

**BUSINESS SUPPORT
OVERVIEW AND SCRUTINY COMMITTEE
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PETITIONS AND E-PETITIONS**

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Summary

Every local authority is now required to respond to petitions and inform local people what action is going to be taken to address their concerns. This report provides information about the new duty and proposes a new petitions scheme for inclusion in the Council's Constitution. The Committee is invited to consider the proposed scheme and forward comments for inclusion in the reports to be considered by the Cabinet on 8 June and full Council at its meeting on 17 June 2010.

1. Budget and Policy Framework

- 1.1 Sections 10 to 22 of the Local Democracy, Economic Development and Construction Act 2009 introduce a duty for Councils to establish a scheme for handling petitions and to inform local people what action is going to be taken to address their concerns.
- 1.2 The 2009 Act requires petition schemes to meet some minimum standards in order to ensure minimum entitlements which all citizens can expect and this includes a duty to provide a facility for electronic petitions (e-petitions).
- 1.3 The requirement to have a scheme for responding to petitions comes into force on 15 June 2010. The requirement for local authorities to provide a facility for making petitions in electronic form comes into effect on 15 December 2010.
- 1.4 The scheme must be approved by Full Council before it becomes effective and then must be published on the Council's website and by any other method appropriate for bringing it to the attention of those who live, work or study in the area.
- 1.5 The new scheme will be incorporated into the Council's constitution and is expected to contribute to the achievement of NI 4 in Medway's Local Area

Agreement– the percentage of people who can influence decisions in their locality.

2. Background and new requirements

- 2.1 The Department for Local Communities and Local Government (DCLG) has published statutory guidance which says that local authorities should approach their petition scheme from the starting point of responding to all the petitions they receive. The DCLG guidance says that signing a petition is one way for citizens to express their concerns and priorities to their local authority and that a recent Citizenship Survey in 2007 showed that petitions are the most popular and recognised form of civic action. However in a 2008 survey of all local authorities the DCLG found that only one in five Councils make details about how to submit a petition publicly available.
- 2.2 Medway is well positioned to respond to the new statutory requirement to introduce a petitions scheme. In June 2007 the Council adopted a clear and effective procedure for handling petitions presented by Councillors at Council meetings and this is included in the Council's constitution. In 2008 the DCLG identified Medway as an expert practitioner in the area of petitioning. Subsequently the Council was invited by the De Montfort University to participate in a workshop on the practical implications of petitioning as part of a systematic review of evidence on community empowerment commissioned by the DCLG.
- 2.3 The Council will have to adopt a new scheme for handling petitions which meets the minimum requirements in the 2009 Act as follows:
- anyone who lives, works or studies in Medway, including under 18's, must be able to sign or organise a petition and trigger a response
 - a facility for making electronic petitions must be provided
 - petitions must be acknowledged within a time period specified by the local authority
 - among the possible steps that the local authority may choose to take in response to a petition, the following steps must be included in the scheme:
 - taking the action requested in the petition
 - considering the petition at a meeting of the authority
 - holding an inquiry
 - holding a public meeting
 - commissioning research
 - a written response to the petition organiser setting out the authority's views on the request in the petition
 - referring the petition to an overview and scrutiny committee
 - petitions with a significant level of support trigger a debate at full Council (this level is set by each local authority and a proposal for Medway is set out at paragraph 6.5)

- petitions with a requisite level of support, set by the local authority, trigger a senior local government officer to give evidence at a meeting of the relevant overview and scrutiny committee
- petition organisers can prompt a review of the local authority's response if the response is felt to be inadequate (similar to an appeal facility and this Council's current procedure).

2.5 The requirements listed above are the minimum set in the 2009 Act. The statutory guidance, to which the Council must have regard, encourages local authorities to consider designing a scheme which is wider than these requirements, for example, responding to petitions from those who do not live, work or study in the local area or e-petitions which are not made through the authority's own e-petition facility.

2.6 Once published the Council must comply with its petition scheme but can revise it at any time.

3. Designing a new petition scheme

3.1 When designing a scheme, local authorities are expected to

- take into account local circumstances to ensure that the scheme is locally appropriate
- ensure that the scheme is accessible to all
- ensure that the process is easy for citizens to use
- introduce thresholds that are low and achievable. They can be reviewed after a period of activity and amended if necessary. The Secretary of State has the power to direct the Council to amend its petition scheme if unachievable requirements are included in the scheme.

4. Responding to petitions

4.1 The statutory guidance says that as community leaders and place shapers, local authorities have a key interest in issues which, although wider than their functions, affect the local area. In view of this, and their role in the Local Area Agreement process, the Act requires top tier authorities (of which Medway is one) to respond to petitions which relate to an improvement in the economic, social or environmental well-being of the authority's area to which any partner authorities could contribute.

4.2 This means that the Council must deal with petitions which relate to the functions of partner authorities as well as petitions which relate to its own functions, including petitions which are sub-regional and cross-authority.

4.3 In practice, this may mean acting as an advocate for the local community, working with partners to resolve issues, lobbying a partner organisation on behalf of the community or instigating an overview and scrutiny review of the issue.

- 4.4 The legislation does not define what constitutes a petition. The guidance says in virtually all cases it should be immediately obvious whether something is or is not a petition and it is important that authorities make sensible judgements about whether to deal with an item of correspondence under its petition scheme or under another procedure, such as the internal complaints procedure. The general view is that authorities should treat as petitions for the purpose of their scheme anything which identifies itself as a petition, or which a reasonable person would regard as a petition.
- 4.5 Should a petition call for something which goes against council policy, the authority may choose to say 'no' to the request. However, to ensure the step taken in response to the petition is substantive the guidance says the council must clearly explain its position in its response.
- 4.6 Local authorities may also choose to verify the signatures on a petition should they wish. In the case of e-petitions, the council must decide what counts as an authentic signature. It is proposed that in Medway this should include a valid e-mail address and a valid postcode as suggested in the Government guidance.
- 4.7 The guidance also says local authorities should approach the petitions they receive positively and not assume that the motivation is one which is vexatious, abusive or inappropriate. However, petitions, which are in the opinion of the authority vexatious, abusive or otherwise inappropriate, do not qualify under the requirement to take steps in response to the petition. These petitions must be acknowledged with an explanation of why the authority will not be taking action.
- 4.8 The types of petitions which may be considered inappropriate include those relating to matters which are part of ongoing legal proceedings or those which target individual members of the community. However, the decision is ultimately for the Council to decide considering the circumstances of the individual case. In addition, it may be inappropriate for councils to deal with certain petitions during periods when they are subject to restrictions immediately before elections or referendums. A description of what may happen in these circumstances should be set out in the petition scheme. For example, the organiser might be informed of the date when the petition will be considered, or when material relating to it will be published on the council's website.
- 4.9 Petitions under other enactments should be dealt with according to the procedures set out in those enactments. For example petitions under the Local Government Act 2000 asking for a referendum on whether the area should have an elected Mayor. In order not to duplicate procedures where established processes exist, the following matters are also excluded from the scope of the petitions duty:
- Any matter relating to a planning decision, including about a development plan document or the community infrastructure levy (ie the Council Tax)
 - Any matter relating to an alcohol, gambling or sex establishment licensing decision

- Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment.

However, failure on a systematic basis to deliver services in these areas remains within the scope of the petitions scheme.

5. New provision for electronic petitions (e-petitions)

5.1 The 2009 Act applies the same requirements to electronic petitions as to paper petitions, except for the following:

- authorities are only required to respond to e-petitions made through their e-petition facility
- the council must decide, when a request to host an e-petition is received, whether the petition is appropriate for publishing on its website
- the council must decide what equates to a signature on an e-petition (see paragraph 4.6 above).
- the council will also be required to provide a facility for people to create and submit petitions electronically on-line which are also available to others for electronic signature. The published scheme should also set out how the council will respond and deal with online petitions.

5.2 The statutory guidance says that guidelines agreed about vexatious, abusive and otherwise inappropriate petitions will also be followed for e-petitions.

5.3 Medway has just introduced new decision management software for all formal member-level meetings and this includes a facility for e-petitioning which it is expected will meet the requirements of the 2009 Act.

6. New provision for petitions to call a full Council debate

6.1 Under the new scheme petitioners who get the number of signatures specified in the Council's petition scheme will be guaranteed a public debate in full Council of their concerns.

6.2 The stated principle behind a petition debate is the increased transparency of the local decision making process. Notification of the debate should be published on the authority's website and the guidance says that petitioners should be offered the option of presenting their petition to the council at the beginning of the debate. Members could also consider what other contribution the petitioners might make to the discussion, for example, answering questions put by councillors.

6.3 The debate should conclude with a decision being taken by Full Council. This could be to take the action the petition requests, not to take action for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee. Where the issue is one on which the Cabinet is required to make the final decision, the Council should decide whether to make recommendations to inform that decision. The petition

organiser should then receive written notification of this decision and it should also be published on the council's website.

- 6.4 An authority is not required to hold a debate in response to any petition which falls outside the scheme, for example because it is vexatious, or relates to a licensing or planning decision. Petitions calling for evidence from an officer are also excluded from the requirement to hold a debate.
- 6.5 The law specifies that 5% of the total population (as estimated by the Office of National Statistics) is the maximum number of signatures that the Council may stipulate as required to trigger a debate at full Council. This would equate to 12 675 signatures in Medway. However it proposed that for the Medway petition scheme the threshold to initiate a debate at Full Council should be set at 1% of the population (currently 2,535 signatures). This is in line with the model scheme issued with statutory guidance and sets a threshold that would be achievable for a ward specific issue.

7. New provision for petitions calling officers to account

- 7.1 Local people will also have the right to petition for a senior member of council staff to attend a public meeting of an Overview and Scrutiny committee. If enough people sign the petition, a senior officer will have to attend the meeting, answer the committee's questions and explain how they are delivering public services.
- 7.2 This builds on existing powers of overview and scrutiny committees who can already require Members and officers to attend a meeting and give evidence. In Medway each Overview and Scrutiny Committee may require any member of the Cabinet, the Chief Executive, and/or any Director, Assistant Director and Service Manager to attend before it for purposes specified in the Councils Overview and Scrutiny rules.
- 7.3 Guidance under the Local Government Act 2000 is already in place to cover the way in which overview and scrutiny committees should conduct themselves when questioning an officer of the local authority – including, for example, considering the appropriate seniority of witnesses to ensure that junior officers are not put under undue pressure, and restricting questions to matters of fact and explanation. The guidance says a petitions scheme must determine which officers are able to be called to account in this way and include the names and job titles of the officers in question. The 2009 Act requires that, as a minimum, it should include the head of paid service (Chief Executive) of the authority and the most senior officers responsible for the delivery of services.
- 7.4 The final decisions on which officer should attend, and the questions to be asked, rest with the overview and scrutiny committee. The Act allows that for the purposes of addressing the concerns raised in the petition, an overview and scrutiny committee can decide it is more appropriate for another officer to be called to attend instead. The committee may also consider it appropriate to call the relevant elected Member with responsibility for the service area in question, in addition to the appropriate senior officer.
- 7.5 The guidance also says it is essential that the scrutiny prompted by petitions is appropriate and fair to the officer involved. They must not be exposed to

inappropriate public scrutiny of their private lives, nor to harassment or bullying. To safeguard officers, the Act stipulates that 'grounds' given in the petition for attendance at a meeting must relate to their job – it cannot relate to personal circumstances or character.

- 7.6 An officer is not required to attend a meeting of the overview and scrutiny committee to give evidence if the petition calling for the attendance is deemed to be vexatious, abusive or otherwise inappropriate by the local authority.
- 7.7 It is proposed that for the Medway petition scheme the threshold for calling an officer to account should be set at 0.5% of the population (currently equating to 1,267 signatures) Again this is in line with the model scheme and would be achievable for a ward specific issue.

8. Petition reviews

- 8.1 The petitions scheme must give petitioners the opportunity to appeal to an overview and scrutiny committee if they feel the Council's final response is not adequate.
- 8.2 This is essentially an appeal provision giving the petition organiser the power to ask an overview and scrutiny committee to review the Council's final response to the petition. The overview and scrutiny committee will be able to decide whether the steps taken by the authority in response to the petition were adequate.
- 8.3 The guidance acknowledges that one of the steps the authority might take in response to a petition is to refer it to an overview and scrutiny committee for consideration. Should the petition organiser subsequently be dissatisfied with the response to the petition, and request a review by the overview and scrutiny committee, the committee might feel that this could give rise to a conflict of interest. Paragraph 9.4 (ix) below suggests how this Council might deal with that scenario.
- 8.4 If an Overview and Scrutiny Committee has reason to be concerned about the adequacy of the Council's final response to a petition it may decide to carry out a full review of the issues raised in the petition using their powers under the Local Government Act 2000.

9. Proposed petitions scheme for Medway Council

- 9.1 Currently the Council's procedure for handling petitions covers petitions presented by Councillors at Council meetings. The existing procedure is attached at Appendix A to this report for ease of reference.
- 9.2 It was agreed to change the Council's petitions procedure in 2007 because in 2006/07 the Regeneration and Development Overview and Scrutiny Committee had 63 petitions referred to it by the Council generating a significant impact on the capacity of the Committee to deal with other business. Special meetings were required to deal with petitions.
- 9.3 It was therefore agreed that procedures for handling petitions at all Overview and Scrutiny Committees should be changed so that as a general rule the

relevant Director responds to any petition handed in at Council with the petitioners having a right of review at the relevant Overview and Scrutiny Committee if they remain dissatisfied. This procedure has been effective in streamlining and speeding up the time it takes to provide a response to petitions. At the same time the procedure recognises the importance of petitions in providing access by the public to a dialogue with elected members and an opportunity for direct community engagement by Overview and Scrutiny Committee members. Since July 2007 151 petitions have been presented at full Council with only 15 being debated subsequently in an Overview and Scrutiny Committee due to dissatisfaction by petitioners. As stated in paragraph 2.2 of this report, after the introduction of this procedure, the DCLG identified Medway Council as an expert practitioner in the area of petitions.

9.4 A proposed petitions scheme for Medway under the 2009 Act is attached at Appendix B to this report. Appendix C sets out other consequential changes required to the constitution. The proposed procedures are based substantially on the model scheme issued by the DCLG with the statutory guidance. Full details are set out in the proposed scheme but the key provisions can be summarised as follows. The Council will:

- (i) respond to **all** petitions presented by members of the public or Councillors at Council meetings or delivered directly to officers (including e-petitions with effect from 15 December) irrespective of how many signatures are included in the petition (but with the exception of those excluded from the scheme)
- (ii) log all petitions within Democratic Services. The Head of Democratic Services will acknowledge petitions usually within five working days of receipt by the Council
- (iii) stipulate in its scheme that the Council may take any of the steps set out in section paragraph 2.3 of this report (as required by 14 (6) of the 2009 Act) but that as a general rule the relevant Director will respond in writing, usually within ten working days of receipt of the petition by the Council and will explain the proposed action and timescales for implementation. The Director may have to explain the reasons why the Council cannot take the action requested by the petitioners. For example, it would conflict with Council policy or is a matter outside of the control of the Council
- (iv) set a threshold of 1% of the population as the number of signatures required to trigger a debate at full Council (currently 2535 signatures). Petitioners would have five minutes to present their petition and there would be twenty minutes for the Council to debate the matter.
- (v) set a threshold of 0.5% of the population as the number of signatures required to trigger an officer being called to account (currently 1267 signatures) at an overview and scrutiny committee.
- (vi) have an e-petitioning facility in place by no later than 15 December 2010

- (vii) provide that petitioners will have a right to ask the appropriate Overview and Scrutiny to review the adequacy of the steps taken or proposed in the Council's final response or as a consequence of action proposed following a full Council debate or an officer being called to account
- (viii) require petitioners to notify the Head of Democratic Services within ten working days of the date of the Council's final response if he/she is not satisfied with reasons which would then trigger a review by the relevant Overview and Scrutiny Committee
- (ix) provide that where petitioners call for a review of action taken/proposed following discussion of a petition or an officer being held to account at an Overview and Scrutiny Committee this will be undertaken by Business Support Overview and Scrutiny Committee (or by full Council if the matter is dealt with in the first instance by the Business Support Overview and Scrutiny Committee).

10. Risk Management

- 10.1 The proposed scheme at Appendix B should minimise the risk of intervention by the Secretary of State by setting low and achievable signature thresholds and using the government's model scheme as a basis for the Medway petition scheme.
- 10.2 As the Council will receive an additional Government grant to meet costs associated with the new petitions duty in 2010/11 it is expected that the new scheme can be introduced and administered within available resources this year. Whilst a recent survey of all Service Managers suggests very few petitions come in directly to officers, the position will have to be kept under review because the publication of the petitions scheme and the introduction of e-petitioning could generate a significant increase in the workload associated with petitions for both members and officers.

11. Financial and legal implications

- 11.1 It is expected that the national cost to the public sector of responding to local petitions will be approximately £4.7 million per year, decreasing over time. These costs arise from increased work for council officers, time at council meetings and Overview and Scrutiny Committees and set up costs for e-petitions.
- 11.2 Local authorities will each receive a grant for 2010/11. This amount will vary by local authority dependent on the local population. It is expected that funding for future years will be incorporated into the revenue support grant.
- 11.3 Sections 10 to 22 of the Local Democracy, Economic Development and Construction Act 2009 place a statutory duty on Local Authorities to respond to all petitions and to set in place the facility (including an electronic facility) to trigger a full debate at a Council meeting, or call a senior officer of the authority to account at an overview and scrutiny committee meeting. The Council must have regard to associated statutory guidance.

12. Recommendations

The Committee is asked to:

- 12.1 recommend the petitions scheme attached at Appendix B to Cabinet for onward referral to the full Council for adoption and inclusion in the Council's Constitution (as Appendix A to the Council rules in Chapter 4)
- 12.2 recommend that authority be delegated to the Monitoring Officer to determine when it would not be appropriate for a petition to be handled under the petitions scheme because it is deemed to be vexatious, abusive, otherwise inappropriate or excluded from the scheme, taking into account relevant law and statutory guidance.
- 12.3 recommend the Cabinet to refer to full Council the changes required to the Constitution as a consequence of introduction of a petitions scheme as set out in Appendix C.

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Background papers

The Local Democracy, Economic Development and Construction Act 2009

http://www.opsi.gov.uk/si/si2010/uksi_20100881_en_1

Statutory guidance to support the petitions duty

<http://www.communities.gov.uk/publications/communities/dutyrespondpetitionguidance>