

# Citizen Participation and Public Petitions Committee

15th Meeting, 2023 (Session 6), Wednesday  
25 October 2023

## Review of Policy on Written Submissions

### Background

When a petition is considered by the Committee for the first time, the clerk's paper that is circulated for the meeting includes (in addition to the petition itself and the SPICe briefing):

- a written submission from the Scottish Government, setting out its initial position on the petition
- in some cases, a submission from the petitioner, responding to the SG submission or providing new/updated information.

When a petition is considered on subsequent occasions, the clerk's paper includes any new submissions that have been received since the petition last appeared on the Agenda – including submissions from:

- the petitioner
- the Scottish Government
- MSPs
- external individuals and organisations.

All submissions received must be processed by the clerks before publication. This involves checking them to ensure (in particular) that they:

- don't include any defamatory statements
- comply with data protection requirements (e.g. don't include sensitive personal information about a third party)
- don't contain any offensive language.

The clerks also routinely check submissions for length, sense, accuracy and clarity, and this may lead to changes in wording being suggested or requested.

### **Change of policy on unsolicited submissions**

Until late last year, the practice was to accept all unsolicited submissions (that is, submissions from external individuals or organisations who had not been invited by the Committee to make a submission) so long as the submissions met certain criteria – in particular, that they provided new information and didn't relate to individual cases.

However, this sometimes led to practical problems. A significant amount of staff time was taken up in assessing whether unsolicited submissions met the published criteria and liaising with the people seeking to make the submissions. Even if accepted, these submissions did not always contain information useful to the Committee, while adding to the volume of material on the website and included in members' papers.

On 7 December 2022, the Committee agreed a revised policy on petition management. There were two main elements to the revised policy.

Firstly, it was decided that all petitions should be open to signatures throughout their lifespan. (Before then, petitioners had a choice of collecting signatures or not, and signatures could be added only within the first 4 weeks after the petition was published). This change was made to ensure that people always had a mechanism to register their support for a petition, in the hope that this would reduce the number of people sending in a submission simply in order to show support.

Secondly, a decision was made to no longer accept unsolicited submissions, except those from the petitioner or an MSP. The aims were to reduce the burden on the clerks in processing submissions, and to reduce the volume of material for Committee members to read. Another benefit is to help ensure that the Committee remains in control of the information-gathering that it undertakes on each petition.

## Review of the new policy

In many respects, the change of policy has been successful. The number of unsolicited submissions has declined since the policy was changed and in most cases where people have contacted the clerks about making an unsolicited submission, they have not questioned or challenged the new policy.

Nevertheless, some practical difficulties have been encountered, and there has also been some pushback and criticism.

If an unsolicited submission is received, current practice (reflecting the policy) is to tell the person who has sent it that the submission could only be accepted if the Committee first agrees (at a meeting) to invite a submission from that person. However, this is quite a slow process, as the Committee's decision (whether to invite a submission) currently has to wait until the next time the petition appears on the Agenda. As a result, if the decision then taken is to invite a submission, the submission itself can't be considered until the next-following time the petition is on the Agenda – a significant further delay.

The extent to which this delays consideration of a submission is illustrated in the box below. For the purpose of this illustration, it has been assumed that a typical continue petition will normally re-appear on a Committee agenda after a period of around 4 months. Given that there are over 100 current petitions, and only 10-12 are considered at a typical meeting, this is likely in fact to be an under-estimate.

Under previous policy

- Meeting 1 (e.g. October) – Committee considers petition and agrees to write to A and B
- C writes to clerks with unsolicited submission
- Meeting 2 (e.g. February) – paper includes submissions from A, B and C

Under current policy

- Meeting 1 (e.g. October) – Committee considers petition and agrees to write to A and B
- C writes to clerks with unsolicited submission
- Meeting 2 (e.g. February) – paper includes submissions from A and B, and notes that C also wishes to make a submission

*[If Committee agrees to invite a submission from C:]*

- Meeting 3 (e.g. June) – paper includes submission from C.

There is also a possibility that the petition may be closed before the submission can be made – i.e. if closure is proposed as an alternative option to inviting further submissions, at Meeting 2.

The current policy was designed, primarily, to deal with situations where a large number of unsolicited submissions were received, or where submissions provided little new or useful information – and in that it has been generally successful. But it may also block people who have relevant expertise or experience, and whose submissions may contain important information that would otherwise not be available to the Committee. The process that informs Committee decisions about whom to invite is not perfect, and it is always possible that some organisations or individuals with a useful contribution to make, or a legitimate viewpoint, won't be among those invited.

In one recent instance, an organisation that sought to make an unsolicited submission wrote to the Convener, after having the policy explained, to say of its submission: "This is information the Committee needs to hear but restricting responses is not allowing for full participation or open democracy." The organisation went on to say that it would be "beneficial to revisit" the policy on written submissions.

Separately, an MSP wrote to the clerks in May raising objections to the new policy. In the view of this member, it "seems to lock out members of the public. Given the committee is intended to be the parliament's outward facing committee I find this decision difficult to understand."

### **Options as a result of review**

One option is to maintain the policy as it stands. Factors in favour of this are:

- there were good reasons for adopting the current policy in December that are still valid

- the change in policy has generally been successful
- it has only been in operation for a limited time and can be reviewed again at a later date if further pushback is received.

On the other hand, there would appear to be ways to retain at least some of these benefits, while addressing the problems that have been identified. The Committee is therefore invited to consider two, alternative, ways in which the policy might be amended.

#### Tighter criteria for unsolicited submissions

One option would be to open the door again to unsolicited submissions, while ensuring there are tighter criteria than previously applied. The aim would be to filter out submissions whose aim is simply to register support for (or opposition to) a petition without adding relevant or new information, while still allowing submissions that are likely to add value.

For example, criteria for accepting an unsolicited submission might include:

- that the person or organisation making the submission can demonstrate relevant expertise in, or experience of, the issues raised by the petition
- that there is no substantial overlap with information or views contained in existing submissions (or other material) about the petition
- the submission does not appear to be part of an organised campaign to show support for, or opposition to, the petition by encouraging people to send in multiple, similar submissions.

Whether these criteria apply, however, is quite subjective and could come down to the judgement of clerks. This may make it necessary for clerks sometimes to seek a view from the Convener or even from the whole Committee. There is also a risk that the work involved for clerks in applying these tests and corresponding about them with submission authors would re-introduce some of the disadvantages of the earlier policy.

#### Invite Committee decisions at intervening meetings on whether to invite additional submissions

As noted above, a disadvantage of the current policy is that requiring the Committee to decide whether to invite an additional submission at the next meeting when the petition is on the agenda significantly extends the timescale for getting the submission itself in front of the Committee.

To avoid this, it would be possible to allow these decisions to be made at intervening meetings (i.e. between meetings where the petition is listed for substantive consideration).

Assuming – as above – that petitions recur on the agenda at a frequency of roughly once every 4 months, there will typically be at least 4 or 5 intervening Committee meetings.

If this approach was adopted, some Committee agendas would need to include an item along the following lines:

**Decisions on inviting written submissions:** The Committee will decide whether to invite a written submission from [person/organisation] on petition PE2345: [title].

It is envisaged that the paper for such an item would be very short. It would include basic information about each petition, a list of those already invited to give evidence and the name of the person or organisation seeking a similar invitation, together with any information about that person/organisation relevant to the decision whether to invite their submission (e.g. their credentials, if known, or any particular reason they have given for wishing to make a submission). The text of any proposed submission would not be included.

It is envisaged that any such paper would be published, and that the item itself would be taken in public (just as, at present, Committee decisions about what, if any, submissions to invite are taken in public). It is expected that any such item would require only a few minutes of committee time. Such items would not provide an opportunity for substantive consideration of the petition or its merits, or for decisions of any other sort – e.g. to close the petition. Petitioners (and interested MSPs) would not need to be alerted that such an item was on the agenda (in the way that they are routinely alerted each time a petition is on the agenda for substantive consideration).

An illustration of how this might work is shown in the box below:

Suggested new policy

- Meeting 1 (e.g. October) – Committee considers petition and agrees to write to A and B
- C writes to clerks with unsolicited submission
- Intervening Meeting (e.g. December) – special item inviting decision on whether to invite submission from C.
- Meeting 2 (e.g. February) – paper includes submissions from A and B and (if Committee agreed to invite it) a submission from C.

This option does add some additional complexity, but otherwise appears to secure the best of both worlds. Like the current policy, it keeps the Committee in control of whom it invites evidence from, while avoiding the additional delay that results, at present, when requests to make additional submissions are received.

## For decision

The Committee is invited to review its policy on written submissions, and decide among the following options:

- to retain the current policy; or
- to change the policy by:

- agreeing that the clerks may accept unsolicited submissions, but only if they meet tighter criteria (along the lines outlined above), and that in cases of dispute it will be for the Convener or the Committee to decide; or
- continuing not to accept unsolicited submissions, but agreeing to make decisions, at intervening meetings, whether to invite additional submissions from persons or organisations that have so requested.

If the Committee decides on one of the change options, it could do so initially on a trial basis, subject to a further review at a later point.

### **Clerks to the Committee**