

CONSTITUTION WORKING PARTY		
Report Title	PETITION SCHEME	
Key Decision		Item No. 4
Ward	All	
Contributors	HEAD OF LAW	
Class	Part 1	Date: 17 FEBRUARY 2010

## 1. Summary

This report sets out the anticipated legal requirement for the Council to have a petition scheme from the 1<sup>st</sup> April 2010 and presents a draft for consideration by the Constitution Working Party with a view to it being recommended to full Council for implementation from the 1<sup>st</sup> April 2010.

## 2. Purpose

The purpose of this Report is to ensure that the Council's governance arrangements comply with the changing law.

## 3. Recommendations

The Constitution Working Party recommends to full Council:-

- i) that it adopt the draft Petition Scheme appearing at Appendix 1 to this Report to be effective from 1<sup>st</sup> April 2010 subject to the legislative framework being completed;
- ii) that the Petition Scheme be appended to the Council's Constitution at that point;
- iii) that the Council delegate any minor amendments required to comply with the legislative framework as it emerges to the Head of Law;

## 4. Background

4.1 The Local Democracy Economic Development and Construction Act 2009 was given Royal Assent in November 2009. Part 1 Chapter 2 of that Act deals with local authority petitions. It imposes a new statutory

duty on local authorities to have a scheme for handling petitions which must be approved by full Council and published on the Council's website. A draft statutory instrument and draft statutory guidance have been issued and it is the clear intention that the new duty should be effective from the 1<sup>st</sup> April 2010.

4.2 Under the petition scheme anyone who lives, works or studies in the borough can sign or organise a petition and trigger a response from the Council. Among the possible steps which the Council may choose to take in response to a petition must be included in the following:-

- Taking the action requested
- Considering the petition at Council
- Holding an enquiry
- Holding a public meeting
- Commissioning research
- A written response setting out the Council's view on the issue
- Referring the matter to a Overview and Scrutiny

Petition organisers who are dissatisfied with the Council's response can ask for a review.

4.3 Where petitions have a significant degree of support they will trigger a Council debate. It will be for the Council to determine the number of signatures required to trigger a Council debate but the draft guidance states that the number should not exceed 5% of the borough's population according to the Office for National Statistics - in Lewisham approximately 3,000.

4.4 Local authorities will also have to provide in their petition scheme that petitions with the requisite support (again set by Council) will trigger a requirement that senior officers give evidence to Overview and Scrutiny. This will normally be in public unless confidential information would be disclosed, in which case the meeting will take place in private.

## **5. Application of a Petition Scheme**

The petition scheme will apply to a petition made to the Council which:

- Asks for action to be taken or ceased
- Is signed by the requisite number
- Is not under another enactment
- If electronic, uses the Council's facility.

## **6. The Subject Matter of Petitions**

- 6.1 A petition must relate to a relevant matter i.e. a Council function or an improvement in the economic, social or environmental wellbeing of the area to which a partner authority can contribute.
- 6.2 The draft statutory instrument makes it clear that planning and licensing decisions are to be excluded, as are matters where there is another appeal (e.g. Council tax banding). However these matters will not be excluded if the petition relates to a systematic failure in service provision.
- 6.3 In deciding whether to allow the petition scheme to be used, the Council can take into account data protection issues and such matters as equalities law, libel and whether the petition is vexatious, abusive or inappropriate. If the Council refuses to allow the petition facility to be used it must give reasons.
- 6.4 The draft guidance says that in deciding whether a petition is vexatious or abusive, Councils should base their decision on the same test that would be used for Freedom of Information (FOI) requests - namely "Is the request likely to cause distress, disruption or irritation without any proper or justified cause?". The test must be applied to the topic and not the petition organiser. The guidance also states that a petition may be inappropriate where legal proceedings are possible or the petition relates to an individual member of the community.

## **7. E-Petitions**

- 7.1 It will be a new statutory duty for the Council to provide an e-petition facility. This duty will not be satisfied simply by a declaration that the Council will accept petitions by email. The Council must create a facility for such e-petitions and incorporate it into its on-line information.

## **8. Signatures**

A signature will count only if the name and address are given and if the petition is electronic with such means of authentication as the Council requires. The model scheme suggests that this might be name, postcode and individual email address.

## **9. Acknowledgements**

Petitions must be acknowledged within a specified time with an indication of what the Council has done or intends to do in respect of it. Notification must be sent to the organiser and must be posted on the Council's website.

## **10. Review**

- 10.1 An organiser who is dissatisfied with the Council's response to a petition has the right of review. They may request the Overview and Scrutiny Committee to review the adequacy of the steps taken and or

proposed. The outcome of the review must be published on the Council's website.

10.2 If the Overview and Scrutiny Committee is of the view that the Council's response inadequate, having regard to the possible responses and matters of proportionality, they may use their existing powers to conduct their own review of the issue under the Local Government Act 2000.

10.3 If the Overview and Scrutiny Committee is of the opinion that the Council has seriously neglected its responsibility to listen to the local community in its response to the petition, it may refer the matter to full Council to review. The outcome of that review will be communicated to the petition organiser and appear on the Council's website.

## **11. Calling Officers to Account**

11.1 A petition may be submitted requiring an officer to be called to give account. The Council sets the threshold for the number of signatures required for such a petition. The grounds in the petition must relate to the officer's duties and not be personal.

11.2 Officers who can be called to account in this way are those set out in the scheme and must include :-

- a) Head of Paid Service (Chief Executive)
- b) Statutory Chief Officers defined as:-

- Director of Children Services (Executive Director, Children and Young People)
- Director of Adult Services (Executive Director, Community Services)
- Section 151 Officer (Executive Director, Resources)

- c) Non statutory Chief Officers i.e.

- Anyone reporting directly to the Head of Paid Service or to the Council or a Committee of it.

- d) Deputy Chief Officers i.e.

- Those reporting directly (or indirectly) for most or all of their duties to a statutory or non statutory chief officer.

11.3 If such a petition is received, the scheme must provide for :-

- Attendance by the officer at Overview and Scrutiny Committee to ask questions and
- The petitioner to receive any report/recommendations made by Overview and Scrutiny.

11.4 The Overview and Scrutiny Committee may call another officer if they think it more appropriate but officer advice is that this ought not to be at more junior levels and any alternative officer should be drawn from the list of those who could be called in any event to give account before Overview and Scrutiny.

11.5 The Overview and Scrutiny meeting will be in public and the organiser of the petition is to be invited unless confidential information would be revealed. Notification of the meeting and any report or recommendations arising from it are to be communicated to the organiser and placed on the Council's website.

## **12. Petitions requiring debate**

12.1 The Act requires that the scheme allow for petitions requiring a debate at Council provided it has sufficient signatures (set by the Council subject to 5% of the population according to ONS). The possible responses must include or comprise referral to a meeting of the full Council. This does not apply to a petition to hold an officer to account. As before, the petition organiser must be told of the arrangements and notice of the debate must be placed on the Council's website. The draft guidance states that the Council debate could lead to a decision to take the action sought by the full Council. However this will only be possible where the action sought falls within the powers of the full Council to make the decision. The guidance goes on to state that the organiser might be given the opportunity to address Council and maybe answer questions.

## **13. Reserved Powers**

The Secretary of State has wide reserve powers to make orders about a range of matters e.g. the number specified as a threshold for petitions, the identity of officers to be called to account and as to the contents of the scheme.

## **14. A Model Scheme**

The Department for Communities and Local Government has issued a draft Model Scheme based on an authority with a population of 150,000. The thresholds in that scheme for petitions requiring a debate by full Council (1500) and those for petitions which call for evidence from a senior officer (750) have in the proposed scheme appearing at Appendix 1 been upgraded to reflect Lewisham's larger and densely populated area.

## **15. Financial Implications**

The Executive Director for Resources will closely monitor the impact of the new petitions duty. The cost of introducing electronic petitions can be met

from existing budgets. Any staffing implications will be considered as part of the overall budgetary process.

## **16. Legal Implications**

These are broadly set out in the body of the Report. The legal requirement to have a petition scheme is already embodied in statutory provisions. It will be given force by statutory instrument which is currently in draft form. If and when the statutory instrument is in force, the duty will arise in accordance with the date set out therein. Currently the proposal is that Councils should have their petition schemes in place by 1<sup>st</sup> April 2010 though this may change if the draft statutory instrument is amended in any way. Currently Communities and Local Government are consulting on the draft statutory guidance on the duty to respond to petitions. This report is based upon the draft statutory guidance as the timetable for implementing the scheme is short if the 1<sup>st</sup> April this year is to be the operative date. In finalising the petition scheme the Council will be under a statutory duty to have regard to the statutory guidance issued in relation to this duty and any amendments which would impact on the proposals set out in this report will be reported to full Council in due course. It is because the statutory framework has not yet fully been put in place that this report suggests that the Council delegate to the Head of Law any minor amendments to the scheme which might arise as a result of a change to the final statutory instrument and/or guidance.

## **17. Crime and Disorder Implications**

There are no specific implications.

## **18. Human Rights Implications**

There are no specific implications.

## **19. Environmental Implications**

There are no specific implications.

## **20. Equalities Implications**

It would appear that the proposals for petition schemes seek to give access to local government to the broadest possible range of groups.

## **21. Conclusion**

For the reasons set out in this report it is suggested that the Constitution Working Party recommend to full Council that it adopt the petition scheme appearing at Appendix 1 to be effective from the 1<sup>st</sup> April 2010 subject to the statutory framework being completed and that authority be delegated to the Head of Law to make any minor amendments to reflect any changes to the draft statutory instrument and guidance.

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**Background Documents:**

The Local Democracy Economic Development and Construction Act 2009;

Communities and Local Government – Listening to Communities: Consultation on Draft Statutory Guidance on the Duty to Respond to Petitions December 2009