

Shetland Islands Council: Participation Requests under the Community Empowerment (Scotland) Act 2015 – POLICY v1.1.4

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1. Introduction

- 1.1. Shetland Islands Council (the Council) recognises the importance of giving the wider Shetland community opportunities to get involved in decisions about the delivery of services, objectives and outcomes.
- 1.2. The Participation Request Policy is an acknowledgement of the role communities can play in enhancing service delivery and the role of enhanced participation in delivering community empowerment and sustainability.
- 1.3. This Policy sets out the Council's approach to meeting its legislative duties under [Part 3 of the Community Empowerment \(Scotland\) Act 2015](#) (the Act). This policy draws on [Part 3 of the Act and the Participation Request \(Procedure\) \(Scotland\) Regulations 2017](#).
- 1.4. This Policy acknowledges the rights afforded to community bodies under the Community Empowerment (Scotland) Act 2015 and the Council commits to promote, support and uphold these rights in the spirit of the legislation.
- 1.5. A reference in this policy to particular legislation includes that legislation as amended, consolidated, re-enacted or replaced, and all subordinate legislation made under it as is, in each case, from time to time in force.
- 1.6. In the event of a conflict between this policy and applicable law, the applicable law shall prevail.
- 1.7. This policy does not in any way fetter the discretion of the Council and each application will be considered on its individual merits and with reference to any other relevant considerations.

2. Procedures

- 2.1 Advice and support for the implementation of this Policy is available from the Community Planning and Development Service.

3. Definition of a Participation Request

- 3.1 The Act states that a community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process. There are a range of possible uses of Participation Requests which can be broadly divided into four categories as follows:
 - To help people start a dialogue about something that matters to their community, through highlighting needs, issues or opportunities for improvement.
 - To help people have their voice heard in policy and service development, through contributing to decision-making processes.
 - To help people to participate in the design, delivery, monitoring or review of service provision, through contributing to service change or improvement.
 - To help people challenge decisions and seek support for alternatives which improve outcomes.
- 3.2 An outcomes improvement process is a process established or to be established by the Council with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service.

3.3 Agreeing to a request is an agreement to a dialogue on improving the outcome as set out by the community participation body – i.e. this dialogue is a major part of the outcome improvement process and will include discussion of changes to service design and delivery where appropriate. It is for the Council, following the outcome improvement process, to decide whether to make any changes to existing service delivery arrangements.

4. Principles

4.1 The Policy is based on the following principles:

- Informal dialogue to establish shared understanding of needs, circumstances and ways forward is the foundation upon which successful community participation is built;
- Proposed outcomes improvements should support the outcomes in [Shetland's Local Outcomes Improvement Plan](#), and should not be to the detriment of other strategies and policies;
- The process for making, receiving and approving/declining participation requests will be carried out in a transparent, equitable and accountable way;
- All Council services will support the Council's Policy on the participation requests and assist in delivering the aims and objectives contained in this Policy;
- The Council will proactively seek to promote participation requests as a means for the most vulnerable and least vocal parts of the Shetland community to get involved in outcomes improvement, and;
- The Council will seek to continuously improve the opportunities for people in Shetland to pro-actively participate in improving outcomes for themselves and their community.

5. Eligibility

5.1 To make a participation request, the community organisation needs to be a "community participation body". This is defined in section 20 of the Act. It can be either:

- a community controlled body (defined in section 19 of the Act);
- a community council;
- a community body without a written constitution (set out in section 20(4) of the Act); or,
- a body designated by the Scottish Ministers.

5.2 A community controlled body must fulfil certain requirements when it wants to make participation request. A community organisation does not need to be defined as a "community controlled body" to be able to make a participation request. However, it will need to meet similar requirements as a community controlled body. These are set out below.

5.3 A community controlled body means a body that has a written constitution which includes:

- (a) **A definition of the community to which the body relates** (whether geographic or a community of interest¹),
- (b) **Provision that membership of the body is open to any member of that community** (the body must be open to anyone who is a member of the community defined above; there must be no additional requirements. Where membership is based on a fee, this should be affordable to anyone from the defined community),
- (c) **Provision that the majority of the members of the body is to consist of members of that community** (people (and organisations) who are not members of the defined community may be allowed to join the body, but the governing documents must require that those who are members of the community must always be in the majority. This can be accomplished by providing for Ordinary Members and Associate Members or Junior Members – the number of Ordinary Members should always exceed the number of other members),
- (d) **Provision that the members of the body who consist of members of that community have control of the body** (having “control of the body” means that the members of the community are in charge of the decisions made by the body. This may be arranged by providing that only Ordinary Members can vote at General Meetings, a majority of the Board must be made up of Ordinary Members and the Chair and Vice-Chair must be Ordinary Members, where they have a casting vote),
- (e) **A statement of the body's aims and purposes, including the promotion of a benefit for that community** (the aims and purposes may include activity that goes wider than the defined community, such as raising money for charity, promoting their interest to other people or sharing experience with communities in other areas; however, at least one of the purposes of the body must clearly be for the benefit of the community they represent), and
- (f) **Provision that any surplus funds or assets of the body are to be applied for the benefit of that community** (any money or property the body has, after covering its running costs, must be used to benefit the community as a whole. Bodies incorporated as co-operatives, which distribute their profits or dividends to members of the body, are not eligible to make requests for ownership).

5.4 Community Bodies without a written constitution are also eligible to make participation requests under certain circumstances where the community participation body comprises a more loosely associated group of people. Under section 20(4) of the Act the community group must have similar features to that provided by a community controlled body as set out above but without a written constitution.

5.5 It will be for the Council to determine whether a group meets the requirements under the Act. But it will be for the community group to provide such information as the Council needs to be satisfied. This can be worked out during the pre-application stage in discussion with the service lead(s).

5.6 The Scottish Ministers can also designate a body to be a community participation body. They will do this by making an order.

¹ Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations, etc.

6. Pre-application stage

- 6.1 In accordance with [Scottish Government guidance](#) and in order to maximise the benefits afforded by this Policy, the Council has designed a pre-application stage for community participation bodies wishing to consider the possibility of making a participation request. This process will be administered by the Council's Community Planning and Development Service, acting as a single point of contact for community participation bodies to discuss their proposals at an early stage.
- 6.2 The pre-application stage is designed to help community participation bodies understand the requirements of the legislation and to assess their readiness and eligibility to submit a competent application. It will also allow for informal dialogue with the relevant service lead(s) to explore opportunities for outcomes improvement without recourse to a formal request.
- 6.3 Community participation bodies are strongly advised to contact the Council's Community Planning and Development Service and discuss their proposals at the earliest opportunity and before any formal request is submitted.

7. Submitting a formal Participation Request

- 7.1 Participation requests can be made to the Council for outcomes that result from (or are contributed to by virtue of) the provision of a Council service (or Council services) or a service delivered on behalf of the Council.
- 7.2 Requests should be made in writing to the Council and must:
- (a) state that it is a participation request made under Part 3 of the Community Empowerment (Scotland) Act 2015;
 - (b) 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
 - (c) set out the reasons why the community participation body considers it should participate in the outcome improvement process
 - (d) provide details of any knowledge, expertise or experience the community participation body has in relation to the specified outcome
 - (e) provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation
- 7.3 A statutory form is provided to guide community participation bodies in submitting a formal request; this is included at Appendix A of this Policy.
- 7.4 Further information and guidance are available from the Council's Community Planning and Development Service; including support for those who have any barriers to filling out the form.
- 7.5 Joint requests may be made by two or more community participation bodies.

8. Receiving Participation Requests

- 8.1 Requests received by the Council will be checked to ensure they have come from an eligible community participation body and are valid, containing the correct information. In the event that a request is not valid, or required information is missing, the Council will write to the community participation body to inform them what is missing and how to complete their request. This will happen only once. If a valid, completed request is

not received after this or a completed request is found to be ineligible, then it is not a participation request and no further action need be taken.

8.2 Once a completed request is submitted, the Council will issue an acknowledgment to the community participation body. The acknowledgement will include:

- the validation date for the request – this is the date on which the last of the required information was received by the Council (the date the request was received if it was complete). This is the date from which other time limits will be calculated
- the time period for the Council to notify the community participation body of its decision – this is 30 working days from the validation date, unless additional public service authorities are involved or an extended timeline is agreed to by the community participation body.

8.3 Should the community participation body include a request that more than one public service authority should participate in the outcome improvement process then the Council, as the lead authority (to who the request was made), should:

- notify the additional public service authorities of the request
- inform the additional public service authorities of the validation date
- send a copy of the participation request and the information provided by the community participation body to each additional public service authority

8.4 Within 15 working days upon of receiving notification the additional public service authorities must inform the Council whether they wish to participate and if it does not, the reasons for that decision. The 15 days will not count towards the time period for notifying the community participation body of the decision, effectively meaning that the time period for decision can be extended in these circumstances to up to 45 working days.

9. Repeat requests

9.1 Section 27 of the Act allows the Council authority to choose not to consider a request which is the same or very similar to a previous request. This applies if the new request relates to matters as a request made in the previous two years. It does not matter if the new request is made by the same body or a different one.

9.2 Where a repeat request is declined, the public service authority should write to the community participation body to advise them of the situation and the reason for declining the request.

10. Decision Making

10.1 Where a participation request is made by a community participation body to the Council, the Council must decide whether to agree to or refuse the request – under the Act, the Council must agree to the request unless there are reasonable grounds for refusing it.

10.2 The decision regarding the request will be taken by the relevant service lead(s) – i.e. Executive Manager or Team Leader – giving consideration as to whether the proposed outcome improvement is likely and achievable. Advice and guidance to assist service leads in making decisions is available from the Community Planning and Development Service.

11. Decision notice

- 11.1 Having made its decision, the Council must issue a decision notice to the community participation body, setting out its decision and, if it refuses the request, the reasons for the decision. This must be done within 30 working days from the validation date or 45 working days if more than one public service authority is involved. Note that this is the period during which both the decision on whether to accept the request and how best to proceed with the outcomes improvement process should be taken.
- 11.2 A longer period for the decision notice to be issued is possible, where this is agreed between the Council and the community participation body. Note that it is for the community participation body to agree any extension to the statutory time period.
- 11.3 The decision notice will be sent to the community participation body and posted on the Council's website www.shetland.gov.uk. Any documentation will be redacted to remove personal information prior to publication in line with The Data Protection Act 2018.
- 11.4 Where a participation request has been accepted and the Council service(s) involved have already established an outcomes improvement process, the decision notice will include the following details:
- how the process operates;
 - what stage the process has already reached
 - how the community participation body will participate, and;
 - how any other parties will participate.
- 11.5 Where a participation request has been accepted and the Council service(s) involved have not already established an outcome improvement process then the decision notice will:
- describe how the outcome improvement process will operate
 - explain how the community participation body is expected to participate
 - describe how any other parties are expected to participate in the process
- 11.6 Outcomes improvement processes should be designed in accordance with the Council's Participation and Engagement Policy.

12. Agreeing the Outcome Improvement Process

- 12.1 Once a decision notice has been given agreeing to a participation request, an outcome improvement process must be discussed and agreed. The outcome improvement process is a process that will improve the outcome set out by the community body.
- 12.2 The community participation body will consider the contents of the decision notice describing the existing or proposed outcomes improvement process. The community participation body can, within 28 days of the decision notice being issued, propose changes to the outcome improvement process. These must be taken into account by the Council.
- 12.3 In practice, the relevant service lead(s) are encouraged to continue dialogue with the community participation body and involve them as far as possible in directly designing the outcomes improvement process.
- 12.4 The final details of the outcomes improvement process must be provided to the community participation body within 28 days of the ending of the initial period of 28

days from the decision notice (i.e. within a maximum of 56 days from the decision notice being issued).

- 12.5 At this point, details of the outcomes improvement process must be published on the Council website (www.shetland.gov.uk), namely:
- the names of the community participation bodies and public service authorities which are involved in the outcome improvement process
 - the outcome to which the outcome improvement process relates
 - how the outcome improvement process is to operate
 - the timescale for the completion of the outcome improvement process

13. Setting up and maintaining the Outcomes Improvement Process

- 13.1 The outcomes improvement process must be established and started within 90 calendar days of the decision notice being issued. Once underway, the Council must maintain the process to completion as per the details set out in paragraph 12.5.
- 13.2 The Council can modify the process, following consultation with the community participation body. Where a process is modified, the following details should be published in the same manner as set out in paragraph 12.5:
- the names of the community participation bodies and public service authorities involved in the modified outcome improvement process
 - the outcome to which the modified process relates
 - identify the process which has been modified
 - how that process has been modified
 - how the modified process is to operate

14. Reporting

- 14.1 When an outcome improvement process has been completed the Council must 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 outcomes. It must also explain how the Council 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.
- 14.2 The report will be prepared by the relevant service lead(s). A reporting template is available from the Community Planning and Development Service.
- 14.3 In preparing the report, the Council must seek the views of the community participation body that made the request and any other community participation bodies involved.
- 14.4 Annual reports will be presented to the Development committee to update Elected Members on live participation requests and any participation requests and outcomes improvement processes that have commenced during the preceding year.
- 14.5 An annual report on participation requests will be published by the Council to include for that year:
- the number of requests received

- the number of requests agreed and refused
- the number of requests which resulted in changes to a service provided by, or on behalf of, the Council
- any action taken by the Council following an outcomes improvement process

14.6 Annual reports will cover the period 1st April to 31st March and must be published by 30th June in the following financial year.

Appendix A: Participation Request under Part 3 of the Community Empowerment (Scotland) Act 2015 – statutory form

1 Details of Community Participation Body

Name of Community Body:	
Contact Name:	
Contact address:	
Contact Telephone number:	
Contact Email:	
Website (if available):	

Please ensure that you include a copy of your written constitution or governance documentation if available.

2 Name of the public service authority to which the request is being made:

Note 1 (see page following form)

3 Name of any other public service authority which the community participation body requests should participate in the outcome improvement process:

Note 2

4 The outcome that community participation body want to improve:

Note 3

5 The reasons why the community participation body should participate in an outcome improvement process:

Note 4

6 Knowledge, expertise and experience the community participation body has in relation to the outcome:

Note 5

7 How the outcome will be improved because of the involvement of the community participation body:

Note 6

8 What type of community participation body are you?

- a) A community controlled body
- b) A community council
- c) A body designated by the Scottish Ministers as a community participation body
- d) A group without a written constitution

Note 7

9 Additional Information

Note 8

Notes

1. Specify the public service authority to whom the request is being made. The authorities to whom a request can be made in Shetland are:
 - Shetland Islands Council
 - NHS Shetland
 - Highlands and Islands Enterprise
 - Police Scotland
 - The Scottish Environmental Protection Agency
 - The Scottish Fire and Rescue Service
 - Scottish Natural Heritage
 - Zettrans
2. Insert the name(s) of any other public service authority which the community participation body requests should participate in the outcome improvement process.
3. 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. Outcomes are the changes, benefits, learning or other effects that result from what the public service authority makes, offers or provides.
4. Set of the reasons why the community body believes it should participate in the outcome improvement process.
5. Provide details of any knowledge, expertise and experience the community body has in relation to the outcome specified under paragraph 3, supported with relevant evidence where possible.
6. Provide an explanation of the improvement in the outcome specified under paragraph 3 which the community body anticipates may arise as a result of its participation in an outcome improvement process.
7. To make a participation request the Community Empowerment (Scotland) Act 2015 provides that certain bodies can do so. The community participation body should provide the necessary information to the Council to show that they are a valid body who can make a participation request. If the community participation body is one without a written constitution, this should be raised as soon as possible during pre-application.
8. Any other information in support of the participation request can be included in this section or attached separately should the community body wish to do so. It may be helpful for the community participation body to outline if they have previously been in contact with the Council regarding the outcome. The community participation body may also want to provide information on any additional support they may require to be able to participate in an outcome improvement process.