



Community Empowerment (Scotland) Act 2015

2015 asp 6

PART 3

PARTICIPATION REQUESTS

Key definitions

19 Meaning of “community-controlled body”

In this Part, a “community-controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—

- (a) a definition of the community to which the body relates,
- (b) provision that the majority of the members of the body is to consist of members of that community,
- (c) provision that the members of the body who consist of members of that community have control of the body,
- (d) provision that membership of the body is open to any member of that community,
- (e) a statement of the body’s aims and purposes, including the promotion of a benefit for that community, and
- (f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

20 Meaning of “community participation body”

(1) In this Part, “community participation body” means—

- (a) a community-controlled body,
- (b) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973,
- (c) a body mentioned in subsection (2), or
- (d) a group mentioned in subsection (4).

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- (2) The body is a body (whether corporate or unincorporated)—
 - (a) that is designated as a community participation body by an order made by the Scottish Ministers for the purposes of this Part, or
 - (b) that falls within a class of bodies designated as community participation bodies by such an order for the purposes of this Part.
- (3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community participation body is to be the trustees of the trust.
- (4) The group is a group—
 - (a) that comprises a number of individuals who are members of the group,
 - (b) that has no written constitution,
 - (c) that relates to a particular community,
 - (d) membership of which is open to any member of that community,
 - (e) whose decisions are made or otherwise controlled by members of the group who are members of that community, and
 - (f) any surplus funds and assets of which are to be applied for the benefit of that community.

21 Meaning of “public service authority”

- (1) In this Part, “public service authority” means—
 - (a) a person listed, or of a description listed, in schedule 2, or
 - (b) a person mentioned in subsection (3).
- (2) The Scottish Ministers may by order modify schedule 2 so as to—
 - (a) remove an entry listed in it,
 - (b) amend an entry listed in it.
- (3) The person is a person—
 - (a) that is designated as a public service authority by an order made by the Scottish Ministers for the purposes of this Part, or
 - (b) that falls within a class of persons designated as public service authorities by such an order for the purposes of this Part.
- (4) An order under subsection (3) may designate a person, or class of persons, only if the person, or (as the case may be) each of the persons falling within the class, is—
 - (a) a part of the Scottish Administration,
 - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
 - (c) a publicly-owned company.
- (5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more public service authorities.
- (6) For that purpose, a company is wholly owned by one or more public service authorities if it has no members other than—
 - (a) the public service authority or (as the case may be) authorities,
 - (b) other companies that are wholly owned by the public service authority or (as the case may be) authorities, or
 - (c) persons acting on behalf of—

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- (i) the public service authority or (as the case may be) authorities, or
- (ii) such other companies.

- (7) In this section, “company” includes any body corporate.
- (8) Subsection (9) applies where the Scottish Ministers make an order under subsection (3).
- (9) The Scottish Ministers may specify in the order a public service that is or may be provided by or on behalf of the person designated, or (as the case may be) a person falling within the class designated, in respect of which a specified outcome may not be specified in a participation request.

Participation requests

22 Participation requests

- (1) A community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process.
- (2) In making such a request, the community participation body must—
 - (a) specify an outcome that results from, or is contributed to by virtue of, the provision of a service provided to the public by or on behalf of the authority,
 - (b) set out the reasons why the community participation body considers it should participate in the outcome improvement process,
 - (c) provide details of any knowledge, expertise and experience the community participation body has in relation to the specified outcome, and
 - (d) provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation in the process.
- (3) Subsection (4) applies where a community participation body which is a group as mentioned in section 20(4) makes a participation request to a public service authority.
- (4) The group must, in addition to complying with subsection (2), provide such information to the authority as the authority may require in order for it to be satisfied that the body meets the requirements to be such a group.
- (5) A participation request may be made jointly by two or more community participation bodies.
- (6) A participation request may include a request that one or more public service authorities other than the authority to which the request is made participate in the outcome improvement process along with the authority to which the request is made.
- (7) In this Part—
 - “outcome improvement process”, in relation to a public service authority, means a process established or to be 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,
 - “participation request” means a request made under subsection (1),
 - “public service” means a service provided to the public by or on behalf of a public service authority,

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“specified outcome” means an outcome of the type mentioned in subsection (2) (a).

23 Regulations

- (1) The Scottish Ministers may by regulations make further provision about participation requests.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with specifying—
 - (a) the manner in which requests are to be made,
 - (b) the procedure to be followed by public service authorities in relation to requests,
 - (c) the procedure to be followed by public authorities in relation to requests that include a request of the type mentioned in section 22(6),
 - (d) the information to be provided in connection with requests (in addition to that required under section 22(2)),
 - (e) ways in which public service authorities are to promote the use of participation requests,
 - (f) support that public service authorities are to make available to community participation bodies to enable such bodies to make a participation request and participate in any outcome improvement process resulting from such a request,
 - (g) types of communities that may need additional support in order to form community participation bodies, make participation requests and participate in outcome improvement processes.

Decisions about participation requests

24 Participation requests: decisions

- (1) This section applies where a participation request is made by a community participation body to a public service authority.
- (2) The authority must decide whether to agree to or refuse the participation request.
- (3) In reaching its decision under subsection (2), the authority must take into consideration the following matters—
 - (a) the reasons set out in the request under section 22(2)(b),
 - (b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
 - (c) whether agreeing to the request mentioned in subsection (2) would be likely to promote or improve—
 - (i) economic development,
 - (ii) regeneration,
 - (iii) public health,
 - (iv) social wellbeing, or
 - (v) environmental wellbeing,
 - (d) whether agreeing to the request would be likely—

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- (i) to reduce inequalities of outcome which result from socio-economic disadvantage,
 - (ii) to lead to an increase in participation in the outcome improvement process to which the request relates by persons who experience socio-economic disadvantage,
 - (iii) otherwise to lead to an increase in participation by such persons in the design or delivery of a public service the provision of which results in, or contributes to, the specified outcome mentioned in the request,
 - (e) any other benefits that might arise if the request were agreed to, and
 - (f) any other matter (whether or not included in or arising out of the request) that the authority considers relevant.
- (4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (5) The authority must agree to the request unless there are reasonable grounds for refusing it.
- (6) The authority must, before the end of the period mentioned in subsection (7), give notice (in this Part, a “decision notice”) to the community participation body of—
- (a) its decision to agree to or refuse the request, and
 - (b) if its decision is to refuse the request, the reasons for the decision.
- (7) The period is—
- (a) a period prescribed in regulations made by the Scottish Ministers, or
 - (b) such longer period as may be agreed between the authority and the community participation body.
- (8) The Scottish Ministers may by regulations make provision about—
- (a) the information (in addition to that required under this Part) that a decision notice is to contain, and
 - (b) the manner in which a decision notice is to be given.

25 Decision notice: information about outcome improvement process

- (1) This section applies where a public service authority gives a decision notice agreeing to a participation request by a community participation body.
- (2) Where the authority at the time of giving the notice has established an outcome improvement process, the decision notice must—
- (a) describe the operation of the outcome improvement process,
 - (b) specify what stage in the process has been reached,
 - (c) explain how and to what extent the community participation body is expected to participate in the process, and
 - (d) if any other person participates in the process, describe how the person participates.
- (3) Where the authority at the time of giving the notice has not established an outcome improvement process, the decision notice must—
- (a) describe how the proposed process is intended to operate,

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- (b) explain how and to what extent the community participation body which made the participation request is expected to participate in the proposed process, and
- (c) if any other person is expected to participate in the proposed process, describe how the person is expected to participate.

26 Proposed outcome improvement process

- (1) This section applies where a public service authority gives a community participation body a decision notice as mentioned in section 25(3).
- (2) The community participation body may make written representations in relation to the proposed outcome improvement process.
- (3) Any representations under subsection (2) must be made before the end of the period of 28 days beginning with the day on which the notice is given.
- (4) Before giving notice under subsection (5), the authority must take into consideration any representations made under subsection (2).
- (5) The authority must, before the end of the period of 28 days beginning with the day after the expiry of the period mentioned in subsection (3), give a notice to the community participation body containing details of the outcome improvement process that is to be established.
- (6) The authority must publish such information about the process as may be specified in regulations made by the Scottish Ministers.
- (7) The authority must publish the information mentioned in subsection (6) on a website or by other electronic means.

27 Power to decline certain participation requests

- (1) Subsection (2) applies where—
 - (a) a participation request (a “new request”) is made to a public service authority,
 - (b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous participation request (a “previous request”), and
 - (c) the previous request was made in the period of two years ending with the date on which the new request is made.
- (2) The public service authority may decline to consider the new request.
- (3) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests relate to—
 - (a) the same public service, and
 - (b) the same, or substantially the same, outcome that results from, or is contributed to by virtue of, the provision of the public service.
- (4) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

Outcome improvement processes

28 Duty to establish and maintain outcome improvement process

A public service authority that gives notice under section 26(5) must—

- (a) before the end of the period of 90 days beginning with the day on which the notice is given, establish the outcome improvement process in respect of which the notice is given by taking whatever steps are necessary to initiate the process, and
- (b) maintain that process.

29 Modification of outcome improvement process

- (1) This section applies where a public service authority establishes an outcome improvement process under section 28(a) following a participation request by a community participation body.
- (2) Following consultation with the community participation body, the authority may modify the outcome improvement process.
- (3) Where the outcome improvement process is modified under subsection (2), the authority must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.

Appeals and reviews

30 Regulations: appeals and reviews

- (1) The Scottish Ministers may by regulations make provision for or in connection with—
 - (a) appeals against decision notices,
 - (b) reviews of decisions of public service authorities relating to participation requests.
- (2) Regulations under subsection (1) may, in particular, make provision for or in connection with—
 - (a) the procedure to be followed in connection with appeals and reviews,
 - (b) the manner in which appeals and reviews are to be conducted,
 - (c) the time limits within which—
 - (i) appeals are to be brought,
 - (ii) applications for reviews are to be made,
 - (d) the circumstances under which—
 - (i) appeals may or may not be brought,
 - (ii) applications for reviews may or may not be made,
 - (e) the persons to whom—
 - (i) appeals may be made,
 - (ii) applications for reviews may be made,
 - (f) the powers of persons determining appeals and the disposals available to such persons,
 - (g) the steps that may be taken by a public service authority following a review,

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- (h) the effect of any decision taken in relation to an appeal or review on a decision notice to which the appeal or review relates.

Reporting

31 Reporting

- (1) This section applies where—
 - (a) a participation request has been made, and
 - (b) the outcome improvement process relating to that request is complete.
- (2) The public service authority that established the process must publish a report—
 - (a) summarising the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved,
 - (b) describing how and to what extent the participation of the community participation body that made the participation request to which the process related influenced the process and the outcomes, and
 - (c) explaining how the authority intends to keep the community participation body and any other persons informed about—
 - (i) changes in the outcomes of the process, and
 - (ii) any other matters relating to the outcomes.
- (3) In preparing the report mentioned in subsection (2), the public service authority must seek the views of the bodies mentioned in subsection (4) in relation to—
 - (a) the way in which the outcome improvement process was conducted, and
 - (b) the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved.
- (4) The bodies referred to in subsection (3) are—
 - (a) the community participation body which made the participation request to which the outcome improvement process related, and
 - (b) any other community participation bodies which participated in that process.
- (5) The authority must publish the report mentioned in subsection (2) on a website or by other electronic means.
- (6) The Scottish Ministers may by regulations make provision about reports published under subsection (2), including the information (in addition to that required under that subsection) that reports are to contain.

32 Annual reports

- (1) A public service authority must publish a participation request report for each reporting year.
- (2) A participation request report is a report setting out, in respect of the reporting year to which it relates—
 - (a) the number of participation requests the authority received,
 - (b) the number of such requests which the authority—
 - (i) agreed to, and

- (ii) refused,
 - (c) the number of such requests which resulted in changes to a public service provided by or on behalf of the authority, and
 - (d) any action taken by the authority—
 - (i) to promote the use of participation requests,
 - (ii) to support a community participation body in the making of a participation request.
- (3) A participation request report is to be published under subsection (1) no later than 30 June following the end of the reporting year to which it relates.
- (4) In this section, “reporting year” means a period of one year beginning on 1 April.

33 Ministerial report

- (1) The Scottish Ministers must prepare, and lay before the Scottish Parliament, a report on the operation of participation requests.
- (2) The report is to be prepared before the expiry of the period of three years beginning with the day on which section 22 comes into force.

Guidance

34 Guidance

- (1) A public service authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.
- (2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

Interpretation of Part 3

35 Interpretation of Part 3

In this Part—

- “community-controlled body” has the meaning given by section 19,
- “community participation body” has the meaning given by section 20(1),
- “constitution”, in relation to a company, means the memorandum and articles of association of the company,
- “decision notice” is to be construed in accordance with section 24(6),
- “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,
- “outcome improvement process” has the meaning given by section 22(7),
- “participation request” has the meaning given by section 22(7),
- “public service” has the meaning given by section 22(7),
- “public service authority” has the meaning given by section 21,
- “specified outcome” has the meaning given by section 22(7).