

Taunton Deane Borough Council

Executive – 9 February 2010

Petitions – Response to Consultation

Report of Legal and Democratic Services Manager

(This matter is the responsibility of Councillor Ross Henley, Leader of the Council)

1 The requirements of the Local Democracy, Economic Development and Construction Act 2009

The Local Democracy, Economic Development and Construction Act 2009 includes requirements for every principal local authority to respond to petitions. These provisions have yet to be brought into force, and the Government is now consulting on the implementation of these provisions. The main statutory requirements are as follows –

- 1.1 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.
- 1.2 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.
- 1.3 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".
- 1.4 The authority can delegate to an appropriate officer the power to reject petitions which he/she considers to be vexatious, abusive or otherwise inappropriate.
- 1.5 The new petition scheme does not apply to petitions received under other statutory procedures, such as petitions for a mayoral constitution, 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.

- 1.6 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.
- 1.7 “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”.
- 1.8 “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”. In addition there are number of officers who must be included and these are the officers defined in s2 of the Local Government and Housing Act 1989
- 1.9 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 The Consultation

The Government proposes to make statutory orders, bringing these provisions 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 draft Guidance and consultation paper has recently been received. Comments must be submitted to the Department for Communities and Local Government by 24 February 2010.

The consultation paper incorporates a draft model petition scheme which authorities may adapt for their own use, and sets out 12 questions on which the Government seeks responses. The questions and a draft response to each is set out as Appendix One to this report.

3 General Comment

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 follows –

3.1 Limitation on the number of Petitions

The Government’s draft Guidance requires that the threshold numbers of signatures which authorities set for each category of petition should be achievable and proposes to provide by order that the maximum number of signatures required for a “petition requiring debate” which

must be debated in full Council shall be equal to 5% of the population of the authority's area. As a result, some authorities may receive a considerable number of "petitions requiring debate". 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 real problems. It would therefore be helpful if the order could provide that the petition scheme may specify a maximum period at any meeting to be taken up by petitions (which Guidance might acknowledge could reasonably be limited to 30 minutes per meeting), and that petitions which cannot be dealt with in the time available can then be dealt with as if they were "ordinary petitions" rather than petitions requiring debate" or "petitions to hold an officer to account".

3.2 Debate in Council

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 Executive, 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 Executive for decision, and it can refer the matter to an Overview and 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.

The model petition scheme states at page 34 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.

3.3 Petitions to hold officers to account

This provision does not sit well with a pattern of employed as opposed to elected officers. The previous Local Government Minister did state that the Government would re-draft this section, but it has been enacted without substantial change.

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, Executive or an individual Portfolio Holder. In such cases, if the discussion at the Overview and Scrutiny Committee is to be meaningful, it will be necessary for someone (perhaps an appropriate officer after consultation with the Chairman of the Overview and Scrutiny Committee) to have delegated powers to require appropriate members to attend and to answer questions on the matter alongside the named officer. Alternatively the Chairman of the Overview and Scrutiny can request that a particular member(s) should also attend the meeting alongside the officer.

Where any member of the Overview and 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 Overview and Scrutiny Committee to continue its consideration of the officer's conduct until any disciplinary process were completed.

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 also be extended to heads of service, or in this Council's case, theme managers.

3.4 Appeal to Overview and Scrutiny Committee

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

3.5 Signatures

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. Unfortunately as the Act is drafted, and given that a number of people may share a common email address, verification is now all but impossible.

3.6 Satisfaction with Council Services

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 and dysfunctional Parish and Town Councils. 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.

4 Recommendation

That this report and the responses set out therein be submitted to the Department for Communities and Local Government in response to the Consultation Paper.

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Background Paper : Consultation Paper on Draft Statutory Guidance on the duty to respond to Petitions issued by the Department for Communities and Local Government.

Appendix One

Consultation questions and draft responses

Question 1:

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

Answer 1:

- A. The Act does not define what a “petition” is. So it would be useful if it said very simply that a petition is a ‘formal written request signed by the requisite number of people appealing to an authority about a particular cause or issue’.

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, therefore it would be helpful if authorities were given the means to deal with the petition in the most appropriate way. In addition it is not clear whether the threshold would apply to the whole of a council’s area or whether the local authority could stipulate a threshold that could relate to a particular area so that if a number of people want to submit a petition to deal with a very localised issue the threshold would not preclude them, therefore it may be very difficult for authorities to be able to set meaningful thresholds so that they do not get overloaded with petitions as set out above but at the same time do not prevent a valid and meaningful petition from being made.
- 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 to formally 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. 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 real problems. It would therefore be helpful if the regulations could provide that the petition scheme may specify a maximum period at any meeting to be taken up by petitions (which Guidance might acknowledge could reasonably be limited to 30 minutes per meeting), and that petitions which cannot be dealt with in the time available can then be dealt with as if they were “ordinary petitions” rather than petitions requiring debate” or “petitions to hold an officer to account”.
- B. 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. However the Guidance is not clear as it seems to imply that if there were insufficient numbers to meet the criteria under that particular enactment it can still be dealt with under the 2009 Act therefore contradicting itself. 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”. There are many other examples where petitions may be given which may not need to be dealt with through this route but would still be given consideration, for example the making of traffic regulation orders therefore the guidance needs to be much clearer on this issue.
- C. 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 Executive, a Portfolio Holder, 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.
- D. 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.
- E. 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?

Answer 4:

A Yes guidance on setting up an e-petition facility for authorities.

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.

Model scheme

Question 6:

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

Question 7:

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

Answer 7:

A. At page 34, the draft petition scheme states that the petition organiser will be given 5 minutes to present the petition. Most existing local authority petition and public speaking arrangements, based on practical experience, limit non-Councillor speakers to either 2 or 3 minutes, and Councillors to 3 minutes. If the view is taken that 5 minutes is the minimum acceptable for petition organisers, they are actually being accorded greater speaking rights than Councillors, instead the guidance should refer to the Council’s own standing orders otherwise there will be confusion regarding the different timings given to different speakers making the process hard to manage.

Question 8:

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

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:

- 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. On the face of it this exclusion seems straightforward but then looking at the guidance it would seem that 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". The guidance states that if insufficient numbers are received it should be dealt with through the process set out in the 2009 Act so there is real confusion as to how a petition should be dealt with. 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.
- B. Local authorities are encouraged to consult local residents and service users across the range of their responsibilities. Because the Executive is responsible for the majority of Council services, the majority of such consultation is undertaken by the Executive and informs the Executive's decision-making. Under these provisions, as they stand, wherever such Executive consultation results in a petition in excess of the number of signatures required for a "petition requiring debate", the petition must be reported to and trigger a 20-minute debate in Council, even where Council has no decision-making powers over the matter. It would therefore be sensible if the petition-organiser could agree that the petition be reported to the person or body within the authority who has undertaken the consultation, and does not require reporting to full Council, and that where this is so, the petition be "partially excluded", so that does not require reporting to full Council.

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 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 real problems. It would therefore be helpful if the order could provide that the petition scheme may specify a maximum period at any meeting to be taken up by petitions (which Guidance might acknowledge could reasonably be limited to 30 minutes per meeting), and that petitions which cannot be dealt with in the time available were then "partially excluded" and can then be dealt with as if they were "ordinary petitions" rather than petitions requiring debate" or "petitions to hold an officer to account".

- B. 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 Executive or of the relevant portfolio holder, 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

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. In practice, this makes it very tight to implement for May 2010. This is not disadvantageous, since the Conservative Party has pledged that if it forms the new Government it will repeal the 2009 Act, and so it would be sensible if implementation were deferred until after the next General Election.

In practice, there would be merit in enabling authorities to introduce both petition scheme and e-petition facility at the same time. Therefore it would be more helpful if there was a gap of say 12 months between the publication of the final order and guidance and the implementation of the scheme.

In addition, although the Government has said that local authorities will not lose out financially in implementing this scheme no guidance has been given to local authorities as to how they will be given the funding for this and there will be a number of costs involved in the implementation and continuing maintenance of this scheme, therefore a later implementation will give local authorities the opportunity to assess these costs.

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:

Although there is at least one working commercial solution currently available, it could benefit from some practical development, and in order to ensure the most efficient procurement it is in principle better that there is more than one commercial

solution available. 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 gap between such publication and implementation would be sensible.