



Participation Requests

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If you would like this guidance in a different language or format, please contact the Strategy Manager, Corporate Services, Orkney Islands Council, School Place, Kirkwall KW15 1NY. Telephone 01856873535 extension 2160 or email corporateservices@orkney.gov.uk.

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1. About this guide

Background and context

1.1. The Scottish Government's approach to community empowerment has developed significantly in recent years with some key milestones along the way.

1.2. The Community Empowerment Action Plan was launched by Scottish Government and COSLA in 2009. This document defined 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.'

1.3. Since then, there has been an increased focus on community empowerment both inside and outside Government. 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.

1.4. 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. 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. In so doing it 'reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:

- Empower community bodies through the ownership of land and buildings and strengthen their voices in the decisions that matter to them; and
- Support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the processes of community planning.' (Explanatory Notes. Community Empowerment (Scotland) Act 2015 (ASP 6)).

1.5. Part 3 of the Act (Participation Requests) is focused on extending and improving community participation in improving outcomes for communities. It is the legislation that enables communities to request to participate in decisions and processes which are aimed at improving outcomes.

Status and Purpose of this Guidance

1.6. Part 3 of the Community Empowerment (Scotland) Act 2015 provides a framework for the use of participation requests by community bodies. It gives the Scottish Ministers powers to make regulations which fill in more detail of the procedures to be followed. The following regulations, and orders, have been laid in the Scottish Parliament for scrutiny.

1.7. The text of the Act is available at <http://www.legislation.gov.uk/asp/2015/6/part/3>.

1.8. The text of the Participation Request (Procedure) (Scotland) Regulations 2016 will also be available at <http://www.legislation.gov.uk/ssi/2017/39/contents/made>.

1.9. Part 3 of the Act and the Regulations came into force on 1 April 2017.

1.10. This guidance is aimed at both public service authorities and community participation bodies. Public service authorities are required, under section 34 of the Act, to have regard to this guidance in carrying out their functions relating to participation requests. There is also detailed information for community participation bodies on the process they will need to follow if they are submitting a Participation Request. The guidance covers the whole process, but focuses on the points where each party has to take action – for example, there is more guidance for community participation bodies on completing the request form, and more for relevant authorities on what to do when they receive a request.

1.11. Please send any comments, questions and suggestions on this guidance to corporateservices@orkney.gov.uk.

1.12. This guidance is designed to support effective and consistent implementation of the legislation. It cannot be prescriptive about how it should be implemented in every organisation or community and in every situation across Scotland. So, while the guidance refers to some examples or scenarios these are not intended to be definitive interpretations of the legislation, rather they are meant to illustrate how the law can be used. More information about the development of the Act and its implementation can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/CommEmpowerBill>.

Terms, definitions and language

1.13. The following are some terms, definitions and language used in this Guidance:

- **Regulations** are a type of ‘secondary legislation’. An Act (‘primary legislation’), which has been agreed by the Scottish Parliament, may say that the Scottish Ministers may make regulations about certain things. Those regulations also have to be considered by the Parliament before they can come into effect. Regulations are used to set out detail and technical issues, because they can be updated more quickly than an Act if changes are needed. They are law and everyone has to comply with them.
- **Orders** are another type of secondary legislation, very similar to regulations. The Scottish Ministers have powers under the Community Empowerment Act to make orders to make changes to the list of public service authorities and to designate organisations as community participation bodies.
- **Guidance** gives advice about how to do what the Act and regulations require. Guidance can give examples and suggestions about best practice and can be flexible to allow for different circumstances. It can also provide links to other helpful information and organisations, and can be updated at any time.
- A **community participation body** is a community body or community council who can make a participation request. The Act sets out the criteria for the community body so that it can qualify as a community participation body. More detail can be found in chapter 3.

- A **public service authority** is a public body providing a service to the public who can receive a participation request from a community participation body. The Act sets out the public service authorities and more detail can be found in chapter 3.
- An **outcome** is the change that results from what organisations provide or deliver e.g. an improved environment and increase in physical activity levels arising from the development of a community park. A participation request must set out the outcome that the community participation body wants to improve. More detail can be found in chapter 3.

What is participation and why does it matter?

1.14. 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.

1.15. There have been various models of participation developed many of which are based on Arnstein’s original ‘ladder of participation’. (Arnstein, Sherry R. ‘A Ladder of Citizen Participation,’ JAIP, Vol. 35, No. 4, July 1969, pp. 216-224). The common characteristics of these participation ‘ladders’ is that the top rungs of the ladder describe the highest levels of active participation with the bottom rungs reflecting much more passive or non-participatory relationships.

1.16. 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. Some of the benefits of good community engagement and better participation include:

- The way in which public services are planned, developed and delivered is influenced by, and responds to, community need.
- People who find it difficult to get involved (for example, because of language barriers, disability, poverty or discrimination) help to influence the decisions that affect their lives.
- The various strengths and assets in communities and across public and private sector agencies are used effectively to deal with the issues communities face.
- New relationships are developed between communities and public sector bodies which build trust and make joint action possible.

1.17. The National Standards for Community Engagement (www.voicescotland.org.uk) are a framework for public service authorities, support organisations and community participation bodies when planning and undertaking community engagement processes.



1.18. They also provide useful links to other tools, frameworks and resources which can help to improve practice and increase participation. 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.

2. Getting Started

What are Participation Requests and what are they for?

2.1. 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. The Act goes on to further define what 'community participation bodies' are and what 'public service authorities' are as well as describing what an outcome improvement process is. In this section we give examples of possible scenarios to illustrate the potential application of this Part of the Act.

2.2. This guidance deals only with the procedures for participation requests under the Community Empowerment Act, but this is not the only way for communities to engage and participate with public bodies. In general terms participation requests are intended to provide opportunities for communities to pro-actively 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 complement and 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.

2.3. 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.
 - Example: a group of fathers / grandads have identified a lack of opportunities for support for men and their children within their local area. They are not a constituted group, but have informally come together to provide play activities for their children and have established an informal network. They have identified that there are many men living in the area who are unemployed and who care for their children / grandchildren, and that they struggle to access free or affordable play activities and support. The group want to improve access to existing parents' groups for men locally, and to work with service providers to establish a father's group. They have made a participation request to their **health board** around positive parenting.
- To help people have their voice heard in policy and service development, through **contributing to decision-making processes**.
 - Example: A tenants' organisation which represents a neighbourhood wishes to influence how decisions are made in relation to community safety. They have identified a community safety issue which is specific to their neighbourhood, but which they believe has not been prioritised within wider community safety planning. They feel that their voices have not been heard within the process, and have made a participation request to their **local authority** to be involved in community safety planning structures.
- To help people to participate in the design, delivery, monitoring or review of service provision, through contributing to **service change** or improvement.
 - Example: A network of refugees and asylum seekers from across Scotland have carried out a survey which shows a range of experiences in relation to accessing English language courses. They wish to work with statutory providers to ensure that all refugees and asylum seekers have equal opportunity to access English language tuition, and in particular to address the issue of cost and timing / availability of transport which was reported as a barrier for those living in more rural communities. They have made a participation request to a **regional transport** provider around equality of access to transport.

- Example: A local Development Trust wants to take over the running of a local care service and makes a participation request to the **local authority** to start a dialogue on the issue. People in the community feel strongly that there is a need for such a care service to be delivered locally as it enables many older people to continue to live in their own homes.
- To help people challenge decisions and **seek support for alternatives** which improve outcomes.
 - Example: A community development trust is seeking to challenge a decision about a woodland area which is well used by the local community for outdoor activities such as biking, walking and woodland education. The woodland is owned and managed privately and the owner has endeavoured to restrict access to the site claiming that this is due to the discovery of a protected species. The community development trust has made a participation request to the National Park Authority to become involved in finding a suitable resolution.

First steps

2.4. 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 and always before any formal participation request being submitted. This will help to ensure that existing processes are used appropriately and that any participation request that is submitted is well thought-out, appropriate and is focused on improving community outcomes. This part of the Act requires public service authorities to be more systematic and rigorous when it comes to participation and the guidance identifies key areas to consider when improving practice in this regard.

2.5. It is important that public service authorities have a clear understanding of what they currently do to support community participation. The following checklist questions may help to inform this assessment.

- Do existing processes exist for community participation bodies to be involved in decision-making, or designing, delivering, monitoring, reviewing services?
- How robust are these processes, and have they been evaluated recently?
- Are community participation bodies aware of these processes and how to get involved?
- Does the public service authority use existing frameworks / tools (such as the National Standards for Community Engagement, the Participation Standard, VOiCE, or the Place Standard) to inform its community engagement activity?
- Does the public service authority have its own participation or engagement strategy?
- To what extent are community participation bodies already aware of and engaged with these frameworks, tools and strategies?

2.6. The spirit of the Act is about developing more equal relationships and dialogue. It is important that public service authorities have an understanding of what their current relationships are with a variety of community participation bodies. The following checklist questions may help to inform this.

- Outside of formal processes are there opportunities for community participation bodies to engage in dialogue with public service authorities?
- Does this apply across all parts of the public service authority or just some?
- Does dialogue exist with groups that reflect a wide range of interests and identities?
- Does the public service authority monitor how it engages generally with communities, not just in formal processes?

2.7. It is equally important that community participation bodies have thought about the purpose of their request and how they want to proceed before entering into any formal process. The following checklist questions for community participation bodies may help to inform this.

- 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?

2.8. The community participation body should seek to discuss their ideas with the public service authority at the earliest opportunity. It could be that they 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 and take part in a process to improve the outcome set out by the community participation body.

Awareness, Promotion and Support

2.9. Public authorities have a responsibility to promote Participation Requests. They should let people know about the opportunity to make participation 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.

2.10. The Regulations provide that the public service authority must promote the use of participation requests by publishing on a website and through social media information explaining how a participation request may be made to that authority.

2.11. In order to promote and raise awareness of participation requests, public authorities should also consider the following:

- It is recommended that a 'first point of contact' is created or designated. This member of staff (or team) should understand the scope of the Act, the particular scope of Part 3, and should have an understanding of community engagement and participation generally (see section 3). Having a main contact will help create a consistent approach to participation requests.

- Use a variety of methods to promote and raise awareness of participation requests. Options include websites, conventional and social media outlets, community newsletters and public meetings or events.
- Effort should be made to ensure that people who face additional barriers to accessing information are reached. For instance, translated material may be required by black and ethnic minority (BME) communities and physical leaflets will help reach groups who have less access to digital technology.
- In addition, promotion should go beyond established community organisations that public service authorities are already aware of. The wider community should be made aware of participation requests and what opportunities they create. Disadvantaged and marginalised groups within a community may not be represented by, or connected to, existing community organisations.

2.12. Most community participation bodies will need at least some support to make best use of the Participation Request process and it is important that support is provided for those groups who may be less heard or who face additional barriers. It is also important that this support is available before the formal participation request process as well as during it. The types of support that may be needed include the following:

- Administrative or practical support – e.g. photocopying, printing, access to internet / wi-fi, venues, equipment.
- Support for equal participation – e.g. translated materials, interpreters, childcare, accessible venues, transport.
- Connecting and linking – e.g. signposting to relevant organisations and sources of support.
- Organisational support – e.g. assistance for groups to organise themselves to help achieve their purposes.
- Community development support – e.g. assistance with understanding the scope and possible purposes of participation requests, engaging with their wider community, and planning their involvement in the participation request and outcome improvement processes.

2.13. There are various organisations that can support community groups to develop their ideas, decide whether to make a participation request, and help them through the process. In Orkney, these might include:

- Orkney Islands Council – the Strategy Manager is the designated first point of contact for assistance prior to or while submitting a participation request. The Strategy Manager will make contact with relevant Executive Director(s) and delegated officers as appropriate, for assistance before and during an agreed outcome improvement process.
- The Orkney Partnership –the Community Planning Business Manager may be able to support partnership bodies during the process.
- Voluntary Action Orkney may be able to support voluntary sector organisations during the process.
- Community Development Trusts may be able to support local community bodies during the process.

3. The Participation Request Process

Summary of Participation Requests under the Community Empowerment Act

3.1. Part 3 of the Community Empowerment (Scotland) Act 2015 and the regulations sets out the process for how participation requests will work, briefly the process is:

- A community participation body puts forward a participation request to a public service authority asking them to take part in a process with a view to improving the outcome set out by the community body.
- The public service authority must agree to the request and set up an outcome improvement process unless there are reasonable grounds for refusal. If it refuses the request, it must explain the reasons.
- How the outcome improvement process will work and how long it should take is discussed between the community participation body and the public service authority.
- At the end of the process the public service authority must publish a report on summarising the process, whether the outcomes were improved and how the community body contributed to that improvement.

3.2. A participation request can be submitted by the community participation body in relation to any outcome that relates to a service provided by the public service authority to which it is making the request. It can request that more than one public service authority be involved.

3.3. The participation request must be submitted in writing in the form provided for in the regulations (or in a form which is substantially the same) or by electronic means (email, online form etc).

3.4. In addition to stating the outcome the community participation body wants to improve they must also:

- Set out the reasons why the community participation body believes it should participate in an outcome improvement process.
- Provide details of any knowledge, expertise, and experience the community participation body has in relation to the outcome.
- How the outcome will be improved because of the involvement of the community participation body.

3.5. The public service authority will then have 30 working days to assess the request and must agree to the request unless there are reasonable grounds for refusal. If the request is refused then the public service authority must also provide reasons for the decision. If more than one public service authority is involved the total time may increase to 45 working days.

3.6. Once a public service authority has agreed to take forward the participation request then they will propose how to take forward the outcome improvement process. If an outcome improvement process is already underway it might be suitable for the community participation body to join that process. If not, then the

public service authority will provide information on how the proposed outcome improvement process will operate.

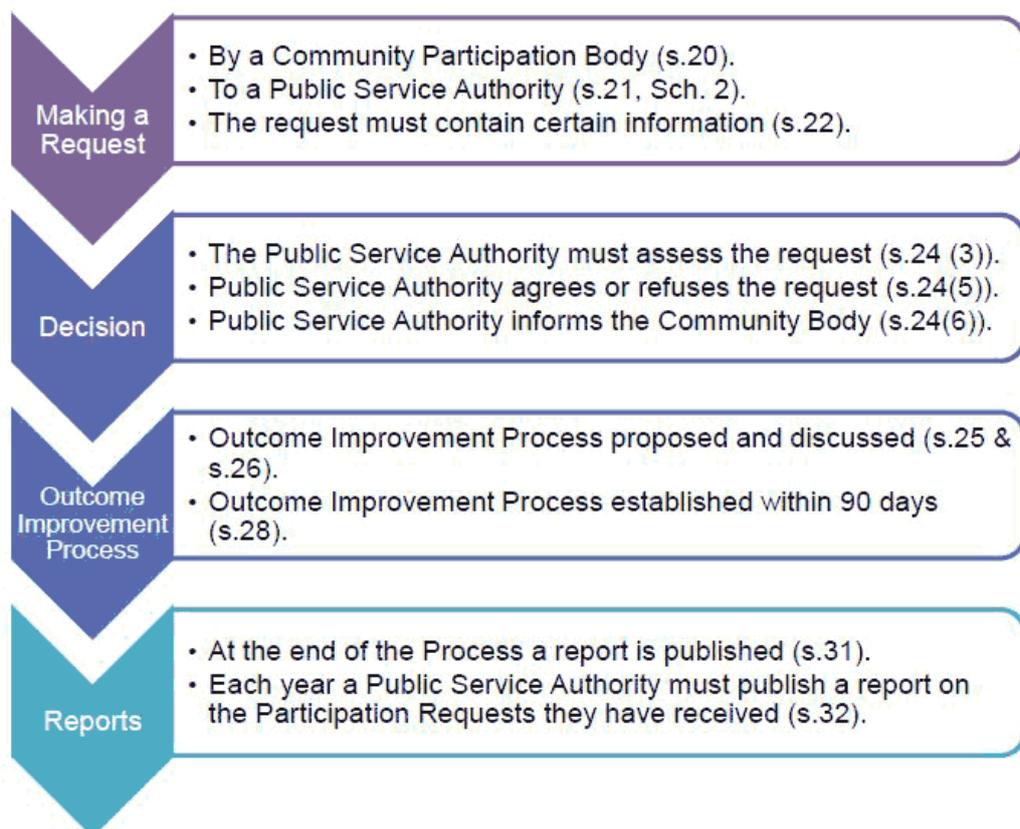
3.7. The community participation body then have the opportunity to discuss and make representations in relation to the proposed outcome improvement process. The public service authority then set out the details to the community participation body of the outcome improvement process.

3.8. The outcome improvement process must be started within 90 days. The process can be changed following discussions between the public service authority and the community participation body.

3.9. Once the outcome improvement process has finished then the public service authority must publish a report which summarises the outcomes of the process, the contribution of the community participation body and how the authority will keep the community participation body informed of any matters in relation to the outcomes. It is recommended that the community participation body is engaged in this process.

3.10. On an annual basis each public service authority must publish a report which sets out how many participation requests they received and the number agreed to and refused. It is recommended that the nature of the request and outcome improvement process is also published. They must also outline any action taken by the authority to promote the use of a participation request and to support community participation bodies in the making of a request.

3.11. The table below outlines the process and some of the sections of the Community Empowerment Act that it relates to.



Making a request

Making a Request

- By a Community Participation Body (s.20).
- To a Public Service Authority (s.21, Sch. 2).
- The request must contain certain information (s.22).

Different types of body

3.12. 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), a community council, a community body without a written constitution (set out in section 20(4)) or a body designated by the Scottish Ministers.

3.13. 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.

Requirements for a community controlled body

3.14. A community controlled body does not have to be incorporated, but must have a written constitution.

3.15. A constitution is a document which sets out what a group is for and how it is organised. It lets everyone know who can join the group, what the rules are and how decisions will be made. A group will usually need to have a constitution if they want to open a bank account or apply for grants.

3.16. 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.

3.17. If a group is incorporated it is legally a single body rather than just a group of individuals. This means the body can enter into contracts which continue even if the membership changes. Being incorporated may protect the members from liabilities, otherwise they could be required to pay for any debts or damages incurred by the body.

3.18. To qualify as a community controlled body, the constitution, Articles of Association or registered rules must under section 19 include the following things:

- A definition of the community to which the body relates.

The group may represent the community in a particular area or people who have a common interest or characteristic. (See below for more on 'communities of interest'). The definition should be 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.

Membership of the body must be open to anyone who is a member of the defined community. There must not be any additional requirements.

It has been queried whether membership is open to all if membership fees are charged. The legislation does not prevent charging fees to cover the costs of your activities, but generally they should be set at a level that is affordable for members of the community. Membership fees are more common for communities of interest based around a common activity, for example for a sports club to cover insurance, hall hire and registration with the sport's governing body. Alternatively these costs could be covered by fundraising.

- 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.

- 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 community members can vote at General Meetings, a majority of the Board must be made up of community members and the Chair (and Vice-Chair, if you have one) must be community members, 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.

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. But at least one of the purposes of the body must clearly be for the benefit of the community they represent.

- 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 participation requests.

3.19. Whatever type of organisation a group chooses to be, to qualify as a 'community controlled body' it must have the provisions outlined above in its constitution or other governing documents (Articles of Association for a company; registered rules for a BenCom). If the community group are already an established group, they will need to check the existing constitution or governing documents to see if they include all the required points.

Community Bodies without a written constitution

3.20. A community participation body could also be a more loosely associated group of people. Under section 20(4) of the Act it provides that the community group must

have similar features to that provided by a community controlled body as set out above but has no written constitution.

3.21. It will be for the public service authority 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 authority needs to be satisfied.

3.22. SCVO has helpful advice on its website <http://www.scvo.org.uk/setting-up-a-charity/> to help a community body decide what sort of organisation they might want to be, including whether they should become a charity.

Communities of interest

3.23. 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 ensure the body is open to and controlled by members of that community, and uses its assets to benefit that community. Whether an organisation is eligible to make a participation request depends on their meeting the requirements under the Act, not on what community it represents.

3.24. A community can be any group of people who feel they have something in common. In many cases, it is that they live in the same area. However, it can also be that they share an interest or characteristic. 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. They may be very specialised or local, ranging up to national or international groups with thousands of members.

3.25. If the community is a community of interest the community participation body might want to consider engaging with local people in an area that could be impacted by the outcome improvement process, and think about how the proposals may affect them. Public service authorities should also take into account the wider benefits or impact on other groups.

Community Councils

3.26. 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 engage with local people in the area that could be impacted by the outcome improvement process, and think about how the proposals may affect them.

Designation

3.27. The Scottish Ministers can designate a body to be a community participation body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make participation requests.

3.28. The criteria for community controlled bodies are there to make sure the organisation truly represents the members of its community and is open and

inclusive. It must also be clear that the organisation uses its assets and resources for the benefit of that community as a whole and not, for example, for the private benefit of those individuals who are members of the organisation. Ministers will normally only designate a body (or a class of bodies) if it works in a way similar to a community-controlled body, and there is a good reason why it is not able to meet the requirements in the Act. An example could be a charitable trust which cannot change who is on its Board.

3.29. Ministers may consider designating a class of bodies as community participation bodies if the rules for being that type of body are similar to, the requirements for a community controlled body. Examples could include members of an umbrella organisation, or bodies which are regulated under particular legislation. This could be used to avoid the need for other legislation, or the rules of the umbrella organisation, to be amended to match the participation request requirements. To propose a class of bodies to be designated, a representative of those bodies should contact the Scottish Government to discuss the issues at participationrequestguidance@gov.scot.

Public Service Authorities – who can a participation request be made to?

3.30. Participation requests can be made to any ‘public service authority’. Public service authorities are listed in schedule 2 to the Act. In Orkney they are:

- Orkney College.
- NHS Orkney.
- Highlands and Islands Enterprise.
- Orkney Islands Council.
- Police Scotland.
- Scottish Environment Protection Agency.
- Scottish Fire and Rescue Service.
- Scottish Natural Heritage.
- HITRANS.

3.31. Contact details and other information on participation requests should be accessible through the website of the public service authority. The intention is that contact details for the public service authorities will also be provided on the Scottish Government website.

3.32. The Scottish Ministers can also add to this list or designate a body by Order.

How to make a participation request

Community bodies

3.33. If you are a community body and want to make a participation request please make sure you have read the advice on ‘getting started’ in chapter 2 and have made sure your organisation is eligible, as explained earlier in this chapter. Whatever your plans are, you are strongly advised to contact the public service authority and

discuss your proposals with them before making the formal request. Some authorities may have a pre-application process in which they will consider outline proposals and, if approved, will support you to develop your detailed request. These approaches are often helpful, but you are not legally required to go through any such process before making a participation request.

Public Service Authorities

3.34. Ideally, you will be aware of any community body's intention to make a participation request before it is formally submitted. Community participation bodies are strongly advised to contact the relevant authority and discuss their proposals at an early stage. You should make sure it is easy for community bodies to get information about participation requests and that all relevant officers are aware of it and can direct enquiries to the appropriate contact point.

3.35. While the legislation requires a full request to be made to initiate the process, it may still be helpful to invite outline proposal as a 'pre-application' stage. Community bodies would then know whether they had support from the public service authority before undertaking the work to produce a participation request. However, they will still have the right to submit a participation request without going through any 'pre-application' stage, or if their outline proposals have not been supported.

3.36. Whatever other arrangements may be in place, community participation bodies have a right to submit a participation request without any previous discussion and you must be ready to process it in accordance with the requirements of the Act.

Request Criteria

3.37. When putting forward the participation request, the Community Participation Body must provide the information as required in section 22 of the Act. They must:

- 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.
- Set out the reasons why the community participation body considers it should participate in the outcome improvement process.
- Provide details of any knowledge, expertise or experience the community participation body has in relation to the specified outcome.
- Provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation.

3.38. In terms of regulation 4 of the Procedure Regulations, a participation request is not treated as having been made until all the required information is received by the public service authority. This section lists what is required and gives guidance on what the community participation body should consider including under different headings. The next section explains what will happen after the community participation body submit a request.

Standard Form

3.39. To help community participation bodies capture the information that is required when making a participation request a standard form is required to be completed by the community participation body. The Form as provided for in the regulations (adapted for Orkney Islands Council) is set out below.



Participation Request Form

Details of the community body making the request.	
See pages 17 to 20 of the Guidance for details of types of community body.	
Name of community body:	
Contact name:	
Contact address:	
Contact telephone number:	
Contact email:	
Website (if available):	
Is the community body making the request a community controlled body?	Yes / No. (If yes, please send a copy of your written constitution).
If No, please explain how the community body qualifies as a community participation body. (Please send relevant governance documentation, or other information as available, to confirm that your community body is eligible to make a participation request. If in doubt, please contact the Strategy Manager for advice).	
Details of the public service authorities involved.	
Name of the public service authority to whom the request is being made. (This will most likely be Orkney Islands Council, but you could if you wish use this statutory form to submit a participation request to a different public service authority).	
Names of any other public service authorities which the community body requests should participate in the outcome improvement process.	
Details of the outcome improvement process.	
What is the outcome that your community body would like to improve? (The outcome must relate to a service provided by, or on behalf of, the public service authority to which you are making the request).	

What are the reasons why your community body would like to participate in an improvement process relating to this outcome?

What knowledge, expertise and experience does your community body have in relation to this outcome?

Explain how this outcome might be improved through the involvement of your community body.

This space is for any other information you may wish to provide in support of your request.

How to submit your participation request.

Please email your completed form and documentation to:

corporateservices@orkney.gov.uk.

Or post a hard copy to:

Strategy Manager, Corporate Services, Orkney Islands Council, School Place, Kirkwall, Orkney, KW15 1NY.

If you need help or advice please contact:

Anna Whelan, Strategy Manager.
Email: anna.whelan@orkney.gov.uk.
Telephone: 01856873535 extension 2160.

We will acknowledge receipt of your request by return, and will let you know whether it has been granted within 30 working days if it involves only Orkney Islands Council, or within 45 working days if it involves any other public service authorities.

3.40. The form provides short directions on how to fill it out. It is intended to help the community participation body make sure they provide the information needed for a valid request, and can be used to make a request to any public service authority. The requirements of the form are an opportunity for a community participation body to describe how they can positively contribute to improving the outcome. Only outline information is required for a request to be accepted as complete, however, more information may help the public service authority to properly assess and react positively to the request.

3.41. If a community participation body cannot use, or is having difficulty using a form, they should contact the appropriate public service authority to discuss their requirements.

3.42. The public service authority may seek further detail from the community participation body during the process, and the community participation body should provide additional information, in particular in response to any representations made about the request. The public service authority may decide to refuse the request if it does not feel it has sufficient information on the proposals, but the level of detail required should be proportionate to the scale and nature of the request. The public service authority should always give the community participation body the opportunity to provide any missing information which the public service authority considers is key to the decision.

3.43. A participation request should be accompanied by a copy of the community participation body's constitution or other governing documents if applicable. The public service authority should check that it meets the requirements of the Act.

3.44. In deciding whether a community organisation meets the requirements for a community participation body, either as a community controlled body, a community council, a community body without a written constitution or in relation to any designation order, the lead public service authority should be aware that this may have an impact on other public service authorities. If a community body is accepted by one public service authority, it will be reasonable for them to expect that they will also be accepted by others. Other community bodies that use the same terms in their governing documents, for example as fellow members of a wider association, may also expect the same treatment. Public service authorities should therefore be very clear with the community body if there is any uncertainty over their eligibility.

Outcomes

3.45. The Act sets out that the community participation body must specify an outcome that results from the provision of a service provided to the public by the public body. The Act does not define what an outcome is. Typically, outcomes are the changes, benefits, learning or other effects that result from what the public service authority makes, offers or provides. This is often compared to outputs which are the products, services or facilities that result from an organisation's activities.

3.46. The identified outcome does not have to match the stated outcomes of public service authority to which the participation request is being made. However, it must be an outcome that results from a service they provide.

3.47. Outcomes can occur at a range of different levels. The following examples are outcomes resulting from the participation request scenarios provided in section 2.3.

- Example of a group of fathers / grandads making a participation request to their health board around parenting. **Outcome – improved health and life chances for children.**
- Example of a tenants' organisation making a participation request to their local authority to be involved in community planning structures. **Outcome – improved community safety.**
- Example of a network of refugees and asylum seekers making a participation request to a regional transport provider around equality of access to transport. **Outcome – increased access of refugees and asylum seekers to English language courses.**
- Example of a Development Trust making a participation request to a local authority to take over the running of a day care service for older people. **Outcome - people are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.**
- Example of a community development trust making a participation request to the National Park Authority around improving access to outdoor activities. **Outcome - improved health and wellbeing.**

3.48. More information on what outcomes are can be found on the websites of the BIG Lottery (<https://www.biglotteryfund.org.uk/funding/funding-guidance/applying-for-funding/aims-and-outcomes>) and Evaluation Support Scotland (<http://www.evaluationsupportscotland.org.uk/resources/346/>).

Participation in the Process

3.49. The community participation body will need to set out the reasons why they should participate in an outcome improvement process. This is simply to allow the community participation body to set out the benefits that they will bring as a community led organisation.

Knowledge, expertise and experience

3.50. The community participation body should set out their knowledge, expertise and experience in relation to the outcome. This is a chance for the community participation body to provide any information about their understanding and direct (or lived) experience in relation to the outcome. It is not about being 'expert' in an academic and theoretical sense but how they can use their own know-how and awareness of the improvements that can be made.

The improvement in the outcome

3.51. The community participation body need to provide an explanation of the improvement in the outcome which the community body believes may arise as a result of its participation in an outcome improvement process. This will obviously depend on the outcome itself and how the community participation body views its role and the knowledge, expertise and experience they can bring to the process.

Other information

3.52. This section provides an opportunity for the community participation body to include any other information it believes might be useful in the assessment of the participation request. This could include information on any evidence that the community body has in relation to the proposed outcome improvement or describe the support the community participation body has within the community.

3.53. The community participation body should take account that the public service authority will need to assess the request in making a decision on whether to agree or refuse the request. Chapter 4 explains more about how the public service authority makes its decision and what matters it has to take into account.

3.54. The public service authority needs to understand how agreeing to a request will help improve the outcome. The information included on the form should be brief and clear so they can easily pick out the important points.

3.55. The Act sets out a list of matters that the public service authority must consider in reaching its decision on a request. These are whether agreeing to the request would be likely to **promote or improve**:

- Economic development – this could cover creating new job opportunities or training opportunities, bringing more custom to existing businesses, supporting new businesses, etc.
- Regeneration – this is about making the area a better place to live and work, for example providing new housing, bringing empty buildings or unused land back into use, increasing access to services and social and leisure facilities, improving transport, etc.
- Public health – a wide range of activities can help people lead healthier lives and support people living with long-term conditions or mental health issues, as well as provision of care services or improving access to healthcare.
- Social wellbeing – this covers all sorts of activities that bring people together, creating a stronger community spirit, supporting learning, cultural activities, reducing crime, etc.
- Environmental wellbeing – this could include activities to improve the natural environment both locally and more widely, ranging from creating a community garden or managing local woodland to recycling or renewable energy projects.
- Reduce inequalities of outcome which result from socio-economic disadvantage – this refers to tackling poverty and the other issues that often come with it, such as health problems, low quality housing and lack of access to services and employment. If improving the outcome will particularly help people on low incomes or address these kinds of issues, this should be highlighted.

3.56. 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. Authorities must also consider 'any other benefits that might arise', so everything is covered.

3.57. Authorities must also make the decision 'in a manner which encourages equal opportunities' and meets their responsibilities under Equality legislation. They will

therefore take into account outcomes and activities designed to support people who may be disadvantaged on the basis of age, disability, sex, gender identity / reassignment, race, religion or sexual orientation. For example, improving outcomes for disabled people, improving relationships between communities from different ethnic backgrounds or religions, providing services for LGBT+ people, helping parents and carers to take part in community activities.

Community Support

3.58. It would be helpful for the community participation body to describe the support they have for the participation request within the community which the organisation represents i.e. the community defined in the community participation body's constitution or other documentation. Depending on the nature of the community, some community bodies include a large proportion of the members of that community, but many are made up of a relatively small core of enthusiastic people within a much larger community. The public service authority will want to know that the community participation body have engaged with the community as a whole, and that the proposals have broad support.

3.59. The community participation body should start by explaining who your community is, the total number of people in the community, and how many of them are members of your organisation. If the community participation body represents a community of interest, they might only be able to estimate the total size of the community outside your organisation, but where possible they should provide as much information as they can, for example from the census, other surveys or information from national representative bodies.

3.60. To demonstrate the support for the proposals, the community participation body can use the results from whatever activity they have carried out to find out people's views. The community participation body should give the date of the activity, say how many people took part and how many supported the proposals. If different options were considered, it should show the results for all options.

3.61. Ways of finding out people's views might include:

- A vote taken at a public meeting.
- A community survey.
- Results of a community action planning process or community consultation event.
- Results of a community budgeting process.

3.62. The National Standards for Community Engagement (www.voicescotland.org.uk) can help community participation bodies make sure that your engagement is effective and includes all groups of people within the community.

3.63. As well as support from the community which the organisation represents, it may also be helpful to refer to support from other communities. The community participation body may also want to refer to support from organisations such as a sport governing body or national umbrella body for the type of organisation the community participation body represents.

3.64. There are often differences of opinion within communities and if concerns are raised during your engagement with the community and others, the community participation body should try to address them and show how they have done this. If community participation body is aware of other community bodies who are interested in the same outcome then they should try to work together and see if it is possible to agree a single request.

Services and Assets

3.65. Sometimes a community participation body may wish to take over a building or land and improve the services which are delivered by the public service authority from those premises. The transfer of ownership of the building or land could be addressed by an asset transfer request while the participation request would allow the community participation body to start to talk about improving the outcome of the services.

3.66. We do not recommend using both types of request together.

- If the community body wants to take over running a service which is tied to the particular premises, and does not want to use the premises for any other purpose, this can be addressed through a participation request. Usually this would apply to services which will be delivered under a contract or agreement with the relevant authority. A lease or other arrangement in relation to the premises can be negotiated as part of the agreement to provide the service.
- If the community body wants to take control of an asset in order to deliver services on its own terms or use the property for other purposes, this should normally be addressed through an asset transfer request.
- An asset transfer request can be accompanied by negotiations for the public authority to contract with the community body to continue to provide a service, as a source of income.

Procedure following receipt of a participation request

For the Community Participation Body

3.67. When the public service authority receives your request, they will check it contains all the required information, and that your organisation qualifies as a community participation body.

3.68. If your organisation is not eligible to make the request you have submitted, technically it is not a participation request and the public service authority is not required to take any further action. As a matter of good practice, they should reply explaining why they consider you are not eligible.

3.69. If you are eligible but the request is not complete, the public service authority is required to send you a notice explaining what is missing. The public service authority will not start processing your request until you have provided all the required information, as set out earlier in this chapter.

For the Public Service Authority

3.70. When you receive a request, the first thing to do is to check it contains all the required information, and that the organisation making the request qualifies as a community participation body.

3.71. If the organisation making the request is not eligible to do so, technically it is not a participation request and no further action is required under the legislation. As a matter of good practice, you should reply explaining in general terms why the organisation is not eligible, and directing them to the guidance on eligibility. If appropriate, you should highlight any specific failings in the body's constitution.

3.72. If the request does not contain all the required information you must send the community participation body a notice saying what is missing. No further action needs to be taken until all the required information is received. It would be helpful to make clear in the notice that the request will not be progressed until it is complete. Depending on the content of the partial request, you may also want to direct the community participation bodies to sources of support, or invite them to discuss their proposals with you.

3.73. Only outline information under each heading is required to accept a request as complete. You can seek further information at a later stage if you feel this is needed to support the decision-making process.

Power to decline certain participation requests.

3.74. Section 27 of the Act allows a public service 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.

3.75. This is intended to help public service authorities deal with repeated requests which are unlikely to have a different outcome. The public service authority can still choose to consider such a request if they wish. If the community participation body has a request which is the same or similar to a previous participation request and want to submit a new request within two years, it would be advisable to discuss the request with the public service authority before submitting the request.

3.76. 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.

Acknowledgement

3.77. Once the public service authority is satisfied that all the required information has been provided, they will send the community participation body 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 by the public service authority (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 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.

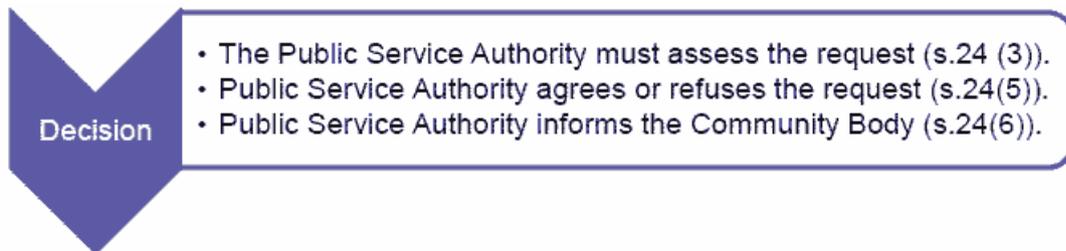
Involvement of additional public service authorities

3.78. Should the 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 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.

3.79. Within 15 working days of receiving notification the additional public service authorities must inform the lead public service authority 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.

Making the Decision



3.80. Each public service authority will have its own process for making decisions on participation requests. They should make information available to community participation bodies on their process.

3.81. The public service authority should continue dialogue with the community participation body throughout the process. They may ask for clarification or more detail on any issues they feel are necessary for their decision. This will help to avoid situations where a request is refused on the basis of a lack of information which the community participation body could have provided if they had been asked. The type of information and level of detail expected should be appropriate and proportionate to the individual request.

3.82. The community participation body can withdraw a request at any time.

Matters to be considered

3.83. Section 24 of the Act states that, 'where a participation request is made by a community participation body to a public service authority ... the authority must decide whether to agree to or refuse the request'. Under subsection (5), 'the authority must agree to the request unless there are reasonable grounds for refusing it'.

3.84. It is not possible to give guidance on what may be reasonable grounds for refusal, as this must be determined in the circumstances of each individual case.

Considering the Request

3.85. In reaching its decision the authority must consider the reasons for the request and the information provided in the request and in support of the request.

3.86. In assessing the benefits of the request the relevant authority must consider whether agreeing to it would be likely to promote or improve:

- Economic development – this could cover creating new job opportunities or training opportunities, bringing more custom to existing businesses, supporting new businesses, etc.
- Regeneration – this is about making your area a better place to live and work, for example providing new housing, bringing empty buildings or unused land back into use, increasing access to services and social and leisure facilities, improving transport, etc.
- Public health – a wide range of activities can help people lead healthier lives and support people living with long-term conditions or mental health issues, as well as direct provision of care services or improving access to healthcare.
- Social wellbeing – this covers all sorts of activities that bring people together, creating a stronger community spirit, supporting learning, cultural activities, reducing crime, etc.
- Environmental wellbeing – this could include activities to improve the natural environment both locally and more widely, ranging from creating a community garden or managing local woodland to recycling or renewable energy projects.
- Reduce inequalities of outcome which result from socio-economic disadvantage – this refers to tackling poverty and the other issues that often come with it, such as health problems, low quality housing and lack of access to services and employment. If improving the outcome will particularly help people on low incomes or address these kinds of issues, you should highlight it.

3.87. The public service authority will also look at whether agreeing to the request would be likely:

- To reduce inequalities of outcome which result from socio-economic disadvantage.
- To lead to an increase in participation in the outcome improvement process by persons who experience socio-economic disadvantage.

- To lead to an increase in participation by persons who experience socio-economic disadvantage in the design or delivery of a public service as relates to the outcome.

3.88. The authority must make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements.

3.89. There is also a general provision that requires a public service authority to consider other benefits that might arise if the request were agreed to and any other matter they might consider relevant.

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

3.91. 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. Any discussions about service design and delivery should be part of the outcome improvement process.

Decision Notice

3.92. Having made its decision, the public service authority must issue a decision notice to the community participation body, under section 24(6) of the Act, 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 or a longer period if agreed between the public service authority and the community participation body.

3.93. The time taken by the public service authority to make its decision will depend on various factors. It may be possible to make a decision in less than 30 working days if the request is straightforward or if community participation body has discussed the proposal with the public service authority before submitting the request. On the other hand, a longer period may be required for more complex requests. There may also be timing issues if requests have to be considered by a Committee of the public service authority at its regular meetings. Public service authorities are encouraged to let the community participation body know about any potential delays as soon as possible.

3.94. If the public service authority asks the community participation body to agree to a short extension to the timescale to make a decision, in most cases it will probably be in the interests of the community participation body to agree. Of course, it is for the community participation body to decide. The community participation body can agree an extension more than once, but just because an extension has been agreed to does not mean that the community participation body has to agree to more.

3.95. The public service authority must publish a copy of the decision notice on a website. The requirement for the public service authority to give reasons for a refusal is a key part of the legislation. A participation request must be agreed unless there

are reasonable grounds for refusal: it is the decision notice that will set out those grounds.

3.96. In order to comply with data protection requirements, any personal information should be redacted from these documents before they are published.

3.97. It may be helpful for public service authorities to maintain an archive of requests online. In particular, this will help community participation bodies to know if previous requests have been made for the same or similar outcomes.

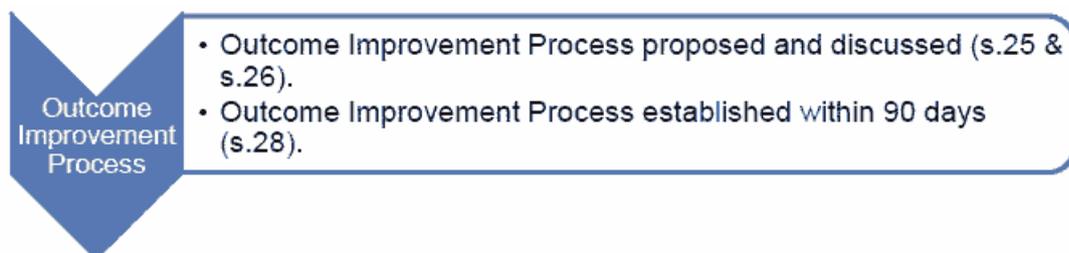
Appeals and reviews

3.98. A public service authority can refuse a participation request if it has reasonable grounds to do so, based on the considerations listed above (3.85-3.91).

3.99. The Act does not currently provide a mechanism for a review or appeal of the decision of a public service authority to refuse a participation request.

3.100. Section 30 of the Act enables the Scottish Ministers to create an appeal or review process for participation request decisions by public service authorities in future should it be required. To inform that decision, section 33 of the Act provides that the Scottish Ministers must present a report to Parliament on the operation of participation requests within three years of the Act coming into force. It is likely that any need for an appeal or review process will be identified at that time.

4. The Outcome Improvement Process



4.1. Once a decision notice has been given agreeing to a participation request, it must describe how the outcome improvement process is intended to work in relation to the participation request. This would then be discussed and agreed with the community participation body. The outcome improvement process is a process that will help improve the outcome set out by the community body.

4.2. The following examples are outcome improvement processes resulting from the participation request scenarios provided in sections 2.3 and 3.47.

- Example of a group of fathers / grandads making a participation request to their health board around parenting. **Outcome – improved health and life chances for children.** An outcome improvement process could be established by the health board around Children’s and Families Services in which the group of fathers / grandads is involved.

- Example of a tenants' organisation making a participation request to their local authority to be involved in community planning structures. **Outcome – improved community safety.** The outcome improvement process could consist of the tenants' organisation being invited onto the pre-existing local community safety partnership and / or other local decision making structures relating to the issue.
- Example of a network of refugees and asylum seekers making a participation request to a regional transport authority around transport provision in order to access English language courses. **Outcome – increased access of refugees and asylum seekers to English language courses.** An outcome improvement process might be to engage the network to advise on service design with the transport providers and Community Learning & Development Services.
- Example of a Development Trust making a participation request to a local authority to take over the running of a day care service for older people. **Outcome – people are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.** An outcome improvement process might be established which explores community-led service provision as one option amongst others to increase independent living.
- Example of a community development trust making a participation request to the National Park Authority around improving access to outdoor activities. **Outcome - improved health and wellbeing.** An outcome improvement process might be to work through the Local Outdoor Access Forum towards co-production of guidance about responsible behaviour on the site and identify opportunities with other stakeholders for access to suitable spaces for the activities to take place.

Information about the outcome improvement process

4.3. Once a decision notice has been given agreeing to a participation request then if the public service authority has already established an outcome improvement process the decision notice will:

- Describe the operation of the outcome improvement process.
- Specify what stage it has already reached.
- Set out how the community participation body will participate in the process.
- Identify others that are part of the process and how they will participate.

4.4. This will allow a community participation body to join a relevant outcome improvement process and participate in that process.

4.5. If an outcome improvement process has not been established 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 persons are expected to participate in the process.

Proposed outcome improvement process

4.6. Section 26 of the Act sets out the process which happens if an outcome improvement process is to be established. It provides that the community

participation body can, within 28 days, propose changes to the outcome improvement process to the public service authority who must take account of any proposals.

4.7. The public service authority must then provide the details of the outcome improvement process to the community participation body.

4.8. The public service authority must publish on a website (or by other electronic means) information about the proposed outcome improvement process.

4.9. The regulations also provides that the public service authority must publish certain information relating to the outcome improvement process:

- 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.

Setting up and maintaining the outcome improvement process

4.10. Section 28 of the Act provides that the public service authority must start a new outcome improvement process within 90 days (this is 90 calendar days rather than working days) from when notice was given under section 26. They must also maintain the process once it is underway.

4.11. Section 29 provides that the public service authority may modify the process, following consultation with the community participation body. The public service authority must publish the new modified outcome improvement process and must make clear what the modification is in relation to the original (or already modified) outcome improvement process. The regulations require the public service authority to publish information regarding the modification:

- The names of the community participation bodies and public service authorities involved in the modified outcome improvement process.
- The outcome to which the modified outcome improvement process relates.
- Identify the outcome improvement process which has been modified.
- How that outcome improvement process has been modified.
- How the modified outcome improvement process is to operate.

Reporting



• At the end of the Outcome Improvement Process a report is published (s.31).

• Each year a Public Service Authority must publish a report on Participation Requests (s.32).

4.12. Section 31 requires that when an outcome improvement process has been completed the public service authority must publish a report on the process.

4.13. 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 authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes.

4.14. In preparing the report, the public service authority must seek the views of the community participation body that made the request and any other community participation bodies involved.

Annual reports

4.15. Section 32 requires that each public service authority must publish a report each year setting out:

- The number of requests received.
- The number of requests agreed and refused.
- The number of requests which resulted in changes to a public service provided by, or on behalf of, the public service authority.
- Any action taken by the public service authority to promote and support the use of participation requests.

4.16. Annual reports cover each year from 1 April to 31 March and must be published by 30 June. Note that the report will show the number of requests received in that year and the numbers agreed to or refused in that year – the figures will not be the same as many requests may be received in one year and decided the next year.