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Our Case ID: 201601364

17 June 2016

Dear Mr Turner

## **The Scottish Government – Community Empowerment (Scotland) Act 2015 Participation Requests: Consultation on Draft Regulations**

Thank you for your invitation to provide our views on draft regulations for Participation Requests. I offer the following comments on behalf of Historic Environment Scotland which is the new lead public body established to investigate, care for and promote Scotland's historic environment.

We are a non-departmental public body with charitable status, governed by a Board of Trustees, who were appointed by Scottish Ministers. We lead and enable Scotland's first historic environment strategy *Our Place in Time*, which sets out how our historic environment will be managed. It ensures our historic environment is cared for, valued and enhanced, both now and for future generations.

We are also responsible for more than 300 properties of national importance. Buildings and monuments in our care include Edinburgh Castle, Skara Brae, Fort George and numerous smaller sites across Scotland, which together draw more than 3 million visitors per year.

### **Consultation paper**

We found the consultation paper and associated draft Regulations to be clear and helpful. We are also grateful to have had the opportunity to meet with a member of your team last month to discuss the consultation material in detail. This has greatly assisted the conversation we are having across our organisation about how we meet the aspirations of the Community Empowerment (Scotland) Act 2015, including how we increase participation with community bodies, communities of interest and local people.

### **General Comment – Public Service Authority**

We note that Historic Environment Scotland is not currently listed under Schedule 2 of the Act as a Public Service Authority. We are also uncertain as to whether our organisation meets the definition under section 21 (3) (b) of the Act for this purpose. For avoidance of

doubt, we consider that community bodies should be able to apply to participate in the delivery of the services that we provide and that Historic Environment Scotland should therefore be included in the Schedule. This would also reflect and compliment the current inclusion of similar organisations such as Scottish Natural Heritage and Scottish Enterprise.

We also understand that while Historic Environment Scotland is not currently listed under Schedule 3 of the Act (as a Relevant Authority for the purposes of Asset transfer Requests), the intention is that this will be amended to allow for our inclusion.

On the assumption that our organisation will be involved in Participation Requests we have provided commentary on some of the questions contained in the consultation paper regarding the application process, timescales and the ways in which we can help promote and support such requests.

I hope this is helpful. Should you wish to discuss our comments in more detail, please feel welcome to contact Alasdair McKenzie on 0131 668 8924.

Yours sincerely

**Barbara Cummins**  
Director of Heritage Management

**Consultation on the Draft Participation Request  
(Procedure)(Scotland) Regulations 2016**



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response.  
Are you responding as an individual or an organization?

- Individual  
 Organisation

Full name or organisation's name

Historic Enviroment Scotland

Phone number

0131 669 8924

Address

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Email

alasdair.mckenzie@hes.scot

The Scottish Government would like your permission to publish your consultation response.  
Please indicate your publishing preference:

- Publish response with name  
 Publish response only (anonymous)  
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

**Participation Requests under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations**

## Questionnaire

Q1: Should the use of a statutory form be required in the regulations?

Yes  No

Please give reasons for your response.

The proposed statutory form could be helpful in guiding applicants to provide key information and help encourage consistency in the submission and determination of applications across Scotland. It would also be useful if the form (or associated guidance) could highlight the importance of early/informal consultation with the Relevant Authority so that they can take steps to ensure those requesting to participate in service delivery can obtain access to all relevant information.

Q2: Should it be possible for a community body to put in a participation request without using a form?

Yes  No

Please give reasons for your response.

If a statutory form is taken forward, we consider Community Bodies should be required to adopt this process. However we recognise that depending upon the specific circumstances/nature of the service in question a degree of flexibility is required. Applicants should not be prevented from including additional information (beyond what is specified on the form) where they feel it is important. Further guidance, including advice from Relevant Authorities could be prepared to help community bodies include the right information under each heading in relation to the services they currently deliver.

Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?

As noted above, we think the guidance associated with any statutory form should highlight the benefits of pre-application engagement with the Relevant Authority.

Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond?

Yes  No

If not, please suggest an alternative timescale and explain reasons for the change.

Where multiple public service authorities are involved, the Regulations currently allow for 14 days for an additional Relevant Authority to respond to the lead public body that has received the initial participation request. We recognise this time scale needs to allow sufficient time for the lead authority to respond within 30 days. Depending upon the complexity of the request and whether there has been pre-application engagement, we consider this time frame could be challenging in some cases, but is generally reasonable.

Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?

We consider Relevant Authorities should ensure staff are aware of Participation Requests and integrate the promotion of these across business areas. Authorities may also wish to review the services they currently deliver and identify those where further participation with community bodies would be beneficial. Where relevant, steps should be taken to promote these opportunities.

Q6: What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?

Relevant Authorities should provide information on their websites and other formats to help guide community bodies that are seeking to participate in delivery of a service. A single point of contact within Relevant Authorities for handling requests would be beneficial – helping to direct applicants toward key information and to put them in contact with staff currently involved in the relevant service.

Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.

No comments.

Q8: How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time?

Yes  No

If not, how long should the period for making a decision be? Please give reasons for your response.

In general we accept that 30 days is a reasonable period within which to make a decision. However, where there are multiple authorities involved or the nature of the request is complex and has not been subject to pre-application discussions, this timescale could prove challenging.

You may wish to consider allowing a time extension in circumstances where both the Relevant Authority and Community Body are in agreements that further consideration is necessary before a decision is taken.

Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.

Where specific policies or criteria have been applied as part of their decision making process, Relevant Authorities should refer to these within the decision notice.

We understand that no appeal mechanism is provided for at present. If this changes we would expect that the decision notice would detail how appeals could be made where a request has been refused.

Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.

No comments.

Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.

No comments.

Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.

No comments.

Q13: Do you have any other comments on the draft Participation Request (Procedure) (Scotland) Regulations 2016?

No comments.

