

Legal advice confirming that the Council does not require to publish population figures

when updating a Scheme of Establishment

From: Charles Livingstone (Brodies Solicitors) [<mailto:charles.livingstone@brodies.com>]

Sent: 20 July 2015 10:05

To: Reid, Jamie

Subject: RE: CC Scheme [BRO-D.FID2686342]

CONFIDENTIAL MESSAGE - INTENDED RECIPIENT ONLY

Jamie

Thanks for your call. I have checked the 1973 Act and, as discussed, can confirm that section 52 of the Act (on the adoption of schemes) contains a requirement to produce "a map showing the boundaries of the proposed areas of community councils and their populations, and the boundaries of any area for which the local authority consider a community council to be unnecessary" (section 52(1)(a)). However, there is no equivalent provision in section 53, which deals with the amendment of schemes.

The amended scheme as provided to me always noted that maps would appear at Appendix IV. I assume those revised boundaries were part of the consultation and in any event are now published, and so the present complaint is that the maps did not also specify the populations of the identified areas.

The original scheme as provided to me did not contain maps but I assume those were published, so it would be worth checking if populations were specified when the scheme was introduced.

In any event, however, section 53 sets out the process by which local authorities can amend schemes, and you have followed that scheme by giving notice of your proposals, inviting representations, further amending the scheme in light of those representations and inviting further representations on those changes.

It may be worth checking if the issue was raised in any consultation responses, but in any case I do not consider that the absence of population figures on the amended maps would invalidate the process, as section 53 gives a local authority a wide discretion on how to amend its scheme as long as it follows the specified procedure.

In any event, I consider that if there were a challenge to the Council's decision to adopt the scheme, the Court would be unlikely to strike it down on such a narrow technical ground. That is not to say that it would be impossible for aggrieved parties to use this as a basis for a challenge. However, I think the prospects of such a challenge would not be good, and would not justify the likely cost.

Please do just let me know if you want to discuss this further.

Kind Regards

Charles Livingstone

Partner

On behalf of Brodies LLP

Glasgow, UK

mailto: charles.livingstone@brodies.com

<http://www.brodies.com>

Telephone: ++44 (0)141 248 4672
