

NORTH LINCOLNSHIRE COUNCIL

CABINET

**LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT
AND CONSTRUCTION ACT 2009**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The report sets out the requirements of the Local Democracy, Economic Development and Construction Act 2009 ('the Act') as regards petitions together with the contents of a consultation paper issued by the Department for Communities and Local Government.
- 1.2 The report also sets out the present position as regards the Duty to Promote Democracy provisions in the Act, designated 'scrutiny officer' and establishment of Local Government Boundary Commission.

2. BACKGROUND INFORMATION

- 2.1 The Act includes requirements for every principal local authority in respect of 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:-
 - 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
 - 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 defines three categories of petition and sets a minimum number of signatures for each type of petition.
 - 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"
 - the authority can delegate to an appropriate officer the power to reject petitions which he/she considers to be vexatious, abusive or otherwise inappropriate

- 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 together with matters relating to an individual where a right of review or appeal is provided
- 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. Accordingly it may be that the council's current scheme can be adapted to fit into this category
- 'petitions requiring debate' must be reported to full council for debate and a higher number of signatures can be set as the threshold for such petitions. The model petition scheme provides for a figure of 1500 signatures. This is based on an authority having a population of 150,000 and so represents 1% of the population
- 'petitions to hold an officer to account' must name a senior officer and will trigger an open meeting of the appropriate Scrutiny Panel at which the officer may be questioned by the Panel in relation to his/her actions on a particular matter. The authority can set a different threshold number of signatures for such petitions. The model scheme provides for a figure of 750 signatures (0.5%) of the population
- where the petition organiser is not satisfied by the actions taken by the authority in response to the petition the petition scheme must give a right of appeal to a relevant Scrutiny Panel

2.2 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 the consultation paper has been deposited in group/independent members' offices. Comments must be submitted to the Department for Communities and Local Government by 24 February 2010.

2.3 The consultation paper incorporates a draft model petition scheme which authorities may adapt for their own use and sets out twelve questions on which the Government seeks responses. The questions and draft suggested responses are set out in Appendix 1 to this report.

2.4 The consultation paper/draft model scheme makes the following main points:-

- the statutory requirements are the minimum. Authorities are encouraged to design wider schemes
- threshold numbers of signatures which authorities set for each category of petition should be achievable and may be variable. It is proposed to provide by order that the absolute maximum number of signatures required for a 'petition requiring debate' should be 5% of the population of the authority's area. It is expected that a much lower figure would be set. The Secretary of State has power to direct an authority to amend the scheme if unachievable thresholds are included.
- the petition organiser should be given five minutes to present the petition, at council and the petition should be discussed for fifteen minutes
- the authority should list by name and post officers subject to account although the final decision on which officers should attend will rest with the Scrutiny Panel

2.5 As regards the Duty to Promote Democracy provisions in the Act (see Appendix 2) the Minister of State, Rosie Winterton in a written response to a parliamentary question has indicated as follows:-

"The Duty to Promote Democracy is important in helping take this work forward and we want to ensure that its introduction has a positive and proactive response from local government given the likely costs involved in implementing it effectively. We have therefore been looking at when the duty should be implemented. We have concluded that given the current economic situation implementation of the duty should be considered as part of the next spending review."

2.6 The next spending review is not scheduled to take place until after the election and so implementation has been deferred.

2.7 However authorities will still have to consider some of the features of the Duty as a result of the steps needed to satisfy NI 4 (percentage of people who feel they can influence local decisions).

2.8 The duty to designate an officer as the authority's "Scrutiny Officer" to promote and provide support to the council's scrutiny functions is likely to be implemented 1 April 2010 as is the establishment of the Local

Government Boundary Commission as a body corporate taking over the functions of the Electoral Commission's Boundary Committee as regards reviews of boundaries, wards, number of members, names of electoral areas etc.

3. OPTIONS FOR CONSIDERATION

3.1 Cabinet may decide to respond or not to the consultation process.

4. ANALYSIS OF OPTIONS

4.1 Responding will ensure the council's views are placed on record.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Existing staff and IT resources which are used to run the current petition scheme will be directed to the new proposals.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 The council will be under a statutory duty to comply with the provisions.

6.2 There may be some environmental benefits as an e petition alternative will be available.

6.3 The statutory proposals will have been subjected to a national diversity assessment but when the council comes to adopt its local scheme a further assessment may be needed.

7. OUTCOMES OF CONSULTATION

7.1 The report deals with an ongoing consultation exercise. Any outcomes of consultation on the proposals to date are set out in the Appendix in the draft responses.

8. RECOMMENDATIONS

8.1 Cabinet determine what if any response be made to the consultation.

8.2 The contents of paragraphs 2.5 to 2.8 be noted.

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Background Papers used in the preparation of this report -

APPENDIX 1

Main Guidance

Question 1:

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

Should there be a definition of what a 'petition' is?

Question 2:

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

It may be that many 'petitions requiring debate' will relate to executive functions rather than council matters. The Act still requires each such petition is debated at council although council will have no power to take an effective decision on the matter. Accordingly for many petitions there may be no direct link between the petition and the decision maker.

Should the guidance indicate that in those circumstances it would be acceptable to simply formally refer the petition to the Executive for consideration:

The guidance refers to variable signature thresholds for different subject matters including lower thresholds for 'very local issues' (however such matters may be defined). This demonstrates the difficulties of translating the general principle behind the legislation into a simple practical set of rules which may make the petition scheme 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.

In the event of a number of 'petitions requiring debate' being received should a maximum period be specified to be taken up at any meeting by petitions?

Should exempted petitions include any petition received in response to a statutory consultation e.g. where petitions are received in response to consultation on traffic orders.

Should 'petitions requiring debate' relate to an executive function be considered first by the Executive in case the matter is capable of resolution.

Where a 'petitions requiring debate' relates to activities of a partner authority should a representative of that authority be required to attend and speak at council in response?

Should two or more similar petitions be capable of being merged?

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?

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?

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.

See 3 above.

Unless general exclusion is included for petitions received in response to any statutory consultation then petitions received in response to consultation on traffic orders, school closures compulsory purchase orders etc would seem to be within the scheme. If such a general exclusion is not made a specific comprehensive list of any excluded statutory consultations should be provided.

Any consultation undertaken by the Executive may result in a petition response which if it passes the threshold for a 'petition requiring debate' would necessitate it being reported to council even though the council has no decision making powers over the matter. Should these kind of consultation exercises be excluded from the scheme?

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.

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.

It would be a tight timescale to implement for May 2010 given the final scheme requirements would not be known until after all responses have been considered and time would then have to be allowed for councils to consider and adopt a scheme.

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.

APPENDIX 2

CHAPTER 1: DUTIES RELATING TO PROMOTION OF DEMOCRACY (SECTIONS 1 - 9)

Section 1 requires principal local authorities, to "promote understanding" amongst local people of:

- The functions of the authority;
- The democratic arrangements of the authority (arrangements for members of the public to participate in, or influence the making of decisions); and
- How members of the public can take part in those democratic arrangements and what is involved in taking part - including how to become a member; what members do; and what support is available from the authority.

The proposed duty draws upon the work undertaken by the Councillors Commission in 2007, to which the Government responded in 2008, one of the recommendations of which was as follows:

Local authorities should be charged with a statutory duty to facilitate local democratic engagement by:

- proactively disseminating clear and accessible information on how local governance works: what councils and councillors do; what the responsibilities of other agencies are; how local agencies relate to one another (or not); even how to register to vote and how exactly to vote;
- facilitating more active civic participation in a range of areas (such as tenant and residents' associations, school governorship etc). This may well require a more specific capacity building/community development approach;
- raising interest in and providing information on how to stand as a councillor;
- proactively promoting the role of councillor and the activities of elected members.

Principal authorities should also provide information and facilitate democratic engagement in respect of the parish and town council tier.

The Community Empowerment White Paper developed this into a duty to promote democracy - seeking to empower councils to present themselves as democratic centres, with a new culture which sees democratic politics as respected, recognised, and valued.

Section 2 introduces a similar duty for "connected authorities", a list of organisations which includes the Homes & Communities Agency; the Secretary of State in relation

to offender management; the managing or governing body of a maintained school or further education institution; an NHS trust/foundation trust, police and fire authorities; PCTs and probation boards/trusts. There is a power in Section 5 for the Secretary of State to make an Order requiring connected authorities to provide information to one or more principal authorities, but the explanatory notes say that this power is only intended to be used if the "intention of the duty is significantly frustrated by the failure of one or more authorities to provide necessary information".

Section 3 imposes similar duties for principal local authorities to promote understanding of an independent monitoring board established under Section 6 of the Prison Act 1952; a visiting committee under the Immigration and Asylum Act 1999 for a removal centre; a courts board for an area; a youth offending team and section 4 goes on to require the same in relation to lay justices.

Section 6 provides for the Secretary of State to give guidance to local authorities in how to discharge their duties under this chapter.

The Statutory Guidance would include suggestions for Councils to consider in developing their response to the new duty i.e. communications about political parties, decision-making and how to get involved etc; methods of making information available; empowering young people through information and engagement e.g. youth parliaments; better staff training; engaging with community groups; ex-councillor mentors etc.