

CHESHIRE EAST COUNCIL

REPORT TO: COUNCIL

Date of Meeting: 27th May 2010
Report of: Borough Solicitor
Subject/Title: Petitions - The Local Democracy, Economic Development and Construction Act 2009 and the Local Authorities (Petitions) (England) Order 2010

1.0 Report Summary

- 1.1 The Local Democracy, Economic Development and Construction Act 2009 places a new duty on Councils to promote local democracy and introduce facilities for receiving and dealing with petitions. The Act received Royal Assent on 12th November 2009. The majority of provisions are coming into force through the publication of orders. The Local Authorities (Petitions) (England) Order 2010 was published on 22nd March and comes into effect on 15th June 2010. The effect of the order is to requires every local authority, from 15th June 2010, to have adopted a "Petition Scheme" which sets out how it will handle petitions, and by 15th December 2010 every local authority must have an on-line petition facility, under which anyone may set up a petition on the authority's website, and other petitioners may "sign up" to the petition on-line. This report invites Council to introduce a scheme for dealing with petitions.

2.0 Decision Requested

It is recommended that Council:

1. Approve the draft Petition Scheme,
2. Designate the Borough Solicitor as the Petitions Officer and request him to report annually to Council on the operation of the Scheme,
3. Request the Borough Solicitor to incorporate the Petition Scheme in the Council's Constitution and make consequential amendments; and
4. That the Borough Solicitor be requested to report to the Governance and Constitution Committee on the development of an on-line petition facility.

3.0 Reasons for Recommendations

- 3.1 Petitions are the most widely used form of civic action by individuals and communities to make representations to different public bodies on matters affecting them. The Government has decided that Councils must introduce facilities for both paper and electronic petitions. The new duty being introduced increases the range of opportunities for individuals and groups to engage with the Council.

4 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications including - Climate change and Health

6.1 Not applicable.

7.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

8.1 The Council's Modern.gov agenda management system has been upgraded at no extra cost with an e-Petitions module. The cost of controlling, moderating and dealing with paper and e petitions can be met from within existing resources.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 Chapter 2 of Part 1 of the Local Democracy, Economic Development and Construction Act places a duty on the Council to have a Scheme in place to handle petitions and to provide a facility for making electronic petitions to the authority. The Local Authorities (Petitions) (England) Order 2010 requires the Council to adopt a Petitions Scheme by the 15th June. The order requires e petitioning to be introduced by 15th December 2010. The Scheme must receive formal approval of the Council before it comes into force. There are specific requirements about the way petitions should be acknowledged and categorised and to require officers to be held to account. The act also requires publication of details of the petition and action taken by the authority. The Legislation also proposes that if the petitioner so requests, an Overview and Scrutiny Committee may review the steps taken or action proposed to be taken by the Council.

10.0 Risk Management

10.1 The Council will need to moderate petitions and criteria will need to be established to decide if a petition should be rejected. This will also cover petitions that do not reflect the views of the Council or those which are politically motivated. The Scheme that Council must adopt will cover these issues but Democratic Services will produce a note covering these issues together with guidance for the public on submitting a petition or e petition. In respect of e petitions privacy of information and the security of data will need to be controlled. The Government has indicated that guidance on e-petitions will be available, including practical advice for selecting and setting up an e-petitions facility and a set of recommended data standards.

11.0 Background and Options

11.1 The Local Democracy, Economic Development and Construction Act 2009 requires all principal local authorities in England to establish a scheme for handling petitions made to the authority. The Local Authorities (Petitions) (England) Order 2010 has been published together with Statutory Guidance. Set

out below is more detailed information on the requirements of the Act and the different matters that need to be addressed.

11.2 What is a Petition?

The Act defines different categories of petitions, and allows the authority to define the number of signatures required for each category –

- a. “Petitions for Debate” must be reported to and debated at full Council;
- b. “Petitions to hold an Officer to Account” trigger an open meeting of an Overview and Scrutiny Committee at which the named officer will report and be questioned on their actions
- c. “Exempted Petitions” – Petitions received in response to statutory consultation for example on planning and licensing applications will continue to be reported to Planning and Licensing Committees
- d. “Ordinary Petitions”, for which the authority can determine how these petitions will be handled.

The Department for Communities and Local Government has issued statutory guidance on Petition Schemes which suggest that authorities should set the number of signatures required for each category of petition at levels which encourage rather than discourage petitions, and should set a lower threshold for petitions on local rather than authority-wide matters.

The Petition Scheme would only apply to petitions which relate to matters for which the authority has responsibility or which it is able to influence.

11.3 What does the Council Need to do?

Attached is a draft Petition Scheme, which has been drafted taking the statutory guidance into account. The key features of this Scheme are as follows –

- a. An appropriate officer needs to be designated as the Petitions Officer, to be responsible for recording all petitions received, responding to petition organisers, ensuring that petitions are reported to Council or to Portfolio Holder Members as required, updating a Petitions Site on the authority’s website, inviting petition organisers to attend meetings. This work is best handled by the Democratic Services Team, and so the Borough Solicitor should be designated as Petitions Officer for this purpose;
- b. The authority needs to decide the number of signatures required for petitions. The suggested minimum threshold for ordinary petitions is 10, but that 2000 signatories be required for a petition to hold an officer to account (reduced to 1000 where it is a local matter which affects no more than 2 wards) and 3,000 signatories for a Petition for Debate (reduced to 1500 where it relates to a local matter affecting no more than two wards). These figures can be revised at any time if they are found to act as a deterrent to petitions, or to encourage frivolous or vexatious petitions, and the Petitions Officer will report annually on how the Petition Scheme is working.

- c. The authority needs to decide who Ordinary Petitions will be reported to for decision. It is suggested that this would ordinarily be the relevant Service and Portfolio Holder(s). If it was beyond the delegated powers of officers it could be considered by the Portfolio Holder who would be able to refer a petition to Cabinet if s/he felt that it raised wider issues or was outside the delegated powers of the Portfolio Holder.
- d. The authority needs to decide who will be provided with copies of petitions. It is suggested that ward Councillor be provided with a copy of each petition within 5 working days of receipt, at the same time as it is put on the Petitions Site on the Council website.
- e. The authority will in practice need to set a maximum time to be allowed for discussion of petitions at any one meeting of Council or Cabinet. Whilst the 2009 Act does not provide for such a limit, the authority does need to ensure that it can continue to discharge its ordinary business effectively. Accordingly, it is suggested that a maximum of 30 minutes be allowed at any meeting, but that this can be extended by the Chairman when appropriate.
- f. The authority needs to develop an On-Line Petition Facility, to be available from 15th December 2010. It is suggested that Borough Solicitor be requested to report to the Governance and Constitution Committee on this matter.

In addition the authorities Petition Scheme must be approved by a meeting of the full council before it comes into force and must be published on the principal local authority's website and by any other method appropriate for bringing it to the attention of those who

- 11.4 The Council should approach any petitions it receives positively and not assume that the motivation is one which is vexatious, abusive or inappropriate. However, petitions, which are in the opinion of the Council are inappropriate, must be responded to. In such cases the Council should explain why it will not be taking any action on it.

12.0 Access to Information

- 12.1 The background papers relating to this report can be inspected by contacting the report writer:

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Appendices:

Appendix A – Model Scheme

APPENDIX A

Petitions

Cheshire East Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition

We treat as a petition any communication which is signed by or sent to us on behalf of a number of people. For practical purposes, we normally set a requirement for at least 10 signatories or petitioners before we treat it as a petition. Whilst we like to hear from people who live, work or study in Cheshire East, this is not a requirement and we would take equally seriously a petition from, for example, 10 visitors to the District on the subject of facilities at one of our visitor attractions.

Petitions can also be presented to the Mayor prior to a meeting of the Council. These meetings take place on a bi monthly basis, dates and times can be found on the Cheshire East Website www.cheshireeast.gov.uk. If you would like to present your petition to the Mayor, or would like your councillor to present it on your behalf, please contact the Democratic Services Manager at the address below at least 10 working days before the meeting and they will talk you through the process.

What should a petition contain?

A petition should include –

A clear statement of your concerns and what you want the authority to do. This must relate to something which is the responsibility of the authority, or over which the authority has some influence. Where a petition relates to a matter which is within the responsibility of another public authority, we will ask the petition organiser whether s/he would like us to redirect the petition to that other authority. Where a petition relates to a matter over which the authority has no responsibility or influence, we will return the petition to the petition organiser with an explanation for that decision;

The name and contact details of the “petition-organiser” or someone to whom you would like any correspondence about the petition to be sent. Contact details may be either a postal address or an Email address;

The names of at least 10 petitioners (which can include the petition organiser). Where the petition is in paper form, this can include an actual signature from each petitioner, but actual signature is not essential. Where the petition is in electronic form, a list of the names of the petitioners will suffice. You may include the addresses of petitioners, which may be useful to the authority, for example, in assessing the degree of local support or opposition to a planning application, but this is not essential. If you want your petition to be debated at a meeting of the Council (“A Petition for Debate”), or to trigger a public meeting of an Overview and Scrutiny Committee at which a specific officer will be required to report (“A Petition to hold an Officer to Account”), your petition will need to contain a higher number of signatories or petitioners (see below);

If you are submitting the petition in response to our consultation on a specific matter, please identify the matter which it relates to, so that we can ensure that your petition is considered along with original matter.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

Who should you send a petition to?

Where you submit a petition in response to consultation by the authority, please address it to the return address set out in the consultation invitation. This will ensure that it is reported at the same time as the matter to which it relates is considered.

We have appointed a Petitions Officer, who is responsible for receiving, managing and reporting all other petitions sent to the authority. Please address petitions to –

The Petitions Officer
Cheshire East Council,
Westfields,
Middlewich Road,
Sandbach,
Cheshire CW11 1HZ

Or to petitions@cheshireeast.gov.uk.

The Petitions Officer will ensure that your petition is acknowledged to the petition organiser and entered on the authority's petitions website and that the website is regularly up-dated with information on the progress of your petition. The Petitions Officer can also provide you with advice about how to petition the authority or the progress of your petition, at either of the above addresses or by telephone at 01270 686458.

Types of Petition

There are five different types of petition, as set out below. How we deal with a petition depends on which type of petition you submit –

Ordinary Petitions

These are petitions which do not come within any of the following specific types. Please note that petitions which raise issues of possible Councillor misconduct will be taken as complaints arising under the Local Government Act 2000 and will be reported to the Standards Committee, rather than considered under this Petitions Procedure.

Consultation Petitions

These are petitions in response to an invitation from the authority for representations on a particular proposal or application, for example on planning or licensing applications or proposals for parking restrictions or speed limits. Consultation petitions which are received by the response date in the consultation invitation will be reported to a public meeting of the person or body which will be taking the decision on the application or proposal.

Statutory Petitions

Particular Acts of Parliament require the Council to consider petitions, for example a petition for a review of Parish Councils, or a petition for a directly-elected Mayor. Where you submit a petition under such a specific statute, we will report it to the next available meeting of the Council in accordance with the statutory requirements.

Petitions for Debate

If you want your petition to be reported to and debated at a meeting of the Council, it must contain at least 3000¹ signatories or petitioners (this is reduced to 1500 signatories or petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). The Petitions Officer will request the appropriate Chief Officer to prepare a report. This report together with the Petition will be presented to full Council who will debate it fully. Council may then refer the Petition to the appropriate decision making body for further consideration.

Petitions to Hold an Officer to Account

If you want your petition to be considered at a meeting of an Overview and Scrutiny Committee, where an officer, identified either by name or by post title, will be required to answer questions on the conduct of a particular matter, your petition should contain at least 2000 signatories or petitioners (this is reduced to 1000 signatories or petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). The authority has determined that such petitions must relate to the Chief Executive, a Director or a Head of Service of the authority. Please note that where the petition raises issues of competence or misconduct, the petition will be referred to the Chief Executive (or to the Head of Human Resources in respect of the Chief Executive) and will be considered under the authority's Disciplinary Procedures, and not under this Petitions Procedure.²

The Petitions Website

The authority maintains a petitions web page on its website.

When a petition is received, within 5 working days the Petitions Officer will open a new public file within the website and will put in that file the subject matter of the petition, its date of receipt and the number of signatories or petitioners. The petition organiser's name and contact details will only be included on the website if s/he so requests.

As soon as it is decided who the petition will be considered by within the authority, and when that consideration will occur, this information will be entered on the website at the same time as it is sent to the petition organiser. Once the petition has been considered, the authority's decision will be notified to the petition organiser and put on the website within 5 working days of that consideration.

¹ The number of signatories or petitioners required for Petitions for Debate, and for Petitions to Hold and Officer to Account have been set by the authority to try to ensure that matters of genuine concern can be brought to the authority's attention. These requirements will be reviewed periodically in the light of the number of petitions received, to ensure that the requirements are not excessive.

² Note that the Local Democracy, Economic Development and Construction Act 2009 makes no provision for handling petitions which raise issues of officer or member misconduct or officer competence, but in practice such petitions cannot be handled under the Petitions Procedure and must be handled under the procedures appropriate to such matters.

Petitions are presented on the petitions website in the order in which they are received, but the website can be searched for key-words to identify all petitions relating to a particular topic. All petitions are kept on the website for 2 years from the date of receipt.

The role of Ward Councillors

When a petition is received which relates to a local matter (particularly affecting specific electoral wards), the Petition Officer will send a copy of the petition to each relevant Ward Councillor at the same time as acknowledging receipt of the petition to the petition organiser.

What happens when a petition is received?

Whenever a petition is received –

Within 5 working days of receipt, the Petitions Officer will acknowledge receipt to the petition organiser.

At the same time as responding to the petition organiser, the Petitions Officer will notify Ward Councillors of receipt of the petition and the relevant officers and Portfolio Holders. In some cases, the Petitions Officer may be able to resolve the petitioners' request directly, by getting the relevant Portfolio Holder or officer to take appropriate action. For example where the petition relates to fly-tipping and the authority can arrange for it to be cleared up directly. Where this is done, the Petitions Officer will ask the petition organiser whether s/he considers that the matter is resolved.

Unless the matter has been resolved to the satisfaction of the petition organiser, the Petitions Officer will within 5 working days of receipt of the petition provide a substantive response to the petition organiser setting out who the petition will be reported to for consideration,

Within 5 working days of receipt of a petition, the Petitions Officer will open a new public file for the petition on the authority's petitions website, setting out the subject matter of the petition, the date of receipt and the number of petitioners. The petition organiser's name and contact details will only be included on the website if s/he so requests.

At each stage of the consideration of the petition, within 5 working days of any decision, the Petitions Officer will ensure that the petitions website is updated to ensure that petitioners can track progress of their petition.

The process after this stage differs for the various types of petitions – see below.

What happens to a Consultation Petition?

Consultations Petitions are submitted in response to an invitation from the Council to submit representations on a particular proposal or application, such as a planning or licensing application or a proposed traffic regulation order.

The petition will be reported to person or body who will take the decision on the proposal or application at the meeting when they are to take the decision on that application or proposal. The Council's Constitution defines who will take different types of decision, as set out in the Scheme of Delegations and the terms of Reference of Committees and Sub-Committees.

Where the petition relates to a matter which is within the delegated power of an officer, s/he will not exercise those delegated powers but will automatically refer the matter up to the relevant Portfolio Holders for decision.³

Where the petition relates to a matter which is within the delegated powers of an individual Portfolio Holders, s/he may decide not to exercise those delegated powers but to refer the matter to Cabinet for decision.

What happens to a Statutory Petition?

Particular Acts of Parliament require the Council to consider petitions, for example a petition for a review of Parish Councils, or a petition for a directly-elected Mayor. Where you submit a petition under such a specific statute, we will report it to the next available meeting of the Council in accordance with the statutory requirements.

What happens to Petitions for Debate?

Petitions for Debate will be reported to the next convenient meeting of Council. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of Council which are not convened to consider the subject matter of the petition.

As set out below, the petition organiser will be invited to address the meeting on the subject of the petition.

What happens to a Petition to Hold an Officer to Account?

Petitions to hold an officer to account will be reported to the next convenient meeting of the relevant Overview and Scrutiny Committee.

In advance of the Committee meeting, the petition organiser will be invited to submit a list of questions which s/he would like put to the officer at the meeting. These questions will be provided to the Chairman of the Committee, who will decide whether they are appropriate, and to the officer concerned, in advance of the meeting.

At the meeting, the Chairman will invite the petition organiser to address the Committee on the issue⁴, and the relevant officer will then be required to report to the Committee in relation to the conduct of the subject matter of the petition. Members of the Committee may question the officer, and the Chairman may invite the petition organiser to suggest questions for him/her to put to the officer.

What happens to an Ordinary Petition?

The Petitions Officer will arrange for each ordinary petition to be reported to the appropriate officer and Portfolio Holder which has responsibility for the subject matter of the Petition for them to deal with under delegated powers. If appropriate to do so the petition organiser will be invited to meet the Portfolio Holder to make representations in support of the petition

³ The exceptions to delegated powers set out in Paragraphs 3.8.3 and 3.8.4 will need to be carried over to the Scheme of Delegations in the Council's Constitution

⁴ Note that the 2009 Act does not give the petition organiser a right to speak at the Committee meeting, but the Council has decided that s/he should be invited to set out the petitioners' concerns in relation to the subject matter of the petition.

Within 5 working days of the consideration of the petition by the relevant Portfolio Holder, the Petitions Officer will notify the petition organiser of the Portfolio Holder's decision and advise him/her that if s/he is not satisfied with that decision, s/he may require the matter to be reported to the next convenient meeting of the appropriate Overview and Scrutiny Committee for review.

At each stage, the Petitions Officer will enter the relevant information on the website at the same time as it is sent to the petition organiser.

Appeal to an Overview and Scrutiny Committee

If the petition organiser is not satisfied with the outcome of the authority's consideration of his/her petition, he/she may appeal to an Overview and Scrutiny Committee by notifying the Petitions Officer of his/her intention to appeal within 20 working days of being notified of the authority's decision on the petition.

Within 5 working days of receipt of intention to appeal, the Petitions Officer will determine which is the relevant Overview and Scrutiny Committee and will notify the petition organiser of the time, date and place of the next convenient meeting of that Overview and Scrutiny Committee and will invite the petition organiser to attend the meeting and to address the Committee on why they considers that the authority's decision on the petition is inadequate.

At that meeting, the Overview and Scrutiny Committee will invite the petition organiser and Ward Councillors to make their representations and to explain why s/he considers that the Council's response was insufficient. The Overview and Scrutiny Committee may not over-ride the decision maker's decision but must consider any recommendations made by the Overview and Scrutiny Committee.

The role of the Petition Organiser

The petition organiser will receive acknowledgement of receipt of the petition within 5 working days of its receipt by the authority.

Where the petition is not accepted for consideration the petition organiser will be advised by the Petitions Officer of the rejection and the grounds for such rejection.

Where the petition is accepted for consideration, the petition organiser will be advised by the Petitions Officer within 5 working days of receipt by the authority as to who the petition will be considered by, and the date, time and place of the meeting at which it will be considered, and will be invited to address the meeting for up to 3 minutes. The meeting may then ask the petition organiser questions on the subject matter of the petition.

The petition organiser may nominate another person to address the meeting and to answer any questions on the matter.

The petition organiser will be regularly informed by the Petitions Officer of any decisions in respect of the petition and will be formally notified of the outcome of the petition's consideration within 5 working days of such decision.

The petition organiser may notify the Petitions Officer of his/her intention to appeal to an Overview and Scrutiny Committee against the decision of the authority relating to the petition within 20 working days of being notified of that decision, and may attend and

address the meeting of the Overview and Scrutiny Committee as to why he/she considers that the authority's decision on the petition was inadequate.

Petitions which will not be reported

Duplicate Petitions

Where more than one petition is received in time for a particular meeting, each supporting the same outcome on one matter, each petition organiser will be treated as an independent petition organiser, but only the petition organiser of the first petition to be received will be invited to address the relevant meeting.

Repeat Petitions

Where a petition will not normally be considered where they are received within 6 months of another petition being considered by the authority on the same matter.

Rejected Petitions

Petitions will not be reported if in the opinion of the Petitions Officer, they are rude, offensive, defamatory, scurrilous or time-wasting, or do not relate to something which is the responsibility of the authority, or over which the authority has some influence.

If your petition is about something over which the council has no direct control we will pass on the petition on behalf of the community to the relevant body. The council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with council policy), then we will set out the reasons for this to you.

Wherever possible, it is expected that the petition will be dealt within six weeks of it being received by the Council. If this is not possible, then a holding response will be sent to the lead petitioner and relevant Portfolio Holder(s).

E-petitions

The council will be introducing e-petitions. It will be possible to create and submit E-petitions through our website and will follow the same guidelines as paper petitions.

This Scheme will be revised when e-petitions are introduced.