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## IMPLICATIONS OF THE LOCALISM ACT 2011 ON THE COUNCIL'S PETITIONS SCHEME

To: **Constitutional Review Working Party**

Main Portfolio Area: **Performance**

By: **Democratic Services and Scrutiny Manager**

Classification: **Unrestricted**

Ward: **All Wards**

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**Summary:** This reports sets out the implications for the Council's petitions scheme from the Localism Act 2011 and gives Thanet District Council the opportunity to consider any changes to its scheme as a result.

### For Decision

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#### **1.0 Introduction and Background**

- 1.1 Chapter 10 of the Localism Act 2011 has repealed Chapter 2 of Part 1 of the Local Democracy, Economic Development and Construction Act 2009 (petitions to local authorities) (LDED&C Act 2009), covering petitions.
- 1.2 The Council based its petitions scheme on the model scheme and rules contained within Chapter 2 of Part 1 of the LDED&C Act 2009. This report allows the Constitutional Review Working Party to make recommendations to the Standards Committee regarding whether any amendments to the scheme should be made as a result of Chapter 2 of Part 1 of the LDED&C Act 2009 being repealed.

#### **2.0 The Current Situation**

- 2.1 The Council's existing petition scheme is attached at Annex 1 to this report. The table below outlines the implications of the repeal of Chapter 2 of Part 1 of the LDED&C Act 2009.

	<b>Duty removed as a result of the repeal of Chapter 2 of Part 1 of the LDED&amp;C Act 2009</b>
1.	It removes the need for the Council to make a scheme for the handling of petitions which are made to the authority (with the exception of those petitions made under another enactment, such as one asking for a referendum on an elected mayor).
2.	It removes the need for the Council to be able to accept petitions electronically.
3.	It removes the need for Council to comply with its own petition scheme.
4.	There is no need to publish the Councils petition scheme on its website.
5.	There is no need to acknowledge petitioners, tell petitioners what we intend to do with their petitions or place their petitions on the Councils website.
6.	It removes the need for the Council to do one of the list of the required steps when considering a petition.

7.	It removes the need for the Council to have thresholds to determine how to process petitions, for those thresholds to be reasonable and the requirement for petitions reaching those thresholds to be debated at Council and or Overview and Scrutiny.
8.	It removes the power of review by the Secretary of State, to review the Council's scheme if we do not receive any petitions that the Council has to debate.
9.	The specified reasons for rejection of a petition have been removed.

### **3.0 Impact of removal of duties as a result of the repeal of Chapter 2 of Part 1 of the LDED&C Act 2009**

3.1 1) It removes the need for the Council to make a scheme for the handling of petitions which are made to the authority (with the exception of those petitions made under another enactment, such as one asking for a change in governance model)

3.1.1 The impact of this repeal is the most significant repeal of all of those outlined in the table at 2.1 of this report. It means that the Council can choose not to have a policy that defines how it would treat petitions. It could therefore be inferred that in the absence of a policy the Council would not be bound to take any action with petitions it receives. The exception to this would be as explained in paragraph 3.1, if the Council received a petition made under another enactment, such as one asking for a referendum on an elected mayor it would still have a duty to accept it.

3.1.2 Democratic Services would strongly recommend that the Council retains a petitions policy as it sends a clear message to the general public that the Council takes their views seriously. It also clarifies for the public what the Council will do and the steps that Officers have to take when it receives a petition.

3.1.3 If Councillors are inclined to choose not to have a petition scheme then consideration of paragraphs 3.2 to 3.9 is not necessary as they are options surrounding what a scheme would contain.

3.1.4 If Councillors are inclined to keep a petitions scheme then the repeals as outlined in paragraphs 3.2 to 3.9 should be considered as they will have a significant effect on what the scheme would contain.

**Recommendation:** That the Council retains a petitions scheme.

3.2 2) It removes the need for the Council to be able to accept petitions electronically.

3.2.1 The impact of this repeal is that the Council could choose to amend the petition scheme to remove the need for Epetitions. This would mean that the Council would only accept petitions in paper format. There could be an argument put forward that as only one petition of the 11 that have been submitted since the scheme was introduced in July 2010 has been submitted in electronic format, there has been no demand for the ability to submit petitions electronically.

3.2.2 There would be no direct financial savings if Thanet District Council ended the use of Epetitions as the software used was part of the Council's existing Modern.gov Committee system and therefore there is no contract to end.

3.2.3 Some Councils have already removed their Epetition webpages from their websites as there is no obligation to continue to have one.

3.2.4 The alternative would be to keep the Epetitions webpage on the Councils website as it could be seen as a retrograde step to remove that functionality.

- 3.2.5 In addition, contained within Schedule 2 Part 1A of the Localism Act 2011 is a power for the Secretary of State to allow petitions for a change in governance arrangements to be submitted to the Council electronically. To date there is no indication that the Secretary of State has issued any instructions regarding allowing such petitions electronically. It is however, important to consider this possibility when making any recommendation on this issue.

**Recommendation:** That the Council keeps its Epetition webpage.

3.3 3) It removes the need for Council to comply with its own petition scheme.

- 3.3.1 When considering this repeal it is important to understand that petitioners do not currently have a right to appeal against the decision that the Council reaches when it considers their petition. A petitioner only has the right to request that the Overview and Scrutiny Panel review the steps in the process the Council has taken in response to the petition, rather than the ultimate result.

- 3.3.2 The impact of this repeal means that a petitioner would have no statutory right to ask the Council to review the steps it took in dealing with their petition. Therefore Council is not obliged to retain paragraph 12.7 of the existing scheme as detailed in Annex 1 of this report.

- 3.3.3 This raises another issue regarding the existing petition scheme. As per paragraph 12.5 of the scheme, if a petition is signed by over 650 people but less than 1300 it is discussed by the Overview and Scrutiny Panel. If a petitioner appeals against the process the Council has followed regarding their petition, under the existing scheme that appeal is considered by the Overview and Scrutiny Panel. Therefore there could be an occurrence where the Panel is reviewing the process that the Panel itself has undertaken.

- 3.3.4 It is recommended by Democratic Services that if a petitioner wishes to lodge an appeal against the steps in the process the Council has taken in response to their petition, then that appeal should be put through the Council's corporate complaints process instead of being considered by the Overview and Scrutiny Panel. This would remove any possibility of the Overview and Scrutiny Panel having to deal with an appeal about a petition they had considered.

**Recommendation:** That appeals regarding the process undertaken by the Council in relation to a petition are put through the Council's corporate complaints process instead of being considered by the Overview and Scrutiny Panel.

3.4 4) There is no need to publish the Councils petitions scheme on its website

- 3.4.1 The impact of this repeal means that the Council would not need to have a separate webpage on its website to explain the petitions scheme. Publication of the scheme within the Council's constitution would be sufficient. Removing the scheme from the Council's website would reduce the visibility of the petitions scheme; it would also isolate the Epetitions website, making it more difficult to find and understand how the Council deals with petitions.

**Recommendation:** That the Council's petitions scheme webpages remain on the Council's website.

3.5 5) There is no need to acknowledge petitioners, tell petitioners what we intend to do with their petitions or place their petitions on the Councils website

- 3.5.1 The existing petitions scheme is very prescriptive regarding how the Council acknowledges and informs petitioners about what is happening with their petitions once

they have been submitted to the Council. To date this has not been a problem for Democratic Services as there have only been 11 petitions since the scheme was introduced, however if there were a significant increase in the number of petitions received then this could place additional resource implications on Democratic Services. However there does not seem to be any evidence of any potential future increase in the number of petitions received.

- 3.5.2 Information regarding paper and electronic petitions is put on to the Council's Epetition webpage, this helps the public to see what progress the Council has made on each petition and also informs them of what is being petitioned about.
- 3.5.3 This issue will be influenced by the decision made regarding paragraph 3.2 above. If Councillors recommend removing the Council's Epetition webpage, then it would be no longer possible to publish petition information on it.

**Recommendation:** That Council continues to acknowledge petitions and tell petitioners what it intends to do with their petitions and that they placed on the Council's website.

- 3.6 6) It removes the need for the Council to do one of the list of the required steps when considering a petition.

- 3.6.1 This means that the Council has no statutory obligation to do any of the following when receiving a petition:

- a) Give effect to the request in the petition
- b) Consider the petition at a meeting of the authority
- c) Hold an inquiry
- d) Hold a public meeting
- e) Commission research
- f) Give a written response to the petitioner explaining the view of the Council.
- g) Refer the petition to the Overview and Scrutiny Panel.
- h) Refer to another Committee of the Council with powers of decision.

- 3.6.2 Councillors could recommend that the scheme retains the list as examples of the type of action it could take regarding a petition or it could remove the list completely or amend it, in order to assist with managing petitioners' expectations.

- 3.6.3 Democratic Services recommend that the list is retained as it informs the public of actions that could be taken and increases transparency.

- 3.6.4 However if Councillors recommend instead that the list is removed then a statement should be added to the scheme that would allow the Council "to take any action it sees fit" to respond to a petition.

**Recommendation:** That the Council retains the list of required steps as part of its petitions scheme.

- 3.7 7) It removes the need for the Council to have thresholds to determine how to process petitions, for those thresholds to be reasonable and the requirement for petitions reaching those thresholds to be debated at Council and Overview and Scrutiny.

- 3.7.1 This means that the Council could remove the automatic referral to the Overview and Scrutiny Panel and to Council for debate if a petition receives certain thresholds. Councillors could recommend that the Council returns to the previous scheme before the introduction of the LDED&C Act 2009 whereby if a petition contained over 25 signatories it was presented to Council and automatically referred to Cabinet or the appropriate committee without debate.

3.7.2 Currently, if a petition has at least 650 signatories and requests that a named officer gives evidence, then that officer is obliged to attend a meeting of the Overview and Scrutiny Panel to give evidence, irrespective of whether the petition achieved over 1300 signatories and would otherwise have been presented to Council. Since the scheme was introduced no request for a named officer to give evidence has ever been made. This rule was originally included in the petitions scheme regulations to give a member of the public a right to request officer evidence when they were not happy with the way officers had dealt with a matter. However the right to request a named officer to give evidence has now been repealed as part of the appeal described in paragraph 3.7.

3.7.3 Democratic Services recommend that the existing scheme of thresholds that automatically determine whether a petition is sent to Council to be referred to Cabinet or another appropriate committee, the Overview and Scrutiny Panel or to Council for debate remain. However, it is suggested that the ability to submit a petition and ask a named officer to give evidence be removed. By doing this the remaining scheme would clearly set out which body would receive the petition given how many signatories there are. It also emphasises the importance that the Council gives to petitions that are signed by increasing levels of people.

3.7.4 Councillors could amend the level of the thresholds to either increase or decrease the number of signatories needed to activate any automatic referral. Note that there is now no legal obligation to set these thresholds at a “reasonable” level; they could be set any level the Council sees fit. For Councillors’ information the thresholds at the other East Kent Councils are as follows:

Thanet:	Overview and Scrutiny 650	Council Debate 1300
Canterbury:	Overview and Scrutiny 1500,	Council Debate 3000
Dover:	Overview and Scrutiny 800,	Council Debate 1600
Shepway:	Overview and Scrutiny 500,	Council Debate 1000

3.7.5 Democratic Services also recommend that the level of thresholds remain as they currently are for referral to the Overview and Scrutiny Panel and for Council debate. There does not appear to be any evidence that the current thresholds restrict or exclude petitioners as of the five petitions that have been received by Full Council three were debated in full.

**Recommendation:** That:

a) the existing scheme of thresholds that automatically determine whether a petition is sent to Council to be referred to Cabinet or the appropriate committee, the Overview and Scrutiny Panel or to Council for debate remain, but ability of a petitioner to ask a named officer to give evidence be removed.

b) the level of the thresholds remain as they are for referral to the Overview and Scrutiny Panel and for Council debate.

3.8 8) It removes the power of review by the Secretary of State, to review the Council's scheme if we do not receive any that we have to debate.

3.8.1 Previously the Secretary of State could periodically review the Council's petitions scheme to assess how many petitions were debated by Full Council. If he/she considered that insufficient numbers of petitions were debated by Full Council he/she could instruct the Council to change the thresholds to help facilitate future Full Council debates. This has now been repealed and so there is no recourse to the level of any threshold set.

**Recommendation:** To note the removal of the power of review by the Secretary of State

3.9 9) The specified reasons for rejection of a petition have been removed.

3.9.1 This means that the Council could amend the reasons by which it rejects a petition. The current guidelines for submitting a petition are included at paragraph 12.1 of Annex 1 to this report. Since the introduction of the scheme two petitions have been rejected.

3.9.2 Of the two petitions rejected one was for not including any contact details and the other was rejected as it related to a regulatory decision.

3.9.3 The Council could make the reasons for rejecting petitioners more or less stringent. Council could streamline the rules to allow the Monitoring Officer to reject petitions on his own without discussing them with the Leader and the Chairman of the Overview and Scrutiny Panel.

3.9.4 Democratic Services recommend that the rules on rejecting petitions be amended to allow the Monitoring Officer to reject petitions without consulting with the Leader of the Council and the Chairman of the Overview and Scrutiny Panel if those petitions relate to a regulatory decision or do not contain the appropriate contact details. This is because these two types of petition must be rejected (one on constitutional grounds and the other as a matter of fact). Elected Members could not alter such a decision, unlike an assessment of whether a petition was considered vexatious, abusive or otherwise inappropriate.

3.9.5 It would remain the case that if the Monitoring Officer was considering rejecting a petition on the grounds of it being vexatious, abusive or otherwise inappropriate he would still need to consult with the Leader of the Council and the Chairman of the Overview and Scrutiny Panel before coming to a decision.

3.9.6 Councillors could also recommend a rule that defines when petitions may not be accepted and may therefore be rejected. Democratic Services recommend that a petition should be rejected by the Monitoring Officer alone if a petition had already been received that was substantially similar to one received within the preceding twelve months. This would add another category to those types of petitions mentioned at paragraph 3.9.4 above that the Monitoring Officer could reject without consulting with the Leader and the Chairman of the Overview and Scrutiny Panel.

**Recommendation:** a) That the Monitoring Officer alone be allowed to reject petitions if they relate to a regulatory decision or include no contact details.

b) That a petition should be rejected by the Monitoring Officer if a petition had already been received that was substantially similar to one received within the preceding twelve months.

#### **4.0 Petitions received under the existing scheme**

4.1 Since the Council's new Petition Scheme was adopted on the 15 July 2010 the Council has received 11 petitions, of which:

- Five were accepted and considered by Council.
- Two were rejected.
- Three were forwarded to Kent County Council
- One Epetition failed to reach the required threshold to be considered valid.

4.2 Only one petition was submitted as an Epetition, however as mentioned above it failed to reach the required threshold to be considered. One other petition was run side by side with a paper petition and the remaining nine petitions were received in paper format.

## **5.0 Options**

- 5.1 Councillors have the option to agree the recommendations as set out in paragraphs 3.1 to 3.9 and summarised below at paragraph 8.1 or they could make recommendations of their own.

## **6.0 Next Steps**

- 6.1 The Standards Committee will consider any recommendations from the Constitutional Review Working Party; the Standards Committee will then make recommendations to Council.

## **7.0 Corporate Implications**

### **7.1 Financial and VAT**

- 7.1.1 There has been little financial impact through the use of officer time on Democratic Services as a result of the implementation of Epetitioning, mainly as a result of the relatively small number of petitions received.
- 7.1.2 There would be no direct financial savings if Thanet District Council ended the use of Epetitions as the software used was part of the Council's existing Modern.gov Committee system and therefore there is no Epetitions contract to end.

### **7.2 Legal**

- 7.2.1 Chapter 10 of the Localism Act has yet to receive a commencement date. However any recommendations regarding changes to the scheme would only take effect from the commencement date for Chapter 10 of the Localism Act.

### **7.3 Corporate**

- 7.3.1 The Petitions policy helps the Council to promote community involvement.

### **7.4 Equity and Equalities**

- 7.4.1 None Apparent

## **8.0 Summary of Recommendations**

Please see the following page.

8.1

1. That the Council retains a petition scheme.
2. That the Council keeps its Epetition webpage.
3. That appeals regarding the process undertaken by the Council in relation to a petition are put through the Council's corporate complaints process instead of being considered by the Overview and Scrutiny Panel.
4. That the Council's petition scheme webpages remain on the Council's website.
5. That Council continues to acknowledge petitions and tell petitioners what it intends to do with their petitions and that they placed on the Councils website.
6. That the Council retains the list of required steps as part of its petitions scheme.
7. a) the existing scheme of thresholds that automatically determine whether a petition is sent to Council to be sent to Cabinet, the Overview and Scrutiny Panel or to Council for debate remain, but ability to create a petition to ask officers to give evidence is removed.  
  
b) the level of thresholds remain as they are for referral to the Overview and Scrutiny Panel and for Council debate.
8. To note the removal of the power of review by the Secretary of State.
9. a) Democratic Services recommend that the Monitoring Officer alone be allowed to reject petitions if they relate to a regulatory decision or include no contact details.  
  
b) Democratic Services recommend that a petition should be rejected by the Monitoring Officer if a petition had already been received that was substantially similar to one received within the preceding twelve months.
10. To give the Democratic Services and Scrutiny Manager delegated authority to amend the Councils petitions scheme to reflect any of the changes made to the scheme.

## 9.0 Decision Making Process

9.1 This is a non-key decision to go to Council

9.2 Any recommendations from the Constitutional Review Working Party will be considered by the Standards Committee and any recommendations from Standards Committee will be considered by Council.

Future Meetings: Standards Committee Council	Date: 1 March 2012 19 April 2012
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Reporting to:	Glenn Back, Democratic Services and Scrutiny Manager, Ext 7187

### **Annex List**

<b>Annex 1</b>	Thanet District Council Petitions Scheme
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**Background Papers**

<b>Title</b>	<b>Details of where to access copy</b>
None	

**Corporate Consultation Undertaken**

Finance	Matthew Sanham, Finance Manager (Service Support)
Legal	Harvey Patterson, Corporate and Regulatory Services Manager and Monitoring Officer
Communications	Hannah Thorpe, Corporate Communications Officer