

# Consultation on the Draft Participation Request (Procedure)(Scotland) Regulations 2016



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organization?

- Individual  
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

# Participation Requests under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

## Questionnaire

Q1: Should the use of a statutory form be required in the regulations?

Yes  No

Please give reasons for your response.

Before answering the specifics of this question, our GCPH discussion on Participation Requests concluded that each stage of the process involved must be underpinned by the following principles:

- **Accessibility** – for all communities and groups; representing a clear, simple process that is well supported.
- **Inclusivity** – involving reasonable and tailored adjustments to the process to promote equality of inclusion.
- **Democracy** – Participation Requests seek to deepen local democratic mechanisms and the process should be democratically governed; decision-making should involve appropriately devised groups or committees and not rely on individual officers.
- **Transparency** – it is vital that the participation process and decision-making is made public to promote fairness, supporting communities and groups in understanding the decision-making process.
- **Accountability** – public services and their group or committee making the decision on a Participation Request should be accountable for both the decision and the process.

Returning to Question 1 specifically, statutory forms can be a pragmatic step in the request process, enabling public services to collect consistent information about requests from a wide range of sources. However, it is our experience that if a statutory form is devised, some communities or demographic groups within the community may need additional support in completing the form, which we further comment on in our response to Question 6.

Current wording in the example contained within the draft regulations and guidance may not be the most appropriate if a statutory form is to be completed by those in community settings. For example, the term 'outcome improvement process' is not the most accessible wording (even when accompanied by detailed guidelines) and we recommend a simpler form of words. Accessible language is especially important considering the aim of Participation Requests, as stated by the guidance, to enable dialogue with communities who find it difficult to be recognised or heard.

Excluded groups can often be missing in engagement processes and statutory forms could unintentionally widen this inequality by acting as a barrier to dialogue and participation. We recommend that public services employ a common sense approach by supporting community groups who might be struggling with a form and the overall request process, by helping them to communicate any necessary

information. Such support provided by the service might include (as outlined in our response to Question 6 below): explaining parts of the form; recording information supplied by the community body on the form; meeting the community body to discuss their participation interests and jointly completing the form; or signposting to a group who can help them complete the form.

We welcome that the example statutory form in the draft regulations and guidance contains a section for a community body to describe the kind of participation they can contribute, potentially empowering communities to build on their strengths, provided the Participation Request does not provide a means by which services offload resources. However, Section 22 (2) of the Act and regulations ask community groups to provide considerable amounts of information, presupposing that community groups will have in-depth knowledge of the service design/delivery in which they wish to participate. We recommend that services promote and communicate information about the areas of their design and delivery which are open for community participation, as we also state in our response to Question 5.

Q2: Should it be possible for a community body to put in a Participation Request without using a form?

Yes  No

Please give reasons for your response.

Section 20 of the Act, as repeated in the draft regulations and guidance, states that a community body may be defined in many ways and may also range from formal groups with written constitutions to groups that are more loosely organised. To facilitate such a variety of groups to submit Participation Requests, it is advisable to allow groups to submit a request through other means such as face-to-face and over the telephone as well as by email. The onus then being on the public service to gather the standard information as needed in the form directly from the community member or group. Considering that the purpose of Participation Requests is to encourage participation among communities who may not be traditionally heard or recognised, this flexibility within the request process is reasonable, worthwhile and aligns well with the principles we state in Question 1.

Section 24 of the Act, echoed in the draft regulations and guidance, has commendable criteria for public services to use when making decisions about Participation Requests, such as increasing participation among persons experiencing socioeconomic disadvantage, reducing inequalities, and improving health and wellbeing. In pragmatic terms, persons experiencing these kind of inequalities may be further disadvantaged if they were required to complete a statutory form. Therefore it is important that public service authorities support such community bodies to communicate the nature of their request through a variety of means.

As part of the engagement methods recommended in these regulations and guidance, we recommend that public services are encouraged to conduct outreach and be proactive rather than placing the emphasis on communities to formulate a request, especially if the service in question has complex design and delivery components.

Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?

To ensure any statutory forms are accessible and comprehensible to all and as expressed above, we recommend that the language is written in Plain English. Specifically, we recommend replacing the word outcome with 'result'.

The sample form in the guidance contains the wording 'Note 1, etc' and it is not entirely clear what this means.

We recommend the form contains a section for the community body to describe their community – how they define themselves, their location (geographical, thematic, city-wide, etc). This information may enable a service to gain some understanding of the extent to which working with this body aligns with the decision-making criteria set out in these draft regulations, including: increasing participation among persons experiencing socioeconomic disadvantage, reducing inequalities, improving health and wellbeing.

Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond? Yes  No

If not, please suggest an alternative timescale and explain reasons for the change.

We have taken this question to mean that it is asking for a reasonable amount of time to send a *holding reply* or *acknowledgement*, and not to process a full response with a decision. Freedom of Information Requests require authorities to reply within 20 working days. Participation Requests may be significantly more complex than satisfying FOIs. We acknowledge the desire for a prompt Participation Request process but propose that 28 days is a more reasonable time for sending an initial response.

Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of Participation Request?

In terms of promoting Participation Requests and in line with our response above, services need to proactively engage rather than rely on communities to formulate a request.

Services could use tried and tested methods to promote Participation Requests such as: websites; social media; newsletters; public notices; etc. It would also seem appropriate to promote Participation Requests through community councils, Community Planning Partners and other local networks; both formal and informal. It would be sensible for a service's promotion efforts to include a named contact within their team who is the first point of communication for Participation Requests and a range of ways for community bodies to get in touch (post, face-to-face, email, telephone, mobile).

For services about which community bodies may not know much about, especially for services which comprise complex design and delivery components, it may be helpful to publicly explain the areas in which community participation is welcomed.

Q6: What are the ways that public service authorities should support community participation bodies to make a Participation Request and participate in an outcome improvement process that should be set out in the regulations?

Support to community bodies can comprise a range of methods, which may be helpful to articulate within the guidance. While we understand that Participation Requests are not designed to replace services' ongoing community engagement activities, nevertheless the draft National Standards for Community Engagement provide detailed information about these methods effectively and we recommend referencing them in the regulations and guidance. The methods include "impartial professional support" for community groups and also the need to ensure "reasonable adjustments are made to ensure that participants are able to participate on an equal basis".

These adjustments may include (as outlined in the draft National Standards for Community Engagement):

- o Suitable transport
- o Care of dependents (childcare, care of older people, etc.)
- o Suitable venues/catering
- o Access to interpreters
- o Communication aids
- o Meetings/events organised at appropriate times
- o Access to social media, video conferencing and/or online resources where appropriate
- o Addressing financial barriers
- o Accessible and appropriate engagement methods

Support to community bodies may need to consider the ways equality issues can impact on participation. Again, the draft National Standards for Community Engagement articulate a range of issues which may be helpful to reference. These range from "poverty" to "socioeconomic barriers, age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation" as well as language, literacy barriers and caring responsibilities.

Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.

The term 'communities' may actually be misleading in this instance; often communities are presented and interpreted in geographical or 'thematic groups of interest' terms or with a degree of homogeneity. A more accurate, comprehensive and just framework from which to consider which demographics of society may need additional support is again detailed in the draft National Standards for Community Engagement. These include persons experiencing poverty and

“socioeconomic barriers, age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation” as well as language, literacy barriers and caring responsibilities.

Furthermore, research increasingly recognises the negative impact that loneliness and social isolation can have on participation rates, particularly among people experiencing socioeconomic disadvantage – one of the groups the Act aims to better serve. The GCPH’s research about loneliness and social isolation points to the pressing need for public service authorities to engage as widely as possible and to make efforts to increase participation among these persons.

As we describe in our points under Question 13, persons with common interests, concerns and place who are not usually recognised or heard may comprise isolated members who have not yet formed a body (or joined an established one) at that particular moment in time. It will therefore be helpful for public services to bear in mind that some communities do not comprise developed networks and infrastructures, meaning flexibility on the service’s part may be necessary to facilitate their participation.

Q8: How long should the public service authority have to assess the Participation Request and give notice to the community participation body? Is 30 days a reasonable amount of time?

Yes  No

If not, how long should the period for making a decision be? Please give reasons for your response.

Participation Requests are likely to encapsulate a range of communities, groups, service areas and thematic interests. Every Participation Request will have its own information needs and local context. In pragmatic terms some requests may be quite straightforward for services to process and issue their decision. Others may be more complex; requiring more time and increased support for the demographic sub-groups of society outlined in our response to Question 7 and for the reasonable adjustments to the participation process to support equal access described in Question 8.

Importantly, time may be required for public services to provide information to community groups which may support their Participation Request. For the Participation Request process to be as inclusive as possible, 50 days or a phased set of deadlines may be more reasonable and achievable. Otherwise the pressure to meet the 30 day decision time may preclude many promising Participation Requests that need even a little support from the public service to be successful.

Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.

A service’s approval or rejection of requests needs to be publicly available and transparent, including reasons for their decisions and describing the decision-making routes which were taken. We suggest that this information should be

published online in an accessible format under geographic and thematic headings; where community groups can easily access both successful and unsuccessful Participation Requests and build an understanding of the factors that contributed to the decision.

If a request is rejected, it would be helpful for the service to be transparent as to why the request was not taken up by the service and supportive as to what factors may have benefited the request. We propose that such feedback is constructive and that the service outlines any other relevant factors for the community body to consider should they wish to reapply – for some community bodies who might not normally be heard, encouraging reapplication may helpfully encourage their future participation. It may also be helpful for the service to articulate other ways the body can participate in the service and also signpost the body to any other known groups.

Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.

We would welcome further clarity about the outcome improvement process. Specifically, we note that the Act and draft regulations stipulate an “outcomes improvement plan” for Community Planning and an “outcome improvement process” for Participation Requests; it would be helpful if further clarification could be provided about these processes and if they refer to the same thing.

To avoid ambiguity and promote accessibility, a definition of “outcome” would be welcomed.

It is further unclear if a Participation Request solely enables a community body to participate in a service’s outcome improvement process or if there are other parts of the service’s design and delivery which are open to requests. Clarification on these points would be welcome, especially if the regulations are to achieve their aim of not “limiting” opportunities for community bodies to make a request.

Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.

Please see our response to Question 10.

Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.

We recommend that the outcome improvement process also records any changes made in response to the participation and / or issues raised in participation which were not able to be addressed. This may help to keep an overall picture of the scope of the impact that the Participation Request mechanism does and does not

facilitate.

Q13: Do you have any other comments on the draft Participation Request (Procedure)(Scotland) Regulations 2016?

#### **Definitions of community participation body (page 4)**

The draft regulations state that a community group can be formal or loose and have a constitution or not. However, the regulations go on to place the power with the public service authority to decide if the community group meets the requirements of being a 'community group', also placing power with the authority to request information it deems to be required:

"It will be for the public service authority to determine whether a group meets the requirements and the group must provide such information as the authority needs to be satisfied of that."

Placing the power with the public service authority to state whether a group satisfies these definitions carries the risk that some community groups may be excluded if authorities decide they do not fit the bill. Criteria used by authorities to inform their decision must be available publicly so that community organisations have confidence in the Participation Request system.

#### **Who can make a Participation Request**

Persons with shared common interests, concerns and location who are not usually recognised or heard may comprise isolated members who have not yet formed a body (or joined an established one) at that particular moment in time. In light of this point, it seems sensible to enable individuals to submit a Participation Request. Where individuals submit requests, this may enable a service to:

- identify a collective interest in their service. With appropriate support this collective interest may provide invaluable participation. It may be helpful for the service to work with third sector or advocacy groups to enable the individuals to organise themselves in ways that support dialogue with the service.
- signpost individuals to an existing community body which may share their interest.

#### **Constitutions**

With regards to constitutions, we recommend that the regulations and guidance also advise that a balance needs to be struck between demonstrating that a community body is inclusive and representative while not discouraging excluded/marginalised groups who may, for valid reasons, be put off by the formality of constitutions – and who may be the very groups for whom Participation Requests have been designed.

We caution therefore that constitutions may not always be the most appropriate documentation for a community group. In pragmatic terms, information contained in constitutions can vary in format and may also become out of date – this is important to consider as Participation Requests may lead to engagement with a body over a substantial period of time. As such, we recommend that the regulations and guidance consider additional and relevant means by which an authority can become familiar with a community group. Such means may include a

brief 'information sheet' containing details about how a community body engages with its members and its purpose. It may be straightforward therefore if any statutory form used for a Participation Request holds this information, removing the need for authorities to collect additional documentation.

**Third sector**

We note that the third sector are not explicitly included within the Act and these regulations. We recommend that these regulations and guidance are amended to be consistent with the draft regulations and guidance for Community Planning, which do reference the third sector in ways which are relevant for these regulations and guidance on Participation Requests (for example paragraphs 17, 51 and 52).