

COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Participation requests

37. This Part sets out how a “community participation body” can make a request to a “public service authority” to participate in a process with a view to improving an outcome that results from (or is contributed to by virtue of) the provision of a public service, and how public service authorities are to deal with such requests. The Act provides the main structure of the approach, and there are powers for the Scottish Ministers to make regulations adding more detail about procedures to be followed, timescales, and information to be provided or published. There is also a requirement (in section 34) for public service authorities to have regard to guidance in carrying out their functions under this Part.

Community controlled body

38. [Section 19](#) defines a “community-controlled body”. This can be a corporate body or unincorporated but it must have a written constitution which:
- defines the community to which the body relates;
 - provides membership rules which ensure the body is open to and controlled by members of that community, and that the majority of the members of the body are members of that community;
 - sets out aims and purposes which include the promotion of a benefit for that community; and
 - provides that any surplus funds or assets are to be used for the benefit of that community.
39. There are no restrictions on how a community may be defined for this purpose. It may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

Community participation body

40. [Section 20](#) defines a “community participation body”, which is the type of body which can make a participation request under section 22. A community participation body may be a community-controlled body, a community council, a body designated by the Scottish Ministers by order or a group as described in subsection (4).
41. Subsection (2) provides that the Scottish Ministers may designate individual bodies as community participation bodies, or may designate a whole class of bodies, so that any body of that type will qualify as a community participation body. Subsection (3) states

that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

42. A group described in subsection (4) is one that has no written constitution, unlike a community-controlled body. It must nonetheless relate to a particular community; its membership must be open to any member of that community, its decisions must be made or otherwise controlled by members of the group who are members of that community, and its surplus funds and assets must be applied for the benefit of that community.

Public service authority

43. [Schedule 2](#), introduced by section 21, lists the bodies to which a participation request can be made, to be known as “public service authorities”. This includes local authorities, Health Boards, and certain other Scottish public bodies. The public bodies selected are involved in providing or supporting local services. The list does not include, for example, boards which advise Ministers or which regulate certain professions.
44. The remainder of section 21 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other persons or classes of person as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:
- part of the Scottish Administration (which has the meaning given in section 126(6) to (8) of the Scotland Act 1998);
 - “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government departments and public bodies that deal with matters reserved to the UK Parliament cannot be included;
 - companies wholly-owned by public service authorities.
45. Under subsection (9), when adding a person to the list, the Scottish Ministers may exclude some of the services they provide from being subject to participation requests.

Participation requests and the outcome improvement process

46. [Section 22](#) provides that a community participation body, or two or more bodies jointly, may make a participation request to a public service authority. This is a request to take part in a process established by the authority with a view to improving an outcome that results from (or is contributed to by virtue of) the provision of a public service. Subsection (2) says that the request must specify an outcome relating to a service provided by that authority, and the community participation body must explain why it considers it should be involved, what it can bring to the process (for example, members’ experience as users of the service), and what improvement it expects might be achieved as a result. Subsections (3) and (4) relate to a request made by a group without a written constitution, and require the group to provide sufficient information to the public service authority to allow the authority to be satisfied that the group meets the requirements set out in section 20(4). Subsection (6) provides that the request may also ask that one or more other public service authorities should participate in the outcome improvement process, in addition to the authority to which the request is made.
47. [Section 23](#) gives the Scottish Ministers powers to make regulations setting out further detail on participation requests. Regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, additional information to be provided in connection with requests, and ways in which public service authorities are to promote the use of participation requests and support communities to form community participation bodies in order to make participation requests and participate in outcome improvement processes.
48. [Section 24](#) requires a public service authority to agree to or refuse any participation request it receives, and sets out in subsections (3) to (5) how the authority must

make that decision. In addition to the reasons provided in the request, the authority must consider whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social or environmental wellbeing, to reduce inequalities that arise from socio-economic disadvantage or increase participation of people experiencing such disadvantage, and any other benefits or matters the authority considers relevant. The authority must also take into account its responsibilities in relation to equal opportunities. It must agree to the request unless there are reasonable grounds for refusal. Subsection (6) requires the authority to give notice of its decision to the community participation body within a period prescribed in regulations made by the Scottish Ministers or a longer period if agreed between the public service authority and the community participation body. In addition, if the public service authority is to refuse the request, it must give reasons for that refusal.

49. When a public service authority agrees to a participation request, the decision notice sent to the community participation body must, under section 25, describe how the outcome improvement process will work, how the body is expected to take part in the process, and whether and how any other person (including another body or another authority) will be involved. The authority may already have established a process with which the community participation body can join in, in which case the authority must say what stage the process has reached. If a new process is to be established as a result of the request, the community participation body has 28 days to comment on that new process (section 26(2) and (3)). The public service authority has a further 28 days to provide final details of that process, taking those representations into account, and must then (under section 28) establish the outcome improvement process within 90 days, and maintain it. The authority must publish information about the process if required to do so by regulations made under section 26(6). Section 29 provides that the public service authority may modify the process, following consultation with the community participation body. If it does so, it must publish information about the modification, if required to do so by regulations.
50. [Section 27](#) allows a public service authority to decline to consider a participation request, if a new request is made within 2 years about the same outcome relating to the same service. The new request may be declined whether it is made by the same community participation body as the previous request or by a different body.
51. [Section 30](#) gives the Scottish Ministers power to make provision for appeals or reviews in relation to decisions on participation requests, by regulations.
52. When an outcome improvement process has been completed, section 31 requires the public service authority to publish a report on the process. The report must summarise the outcome of the process, including whether the outcome to which it related has been improved, and describe how the community participation body that made the request influenced the process and the outcomes. It must also explain how the authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes. In preparing the report, the public service authority must seek the views of the community participation body which made the request and any other community participation bodies that participated in the outcome improvement process. Subsection (6) gives the Scottish Ministers power to make regulations setting out further detail about these reports and the information they are to contain.
53. [Section 32](#) requires a public service authority to publish an annual report on the number of participation request received and their outcomes, and any action taken by the authority to promote the use of participation requests and support community participation bodies to make them. The report will relate to a year from 1 April to 31 March and must be published no later than 30 June following the end of the period to which the report relates. Section 33 requires the Scottish Ministers to produce a report on the operation of participation requests within 3 years of section 22 coming into force and lay it before the Scottish Parliament.