to set a very low threshold (say, below 25) would 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. Notwithstanding this, authorities must be free to accept petitions from a very small number of local residents (e.g. a cluster of houses experiencing a particular problem) and have in place acknowledged processes for considering these.

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. Where however the decision maker is unable to resolve the matter to the satisfaction of the petition organiser then the views of the decision maker, should be considered alongside the petitioners' views at the meeting of the council.

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.

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?

The decision as to whether the petition qualifies under section 14 could be contentious and could be politically sensitive. It is suggested that given the high profile that Government expects local authorities to afford to the broad concept of community engagement, there must be an identifiable office holder to act as a designated "Proper Officer" for the receipt and management of petitions and of the web-based access route. The Chief Executive, Head of Democratic Services or the Monitoring Officer could fulfil this role and determine objectively whether the petition falls within the exclusions provided.

There needs to be recognition that for petitions to be properly debated and considered, officer time will be needed to prepare background information and evidence. In terms of natural justice, opposition to the petition must also be permitted. The model scheme suggests that petitioners can contact the council up to 5 working days in advance of the meeting. This short timescale will not work and any scheme needs to make it clear that far more notice will be required. Lancaster City Council currently requires 10 working days

notice for presentation of a petition or address to Council and anything less would not be workable.

The provisions in relation to Officers giving evidence at Council require further thought. Firstly it might be more appropriate that a petition containing the required number of signatures and requiring officers to give evidence maybe better considered by another body – one that can make the necessary decision. Secondly, the petitioner's ability to suggest questions that maybe asked by the chairman seems quite weak. It surely would be more appropriate for the petitioner to present the petition and present evidence to support it. The scheme would also seem to cut across most Council's current public participation provisions. Furthermore there is no provision for a senior Councillor to be required to give evidence – where a petition refers to a Council policy or decision, this may well have been politically motivated and will not necessarily be totally defensible by an officer.

Lastly, safeguards need to be put in place to ensure that the outcome from the consideration of these petitions by Scrutiny is evidence based. This is not a performance review of the officer's competence and guidelines for the management of these meetings need to be agreed by both councillors and officers. It might also be helpful if the model schemes were required to include the outcomes from a petition debate at Overview & Scrutiny such as a report back to council.

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.

There is an automatic assumption that petitions of a certain size will be referred to the full council for debate. The scheme should provide for the petition organiser in consultation with the proper officer, to agree how best to deal with the petition including to which body it should be referred.

The model scheme clearly states that the council may "...take the action the petition requests" or..."commission further investigation..." . This is misleading and wrong in the context of executive decision making powers.

Question 7:

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

Reference is made in the model scheme to monthly council meetings and Overview & Scrutiny Committees dealing with reviews within 30 days. Councils need to have the flexibility to produce a Scheme which includes deadlines which are achievable within their current decision making structure rather than adding any additional burden or creating too high a level of public expectation.

Question 8:

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

Provisions to deal with issues outlined above.

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.

No comment.

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

Petitions in response to statutory consultation such as on traffic orders or compulsory purchase orders should be excluded as these will be dealt with as part of dealing with any objections or support in accordance with the relevant legislation.

Exclusions could include matters which are currently under consideration by Cabinet, thereby resolving the point raised earlier about potential delays if the matter must be debated by Council prior to a Cabinet decision. The Scheme can include how such matters would be dealt with having been excluded from the requirement to be debated at Council.

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.

Ideally, such new provisions should be introduced after allowing for proper consideration by the Government of any responses received, further stakeholder consultation on a revised draft order, and to take effect so as to enable Councils sufficient time to consider a draft petition scheme properly and then adopt a new petition scheme at or immediately following its Annual Meeting in May/June. In practice, this makes it very tight to implement for May 2010. There would also be merit in enabling authorities to introduce both the petition scheme and e-petition facility at the same time, rather than the e-petition facility being a later 'add-on'. So there is merit in publishing the final order and Guidance if possible before May 2010, but not bringing in the requirement to implement until May 2011. The implementation of a petition scheme in 2011 will tie in neatly with the commencement of new strong leader decision making structures in District Councils and provide sufficient time for Councils to develop their Scheme and make any necessary changes to their Constitution at the same time as other changes that will be required.

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.

There is at least one working commercial solution currently available, which Lancaster City Council is in a position to access but this could benefit from some practical development, and it is in principle better that more than one commercial solution should be available. No statutory e-petition scheme could be finalised until after fine-tuning following the publication of the final order and Guidance and a 12-month gap between such publication and implementation would be sensible as suggested above.