

Business and Regulatory Impact Assessment

Title of Proposal

The Participation Request (Procedure) (Scotland) Regulations 2016

Purpose and intended effect

- **Background**

The Christie Commission recommended that Government and should seek to strengthen communities' voices in shaping the services which affect them. Involving people more regularly and more effectively in the decisions that affect them can lead to better outcomes, making the most of the knowledge and talent that lies in communities. It can also increase confidence and fosters more positive relationships between communities and the public sector.

The Community Empowerment (Scotland) Act 2015 ("the Act") establishes a right for community bodies to put forward a participation request to a public service authority asking them to take part in a process that with a view to improving the outcome set out by the community body. The public service authorities are listed in schedule 2 of the Act; they include local authorities, NHS boards, Police Scotland and a range of Scottish public bodies.

The Act provides a framework for participation requests. It sets out the criteria for a community body to be eligible to make a request, information to be included in the request, and the matters which a public service authority must take into account in deciding whether to agree to or refuse the request. A request must be agreed unless there are reasonable grounds for refusal. It allows for Ministers to make regulations giving further detail about how requests are to be made and about the procedure to be followed.

- **Objective**

These regulations set out the form and information to be provided in a participation request and the necessary timings. These procedure regulations will help provide for a consistent approach across all public service authorities and more clarity for all those involved.

- **Rationale for Government intervention**

Participation requests, and community empowerment more widely, is key to achieving the national objective “We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.”

As set out above, the purpose of introducing this statutory mechanism is to support community participation and the benefits it can bring. Ministers are not required to make regulations on procedure, but they will help to support the practical implementation in public service authorities and ensure consistency.

Consultation

- **Public Consultation**

A public consultation on the proposed regulations and accompanying guidance took place from March to June 2016. A total of 102 responses were received. The majority (60) were from public sector organisations.

Organisational responses were received from local authorities, third sector organisations, community organisations, NHS, community planning partnerships, colleges, Police Scotland and other public sector bodies. The consultation paper and responses are available at

<https://consult.scotland.gov.uk/community-empowerment-unit/participation-request-regulations/>. An analysis of the responses will be published shortly.

Following the consultation a number of changes were made to the regulations. The changes include the inclusion of a form that community participation bodies should complete on making a participation request and changes to the timescales that public service authorities will have to respond to participation requests. The guidance that will accompany the Act has been developed with a group of stakeholders including representatives from the public sector and communities and facilitated by the Scottish Community Development Centre.

- **Business**

The regulations do not affect businesses.

Options

Option 1: Regulate for standard procedures for requests

Option 2: Regulate only for time periods for decisions

Option 3: Do nothing

The Act gives community participation bodies a right to make participation requests, and sets out how public service authorities must make decisions on such requests. The Scottish Ministers have powers to make regulations providing more detail on the procedures to be followed, information to be provided and so on, but they are not required to do so.

Public service authorities are required to give a decision notice to the community participation body within a period prescribed in regulations.

Option 1 is to regulate for procedures throughout the scheme. **Option 2** is to regulate only for time periods for decisions, and **Option 3** is to do nothing.

Sectors and groups affected

The groups affected will be public service authorities (public sector bodies) and community bodies seeking to make participation requests. There is a possible impact for people who may wish to make representations about requests.

Benefits – Option 1

By regulating for statutory procedures, the Scottish Ministers will provide consistency for participation requests, and reduce the amount of effort required for public service authorities to develop their own schemes. If a community participation body makes requests to different relevant authorities, the regulations will ensure that the same type of information is required in each request and they will go through the same processes of notification and decision. People who wish to make representations about requests will also be able to rely on standard processes.

Benefits – Option 2

Regulating for the time periods for decisions would allow the legislation to be implemented effectively. It would provide certainty on timescales for participation requests for both parties. However, it would not provide any certainty or consistency as to other requirements and procedures. Each relevant authority would have to devise their own procedures for requests.

Benefits – Option 3

None. The requirement for decisions to be given within a reasonable time is a key part of the participation request legislation.

Costs – Option 1

The Financial Memorandum for the Act considered the overall costs of participation requests, but concluded these could not be calculated because the level of demand could not be predicted. However, some information was subsequently provided to the Scottish Parliament's Finance Committee (3 October 2014) providing estimates of the average cost for each participation request.

We do not consider that the procedures set out in the Regulations will lead to increased costs for public service authorities, compared to procedures they might implement themselves if the Scottish Ministers do not put in place these regulations.

We do not consider that the procedures set out in the Regulations will lead to any increase in costs for community participation bodies.

Costs – Options 2 and 3

There are no additional financial costs of options 2 or 3, but they would not realise the benefits of Option 1.

Scottish Firms Impact Test

The regulations do not affect businesses.

Competition Assessment

The regulations have no impact on competition.

Test run of business forms

The regulations do not do not affect businesses.

Legal Aid Impact Test

The regulations do not introduce any new processes that would lead to use of legal

aid.

Enforcement, sanctions and monitoring

If community bodies do not submit requests in line with the requirements of the regulations, they will be rejected. Public service authorities are expected to support community bodies to make compliant requests.

If public service authorities fail to follow the statutory procedures this may be grounds for a complaint to the Scottish Public Services Ombudsman. There is no provision in the Act for specific sanctions or enforcement action.

Statutory reporting will provide information on the number of requests received, agreed and refused. Ongoing relationships with stakeholders will allow for feedback on the effectiveness of the procedures.

Implementation and delivery plan

The provisions of Part 3 of the Act and the Regulations will come into force on 1 April 2017.

Public service authorities were encouraged to start preparing their procedures on the basis of the consultation paper, published in March 2016. Final guidance will be published when the regulations are laid in Parliament. Officials have met and given presentations to a wide range of stakeholders throughout the development of the participation request legislation and will continue to do so.

- **Post-implementation review**

Section 33 of the Act provides that the Scottish Ministers must report on the operation of participation requests within 3 years of section 22 coming into force.

Summary and recommendation

Option 1 is recommended, to regulate for procedures for participation requests. This will provide consistency for all participation requests. We do not consider that these regulations will lead to any additional increase in costs for public service authorities or community participation bodies.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that there is no impact on businesses in Scotland.

Signed:**Date:**

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