

Community Empowerment (Scotland) Act 2015

Participation Request Guidance

**1.0 Background**

1. The Scottish Government’s approach to community empowerment has developed significantly in recent years.
2. In 2009 the Scottish Government and COSLA jointly agreed a definition of community empowerment as ‘a process where people work together to make change happen in their communities by having more power and influence over what matters to them’.
3. Since then, there has been an increased focus on community empowerment. Key developments have included the Christie Commission report on Public Service Reform, the expansion of community asset ownership, and the review and revision of the National Standards for Community Engagement.
4. The Community Empowerment (Scotland) Act 2015 has moved this a stage further by enhancing community involvement in community planning; creating new opportunities for influencing public service provision and decision-making; and for community asset ownership and management.
5. The spirit of the Act is one of improving outcomes for communities, encouraging and promoting dialogue, tackling inequalities and supporting the increased participation of those whose voices are less heard or who face additional barriers.

**2.0 Introduction**

1. Part 3 of the Act (Participation Requests) is focussed on extending and improving community participation in improving outcomes for communities. The Act states that if a community group feels that it can improve the outcome of a public service it has the statutory right to request to take part in a process to improve that outcome.
2. The process for handling requests is prescribed including how to establish the process and meet various timescales, for example the process should be underway within 90 days.
3. At the end of the process the public body must publish a report on whether the outcome was improved and describe the community group’s contribution.
4. Public service providers can decline requests only where there are reasonable grounds to do so and these must be explained.

2.5 The Act uses the terms **community participation body** and **public service authority** to describe the bodies who can make and receive Participation Requests. These are defined in sections 6 and 8 respectively.

2.6 This Guidance provides information on:

* The Council’s legal duty to respond to Participation Requests.
* When it is permissable to refuse a request.
* Who can ask to participate in a process to improve outcomes.
* Awareness raising and support.
* A framework to handle requests.
* Governance arrangements.
* Paperwork which needs to be completed to provide an audit trail and ensure compliance.

**3.0 Public Sector Duty**

1. Participation Requests provide a new way for communities to initiate dialogue with public service authorities on their own terms and as such are to be welcomed. The Act allows communities to raise issues about local services that may not be on the authority’s agenda or are outwith their consultation structures. Community bodies may use the Act to discuss with service providers how they could better meet the needs of users, to offer volunteers to support a service or even propose to take over the delivery of the service themselves. Public service authorities must agree to the request for dialogue, unless there are reasonable grounds for refusal. Public service authorities are not required to agree with the community body’s proposals but they will have to listen and to report on the outcomes.
2. As outcomes to be improved may involve more than one service provider or the participation request itself may specify that one or more public service authorities other than the authority to which the request is made should be involved, there will be a need to design and agree a framework for responding to participation requests in conjunction with community planning partners.

**4.0 What are Participation Requests?**

1. The most common definitions describe participation as ‘the act of taking part in, or sharing in something’. The term is one which implies an active rather than a passive process and it is the intention of the Act to enable the active participation of communities in addressing the issues and opportunities which are of greatest importance to them.
2. When done well, the process of community engagement should lead to improved community participation so that communities can have more influence over the services and decisions that affect their lives.
3. The National Standards for Community Engagement provide a framework for public service authorities and community participation bodies when planning and undertaking community engagement processes. They are supported by VOiCE, an online tool for planning, monitoring and evaluating community engagement activity. Both the standards and VOiCE can be accessed at [www.voicescotland.org.uk](http://www.voicescotland.org.uk).
4. In general terms Participation Requests are intended to provide opportunities for communities to proactively be involved in improving outcomes. As such they are designed to help groups highlight community needs and issues and become involved in change or improvement. They are not intended to replace good quality existing community engagement or participation processes but are rather designed to enhance them. Similarly, Participation Requests are not intended to be an extension of complaints procedures but should rather be viewed as an opportunity for communities to establish formal dialogue with public service authorities.
5. There are a range of possible uses of Participation Requests which can be broadly divided into 4 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.

**5.0 Right to Participate**

5.1 A community participation body’s request to participate focuses on whether the exercise of this right is likely to deliver a public benefit by promoting or improving:

* **economic development** – i.e. creating new job or training opportunities, bringing more custom to existing businesses, supporting new businesses etc.
* **regeneration** – i.e. making an area a better place to live and work for example bringing empty buildings or unused land back into use, increasing access to services and social and leisure facilities, improving transport etc.
* **public health** – i.e. helping people lead healthier lives and supporting people living with long-term conditions and mental health issues, as well as provision of care services or improving access to health care
* **social wellbeing** – i.e. activities which bring people together, create stronger community spirit, support learning, cultural activities, reduce crime etc.
* **environmental wellbeing** – i.e. improve the natural environment, create a community garden, manage local woodland, recycling or renewable energy projects etc.
* **reduce inequalities resulting from socio-economic factors** – i.e. tackling poverty and other issues that often come with it, such as health problems, low quality housing and lack of access to services and employment

5.2 The community participation body does not need to show that the request will help deliver benefits in all these areas; rather, they are intended to be inclusive so that whatever they do will fit into one or other of these categories. Public service authorities must also consider ‘any other benefits that may arise’, so in effect everything is covered.

5.3 If Participation Requests are to be made and conducted in the spirit of collaboration and dialogue that the Act emphasises it is important that community participation bodies and public service authorities are engaged in dialogue at an early stage prior to any formal Participation Request being submitted. This will help to ensure that existing processes are used appropriately and that any request that is submitted is well thought out, appropriate and is focussed on improving community outcomes. For this reason Fife Council has introduced a pre-application stage to assist community groups to ensure that they are clear about the purpose of their request and how they want to proceed before entering into any formal process.

5.4 At the pre-application stage groups will be supported to work through a checklist to clarify their ideas and the way ahead e.g.

* Does your organisation meet the criteria for a community participation body?
* What are your objectives – what is it that you want to improve for your community?
* Who are your community?
* Do you have support for your ideas within your community?
* Do you have support for these ideas across the wider community?
* Have you spoken to the relevant public body already?

One outcome of the pre-application stage could be that the community group and the public sector body are able to work together without the need for a Participation Request to be made. However, a community participation body has the right to make a Participation Request to open up a dialogue with or without going through a pre-application stage and to take part in a process to improve the outcome set out by the community participation body.

5.5 In moving to the formal Participation Request stage the community participation body needs to specify the outcome from the provision of a service that they would wish to see improved and set out the reasons why it considers that it should participate in the outcome improvement process. The community body needs to provide details of any knowledge, expertise and experience it has in relation to the specified outcome and provide an explanation of the improvement it anticipates as a result of its participation in the process.

 A form has to be completed and submitted in writing or online (see Appendix 1).

**6.0 Who Can Make a Participation Request?**

6.1 There are two types of community body which can raise Participation Requests:

* community controlled body
* community participation body

6.2 A **community controlled body** will have a written constitution that includes a definition of the community which the body relates to and provision that the majority of members will be drawn from that community. The organisation should be open to any members of that community and be member controlled. Surplus funds or assets should be used for the benefit of that community and the aims and purpose of the body should clearly state that it exists to benefit that community.

6.3 A community body could also be a more loosely associated group without a written constitution but which has similar features to a community controlled body.

6.4 A **community participation body** will include community councils or a body designated by Scottish Ministers. There is no list of organisations which would fall into the latter category. These will arise on a case by case basis.

6.5 In the Act, the term community participation body is used to cover both community controlled bodies who meet the criteria and community councils.

6.6 A Participation Request may be made jointly by two or more community participation bodies.

**7.0 Awareness Raising & Support**

7.1 Public authorities have a responsibility to promote Participation Requests. They should let people know about the opportunity to make requests and provide information on what they can be used for. They should also raise awareness of other engagement / participation processes already in place. Particular effort should be made to promote Participation Requests with more marginalised and disadvantaged communities, who may be less likely to know about and take advantage of such opportunities.

7.2 To ensure that this duty is executed Fife Council has created a section on Fife Direct to explain how a Participation Request can be made.

7.3 We will use a variety of methods to promote and raise awareness of Participation Requests including websites, social media outlets, community newsletters and public meetings or events:

* Briefings for Elected Members
* Reports to Fife Partnership and to Fife Council Policy and Coordination and Area Committees
* Publicise on area Facebook sites
* Raise awareness at Community Councils, Community Centre Management Committees and community groups we are regularly in contact with
* Work with Fife Voluntary Action to reach third sector organisations
* Work with Fife Centre for Equalities to ensure that communities of interest and groups who may not be represented by, or connected to, existing community organisations are made aware

7.4 Fife Council recognises that most community participation bodies will need at least some support to make best use of the Participation Request process and that it is important that additional support is provided for those groups who may be less heard or who face additional barriers.

7.5 In addition to ensuring that it is easy for community participation bodies to get information about Participation Requests it will be necessary for all relevant officers to be made aware of it to enable them to direct enquiries to the appropriate contact point in customer services.

**8.0 Public Service Authorities**

8.1 A Participation Request can be made to a number of organisations collectively referred to in the Act as public service authorities and are:

* a local authority
* a Health Board
* the board of management of a college of further education
* Highlands and Islands Enterprise
* a National Park Authority
* Police Scotland
* Scottish Enterprise
* the Scottish Environment Protection Agency
* the Scottish Fire and Rescue Service
* Scottish Natural Heritage
* a Regional Transport Partnership

**9.0 Decision Making**

9.1 On receipt of a Participation Request in writing in the form provided or by online form, Fife Council must decide whether to agree or to refuse the request. In reaching its decision Fife Council must take into account:

* the outcome the community participation body wants to improve.
* the reasons why the community participation body considers it should participate in an outcome improvement process.
* any other information provided in support of the request including any knowledge, expertise and experience the community participation body has in relation to the outcome.

In reaching its decision Fife Council must ensure that it does so in a manner which encourages equal opportunities and meets its responsibilities under Equality legislation.

9.2 The public service authority will then have 30 working days to assess the request. If more than one public service authority is involved the total time may increase to 45 working days.

9.3 **The authority must agree to the request unless there are reasonable grounds for refusing it.** This would include where a request relates to matters that are the same, or substantially the same, as a previous participation request made in the 2 years prior to the new request.

9.4 A **decision notice** must be sent to the community body within 30 working days (45 if more than one public service authority is involved) giving notice of Fife Council’s decision to agree or refuse the request. If the decision is to refuse the request the reasons for this must be given in writing. In some circumstances a longer period for reaching a decision can be agreed between Fife Council and the community participation body.

9.5 If an outcome improvement process is already underway for the subject of the Participation Request it might be suitable for the community participation body to join that process. If not, then the public service body should provide information on how the proposed outcome improvement process is operating; specify what stage it has already reached; identify others that are part of the process.

9.6 Where Fife Council at the time of giving notice has not established an outcome improvement process, the decision notice must:

* describe how the proposed process is intended to operate;
* explain how and to what extent the community participation body which made the participation request is expected to participate in the process; and
* if any other person is expected to participate, describe how the person is expected to participate.

**10.0** **Outcome Improvement Process**

10.1 A public service authority has a duty to establish and maintain an outcome improvement process where there are no grounds to refuse a Participation Request. This should be started within 90 days from the day on which the decision notice is given. The process can be changed following discussions between Fife Council and the community participation body. The community participation body can also withdraw a request at any time.

10.2 The community participation body has 28 days from the day on which the decision notice is given to make written representation proposing changes to the outcome improvement process should it wish to do so. At the end of this period the public authority has a further 28 days to provide the community body with details of the outcome improvement process to be established taking account of any proposed changes. There will also be a requirement to publish information about the process on Fife Direct. Should the process be modified after consultation with the community body this must also be published.

10.3 The information relating to the outcome improvement process which the public service authority must publish is as follows:

* 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 completion.

10.4 It is important for the public service authority to be aware that agreeing to a request is an agreement to dialogue on improving the outcome as set out by the community participation body. It will be for Fife Council, following the outcome improvement process, to decide whether to make any changes to existing service delivery arrangements.

10.5 The consideration at this stage should therefore be proportionate to the request and focus on the outcome being proposed rather than any changes to service design or delivery that might result. It is anticipated however that the latter would arise as part of discussions.

**11.0 Reporting**

11.1 Fife Council must establish a reporting process and publish reports on Fife Direct to include:

* a summary of the outcomes of the process including whether the outcome to which the process related has been improved;
* a description of how and to what extent the participation of the community participation body influenced the process and the outcomes; and
* an explanation of how Fife Council intends to keep the community participation body informed about changes in the outcomes of the process and any other related matters.

11.2 In preparing the report Fife Council must seek the views of the community participation body and others who participated in the process on the ways in which the outcome improvement process was conducted and the outcomes achieved.

11.3 An Annual Report must also be published by 30 June each year for all Participation Requests within the reporting year 1 April to 31 March. This should include:

* the number of Participation Requests received.
* the numbers agreed to and those refused.
* the number of requests which resulted in changes to a public service provided by, or on behalf of, Fife Council.
* any action taken by Fife Council to promote the use of Participation Requests and to support community bodies in the making of a Participation Request.

**12.0 Council Response**

12.1 The single point of contact for Participation Requests to Fife Council will be the Community Investment Team within Communities and Neighbourhoods Service. The team will be able to support and track all Participation Requests including gathering information for the Annual Report to be published.

12.2 An Officer Group will be set up to consider Participation Requests and to provide governance for the process. Core membership of the group should comprise representatives from:

* Law & Admin
* Communities Directorate (Community Manager (Development), relevant Community Manager (Area)
* Relevant Service

12.3 Quality control of the reporting process should be provided by Corporate Development.

**13.0 Implications for Fife Council and Fife Partnership**

13.1 The Community Empowerment (Scotland) Act 2015 creates a legal framework to underpin a cultural shift in the way which public authorities interact with communities. The duties in the Act in relation to Participation Requests will require Fife Council and its community planning partners to develop new processes in order to comply with the prescribed stages and timescales. There will also be a need to build the capacity of staff to enable them to respond positively to requests and to provide support and guidance to community bodies who seek to make Participation Requests.

13.2 As outcomes may involve more than one service provider or cross organisation boundaries there will be a need to develop a single point of contact (SPOC) at organisational level and robust referral routes between SPOCs. Cognisance will also have to be given to the fact that the outcome improvement process for local outcomes may have to be led by Local Community Planning Groups.

13.3 Should a community participation body include a request that more than one public service authority should participate in the outcome improvement process then the legislation provides that the **lead authority** (to whom the request was made) should:

* notify the other public service authorities listed of the request
* send a copy of the Participation Request and the additional information provided by the community participation body
* inform the other public service authorities of the validation date (i.e. the date on which all relevant information has been received; this is the date from which other time deadlines will be calculated)

13.4 Within 15 working days upon receiving notification the other public service authorities listed must inform the lead public service authority whether they wish to participate. If not, the reasons for that decision needs to be provided in writing.

13.5 Each public service authority will require to have its own process for making decisions on participation requests and will be responsible for making information available to community participation bodies on their process.

**Process and Timescales**

30 working days from validation date to assess (45 if more than 1 public service involved)

90 calendar days from the date on which the decision notice is given

Community Empowerment (Scotland) Act 2015

Participation Request Application Form

**(1) Details of Community Participation Body (Note 1)**

**Name of Community Body:**

 **Contact Name:**

 **Contact Address:**

 **Contact Telephone Number:**

 **Contact Email Address:**

 **Website (if available):**

Please ensure that you include a copy of your written constitution or governance documentation if available (Note 2)

**Constitution/Governance Documentation Enclosed:** Yes [ ]  No [ ]  N/A [ ]

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**(2) Name of the public service authority to which the request is being made: (Note 3)**

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**(3) Name of any other public service authority which you request should participate in the outcome improvement process: (Note 4)**

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**(4) What outcome does your organisation/group want to improve: (Note 5)**

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**(5) Please give reasons why your organisation/group should participate in an outcome improvement process: (Note 6)**

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**(6) What knowledge, expertise and experience does your organisation/group have in relation to the outcome?: (Note 7)**

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**(7) How will the outcome be improved because of the involvement of your organisation/group?: (Note 8)**

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**(8) What type of community participation body are you?: (Note 9)**

|  |  |  |
| --- | --- | --- |
|  |  | Please tick |
| (i) | A community controlled body |  |
| (ii) | A community council |  |
| (iii) | A group without a written constitution |  |
| (iv) | A body designated by Scottish Ministers as a community participation body |  |

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**(9) Additional Information: (Note 10)**

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**Name: Signature:**

**Position in Group: Date:**

**Please send this form to: Community Investment Team**

Fife House, North Street, Glenrothes, KY7 5LT

 Email: Participation.Requests@fife.gov.uk Tel: 03451 555 555 ext.441242

**Participation Requests – Notes on Completing the Application Form**

These notes are provided as an aid to ensuring that your organisation is eligible to make a Participation Request and that you have considered a range of factors. Fife Council has a pre-application process which may assist you but you are not obliged to go through any such process before making a Participation Request. If you would like this additional support please contact Zahida Ramzan, Policy Co-ordinator, Community Investment Team (Zahida.ramzan@fife.gov.uk).

**Note 1** – Please provide the name of the community participation body making this request (see Note 9 below) giving full details to enable contact to be made with you.

**Note 2** – Before the process can begin we require to see your constitution or governance documentation where applicable. It would help to speed up the process if you enclose it with this application.

**Notes 3 & 4** – A Participation Request can be made to one or more designated public service authorities i.e.

|  |  |
| --- | --- |
| Fife Council | Scottish Enterprise |
| NHS Fife | SRUC Elmwood |
| The Scottish Fire & Rescue Service | Fife College |
| Scottish Natural Heritage | Police Scotland |
| The Scottish Environment Protection Agency | SESTRAN (Regional Transport Partnership)  |

Please specify the organisation to which this request is being made in section 2 and any other organisation you feel should be involved in section 3.

Whatever your plans are, you are strongly advised to discuss your proposals with the organisation before making the formal request. Fife Council for example has a pre-application process which will consider your outline proposals and, if approved, will support you to develop your detailed request. For more information contact: Participation Requests short address to be added

You are not legally required to go through a pre-application process before making a Participation Request.

**Note 5** – When putting forward the Participation Request you must specify an outcome that will result from the delivery of an improved service. An outcome is the change that results from what organisations provide or deliver e.g. the desired outcome of developing a playpark may be an increase in physical activity levels of children.

**Note 6** – You should set out the reasons why your organisation / group considers it should participate in the outcome improvement process.

**Note 7** – Please provide full details of any knowledge, expertise and experience your organisation / group has in relation to the outcome specified in section 4. It is not about being ‘expert’ in an academic or theoretical sense but how you can make use of your own ‘know how’ and awareness of the improvements that can be made.

**Note 8** – Please provide an explanation of the improvement in the outcome which your organisation / group anticipates may arise as a result of its participation in an outcome improvement process.

**Note 9** – To make a participation request, your community organisation needs to be a ‘community participation body’. This is defined in section 20 of the Act. Your organisation can be either a community controlled body, a community council, a community body without a written constitution or a body designated by Scottish Ministers.

**Community Controlled Body**

* Does not require to be incorporated but must have a written constitution which sets out what a group is for and how it is organised.
* Having a written constitution is a simple way of showing that the community participation body is open, inclusive and representative and making sure that all members know how the body will operate.
* If a group is incorporated it is legally a single body rather than a group of individuals. This means the body can enter into contracts which continue even if the membership changes. Being incorporated protects members from liabilities, otherwise they could be required to pay for any debts or damages incurred by the body.
* To qualify as a community controlled body the constitution must include:
* a definition of the community to which the body relates which is clear enough to show whether a person is a member of the community or not.
* provision that membership of the body is open to any member of that community
* provision that the majority of the members of the body is to consist of members of that community
* provision that members have control of the body i.e. are in charge of decisions made e.g. only community members can vote at General Meetings; a majority of Board must be made up of community members; and chair must be a community member if they have a casting vote in board meetings.
* a statement of the body’s aims and purposes, including the promotion of a benefit for that community.
* provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

**Co-operatives**

* Bodies incorporated as co-operatives, which distribute their profits or dividends to members of the body, are not eligible to make participation requests.

**Communities of Interest**

* The legislation on participation requests does not define what a “community” can be. It simply requires a community participation body to define the community it relates to, and to ensure that the body is open to and controlled by members of that community, and uses its assets to benefit that community.
* A community can be any group of people who feel they have something in common.

**Community Bodies Without a Written Constitution**

* A community participation body could also be a more loosely associated group of people.
* Under section 20 (4) of the Act it provides that community groups which have similar features to that of a community controlled body, but no written constitution, can make a participation request.
* It will be for the public service authority to determine whether a group meets the requirements under the Act. It is therefore the responsibility of the community group to provide such information as the authority needs to be satisfied.

**Community Councils**

* Community Councils are able to make a participation request under the Act.
* When making a request it would be useful for the Community Council to supply an agreed Scheme of Establishment with the Local Authority and have a written constitution.
* The Community Council should demonstrate how it has engaged with local people in the area that could be impacted by the outcomes improvement process.

**A Body Designated by Scottish Ministers**

* There is provision in the Act for Scottish Ministers to designate a body to be a community participation body.
* Ministers will normally only designate a body if it works in a similar way to a community controlled body and there is a good reason why it is not able to meet the requirements of the Act e.g. A charitable trust which cannot change who is on its Board.
* There are no current bodies in this category.

**Note 10** – Any other information in support of the Participation Request can be included in this section or attached separately. For example, you could explain who your community is, the total number of people in the community, and how many of them are members of your organisation and/or you could describe the support you have for the Participation Request within the community your organisation represents. To demonstrate the support you have for the proposal you could outline what activity has been carried out to find out people’s views e.g. a community survey, vote taken at a public meeting, consultation event. If you have been in contact previously regarding the outcome it would be helpful to know. If you require any additional support to be able to participate in an outcome improvement process please provide details e.g. administrative or practical support, support for equal participation, community development support.

**Please note a Participation Request is not treated as having been made until all the required information is received by the public service authority.** Only outline information is required for a request to be accepted as complete, however more information may help the public sector authority to properly assess and react positively to the request.When the public service authority is satisfied that it has all the relevant information you will be sent an acknowledgement. This will include the following information:

* the validation date for the request – this is the date on which the last of the required information was received (the date the request was received if complete). **This is the date from which other time limits will be calculated.**
* The time period for the public service authority to notify you of its decision – this is 30 working days from the validation date, unless additional public service authorities are involved in which case the time period is extended to 45 working days.