

Briefing for the Citizen Participation and Public Petitions Committee

PE1902: To allow an appeal process for Community Participation Requests

Brief overview of issues raised by the petition

The petitioner, representing Caithness Health Action Team (CHAT), is unhappy that their organisation is not being adequately consulted when NHS Highland make decisions impacting the Caithness area. CHAT state they would like to be more involved in decisions impacting their communities.

In June this year CHAT submitted a Participation Request to NHS Highland, using provisions of Part 3 of the Community Empowerment Act (see below). Their request was rejected. The reason for rejection, as interpreted by the petitioner, was that there are “minor issues with our Constitution”. CHAT would like to appeal against HNS Highland’s decision, however they have found that no appeals process is available to them.

In the published [decision notice](#), NHS Highland explained that their decision to decline was because Caithness Health Action Team “is not constituted as a Community Controlled Body”.

Community organisations do not currently have the right to appeal decisions should their request be rejected (during the [passing of the Bill in 2015](#), Ministers committed to keeping this under review).

This was a major area of focus of the previous Local Government and Communities Committee during its [post-legislative scrutiny of Parts 3 and 5 of the Act](#). The Committee’s report, [published earlier this year](#), included a recommendation for the Scottish Government to introduce an appeals process.

Community Empowerment Act and Participation Requests

Six years have passed since the Scottish Government’s flagship [Community Empowerment Act](#) received royal assent. The Act was intended to encourage and support community involvement and participation in public services.

[Part 3 of the Act](#) introduces the right for ‘participation requests’ which aim to ensure engagement and dialogue between community participation bodies¹ (such as community councils and community development trusts) and public service authorities (for example local authorities, health boards and others).

Community bodies can make a request to a “public service authority” to participate in a process to improve an outcome of a public service. The community body must explain what experience it has of the service and how it could contribute to its improvement, and the public body must agree to the request for dialogue unless there are reasonable grounds for refusal.

[Scottish Government guidance produced in April 2017 sets out](#) that Participation Requests are not intended to replace good quality existing community engagement or participation processes but are rather designed to complement and enhance them. Similarly, Participation Requests are not intended to be an extension of complaints procedures but should rather be viewed as an opportunity for communities to establish formal dialogue with public service authorities.

Following the publication of this guidance, in the latter half of 2017, local authorities and community planning partnerships began to explore and introduce local policies and procedures for embedding the participation request processes. To support this, the [Scottish Community Development Centre](#) (SCDC) developed a [Summary Guidance](#) on Participation Requests and organised a series of awareness raising events, research and training activities.

Post-legislative scrutiny

As stated above, the previous Local Government and Communities Committee conducted [post-legislative scrutiny of Parts 3 and 5 of the Community Empowerment Act](#), reporting earlier this year. The overwhelming majority of community groups whose opinion the Committee canvassed on Participation Requests said they would welcome an appeals process. As such, the Committee recommended:

“...that the Scottish Government introduces an appeals mechanism for community bodies under section 30 of the 2016 Act, and ask it to consider proposing a timeline for this. Section 30 was agreed to in order that the Parliament could take stock of the need for an appeals process, following a first evaluation of participation requests. This has taken place and, in our view, the verdict is now in. We agree with views that the introduction of an appeals process would help keep public bodies disciplined and focussed in their handling of participation requests, as it will require them to take requests seriously, and give

¹ This is defined in section 20 of the Act. It can be either a community controlled body (defined in section 19), a community council, a community body without a written constitution (set out in section 20(4)) or a body designated by the Scottish Ministers. See [Scottish Government guidance](#).

clear reasons for refusing them, if they want to avoid a reversal on appeal. It also seems very unlikely that an appeals body would be flooded with appeals - a concern when the legislation was passed - given the low number of requests so far.”

In [its response to the Committee’s report](#), the Scottish Government did not commit to introducing a process immediately, but would instead continue to monitor the need for one:

“An appeals mechanism is something that we will continue to monitor and consider as Participation Request activity increases. In the meantime we will work with our partners to investigate how such a process could be established in a fair and robust manner, how it might operate in practice, and which body is best to lead this work.”

Recent developments

In its [Programme for Government document](#), published in September, the Scottish Government committed to review the Community Empowerment Act:

“...to consider how local communities can have more of a say over how local public assets are used – whether that is taking on the ownership or management of land or buildings, delivery of services to members of their community, or more say in how services are delivered, assets are used and resources are allocated”.

In his recent letter to the Minister for Public Finance, Planning, and Community Wealth confirmed that participation request legislation “will form part of the review when it is launched in 2022”.

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08 September 2021

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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