

Citizen Participation and Public Petitions Committee

7th Meeting, 2021 (Session 6), Wednesday
17 November 2021

PE1902: To allow an appeal process for Community Participation Requests

Note by the Clerk

Petitioner	Maria Aitken on behalf of Caithness Health Action Team
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to allow an appeal process for Community Participation Requests under the Community Empowerment Act 2015.
Webpage	https://petitions.parliament.scot/petitions/PE1902

Introduction

1. This is a new petition that was lodged on 13 October 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 123 signatures have been received.
4. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe B** of this paper.
5. The petitioner was invited to submit a written submission in response to the Scottish Government. On this occasion, the petitioner decided not to respond.

Background information

6. The Community Empowerment Act 2015 (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 bodies.
7. The SPICe briefing states that 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.
8. The SPICe briefing notes that community organisations do not currently have the right to appeal decisions should their request be rejected.
9. The briefing highlights this as an area examined by the previous Local Government and Communities Committee during its post-legislative scrutiny of Parts 3 and 5 of the Act.
10. An overwhelming majority of respondents to the Committee's Call for views said they would welcome a process for appeals. As such, the Committee's report included a recommendation for the Scottish Government to introduce an appeals process for participation requests.
11. In response to the report, the Scottish Government did not commit to introducing an appeals process, but stated that it would continue to monitor whether there was a need for one.

Scottish Government submission

12. The Scottish Government's submission also notes that there is currently no appeals process for community participation requests, but that section 30 of the Act enables the creation of an appeal process should it be required.
13. To inform the creation of an appeals process, section 33 provides that the Scottish Ministers must present a report to Parliament on the operation of participation requests within 3 years of the Act coming into force.
14. The submission highlights the most recent three-year evaluation carried out on the operation of participation requests which was published in April 2020. Further detail about the report and its findings is provided in the next section of this paper.

15. An appeals process was considered as part of this evaluation and the report stated that, given the significant challenges in introducing an appeals process and in ensuring its fairness and robustness, alongside the very small numbers of participation requests completed using the legislation, this would likely be a longer-term piece of work.
16. The Scottish Government states that it will continue to monitor and consider an appeals process as participation request activity increases and that it will work with partners to investigate how such a process could be established. The submission notes that the Scottish Government has asked the Scottish Community Development Centre to explore what an appeals process might look like and the Centre will report its findings later this year.

Community Empowerment (Scotland) Act 2015 – participation requests: evaluation

17. As previously stated, the Scottish Government published an evaluation of participation requests under the 2015 Act in April 2020. This [report](#) looked at the level of participation request activity, implementation of requests and outcomes.
18. The report states that between 2017 and 2019, 46 participation requests were received and, of those requests, 27 were accepted and 14 were refused. At the time of reporting, one application had not received a decision and four applications were deemed 'invalid' due to a lack of clear intended outcome stated in the application.
19. The report concludes that –

“there is potential for the absence of an appeals mechanism to undermine the rationale behind Part 3 of the Act, as public service authorities can refuse requests based on loosely and locally-defined criteria. Although it is too early to determine whether an appeals process is needed, this should be kept under review as the data on the numbers of participation requests, acceptances and refusals develop”

Action

20. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

PE1902: To allow an appeal process for Community Participation Requests

Petitioner

Maria Aitken on behalf of Caithness Health Action Team

Date Lodged

13/10/2021

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to allow an appeal process for Community Participation Requests under the Community Empowerment Act 2015.

Previous action

I have spoken to MSP Edward Mountain and MSP Rhoda Grant who both support the need for an appeal process to be part of Community Participation Requests.

Background information

Community participation is an excellent way for communities to have influence on services and be part of decisions that affect their lives. This is particularly important for rural communities who need to be consulted and involved in any decisions that impact on their fragile communities.

NHS Highland covers an extremely wide area and decisions are mainly made centrally. We have been left to feel we have no voice and are disempowered within our own community.

Although NHS Highland management were engaging with members of our team, we were not being consulted or involved in any of the decisions. Therefore, Caithness Health Action Team formally requested to participate in future decision making.

Unfortunately, we were turned down to be part of this process due to minor issues with our Constitution which we believe to be unfair. Surprisingly we have since found there is no appeal process that could review our request.

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

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

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](#).

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 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”.

Greig Liddell
Senior Researcher
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

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware

however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Minister for Public Finance, Planning, and Community Wealth submission of 5 October 2021

PE1902/A - To allow an appeal process for Community Participation Requests

I would like to thank the Committee for providing an opportunity for the Scottish Government to update it on actions called for in the above named petition.

Part 3 of the Community Empowerment (Scotland) Act 2015 which concerns participation requests came into force on 1 April 2017. The Act does not currently provide a mechanism for a review or appeal of the decision of a public service authority to refuse a participation request.

Section 30 of the Community Empowerment (Scotland) Act 2015 enables the Scottish Ministers to create an appeals or review process for participation request decisions by public service authorities in future should it be required. To inform that decision, section 33 of the Act provides that the Scottish Ministers must present a report to Parliament on the operation of participation requests within 3 years of the Act coming into force.

To enable this process we asked researchers from Glasgow Caledonian University YUNUS Centre for Social Business and Health to conduct a three year evaluation on the operation of participation requests, and provide a final report. Their report was published on 8 April 2020 and can be accessed here: [Participation requests: evaluation report](#).

Glasgow Caledonian University were asked to consider an appeal process as part of their evaluation on participation requests. The Glasgow Caledonian evaluation highlighted that given the significant challenges to introducing an appeals process and in ensuring its fairness and robustness, alongside the very small numbers of participation requests completed using the legislation, this would likely be a longer-term piece of work.

An appeals mechanism is something that we are continuing 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. As part of this approach we have asked the Scottish Community Development Centre to explore an appeals process for participation requests and report back to us their findings later in the year.

The First Minister has also launched the Programme for Government “*A Fairer, Greener Scotland*” last month which sets out the actions we will take in the coming year and beyond. One of those actions is to review the Community Empowerment (Scotland) Act 2015 six years on from its inception in 2015. Participation request legislation is one of many parts of the Act, and will form part of the review when it is launched in 2022.