



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority
Policy and Strategy Committee

PROPOSALS TO INTRODUCE A COMMUNITY RIGHT TO CHALLENGE

Report of the Chief Fire Officer

Agenda Item No:

Date: 01 April 2011

Purpose of Report:

To update and inform Policy and Strategy Committee of the implications for Nottinghamshire Fire and Rescue Service of the current government consultation on the Community Right to Challenge.

CONTACT OFFICER

Name : Frank Swann
Chief Fire Officer

Tel : 0115 967 0880

Email : frank.swann@notts-fire.gov.uk

**Media Enquiries
Contact :** Elisabeth Reeson
(0115) 967 5889 elisabeth.reeson@notts-fire.gov.uk

1. BACKGROUND

- 1.1 At its meeting of 4 February 2011 the Policy and Strategy Committee received an update on the Localism Bill and the implications for Fire and Rescue Services. The context of this report focused on specific amendments which could result to the Fire and Rescue Services Act 2004 when the Bill becomes enacted.
- 1.2 Also contained within the Bill is the statutory framework for the Community Right to Challenge and the Community Right to Buy. Whilst the Community Right to Buy does not specifically refer to Fire and Rescue Services, Part 4 Chapter 3 of the Localism Bill refers to the Community Right to Challenge. This section underpins new proposed powers to give communities the right to bid to take over local state run services.

2. REPORT

- 2.1 The consultation of the Community Right to Challenge commenced on 4 February 2011 and will run for a period of 12 weeks closing at 17:00hrs on 3 May 2011. The consultation is aimed primarily at relevant authorities and relevant bodies, but also welcomes the views of individual service users.
- 2.2 The consultation focuses on specific areas which this report will clarify. These are:
 - What is the Community Right to Challenge?
 - Which services should be subject to challenge and should there be exemptions?
 - Who are the relevant bodies?
 - What are the processes to making a challenge?
- 2.3 In all, the consultation poses sixteen questions which are attached at Appendix A to this report, along with the consultation document.
- 2.4 The Community Right to Challenge is part of the coalition government's plans to shift power from Whitehall to councils and beyond to citizens and communities. The Community Right to Challenge enables bodies to express an interest in running a service, which may trigger a procurement exercise relating to the provision of relevant authority services on the authority's behalf.
- 2.5 Other linked policies from the coalition government are:
 - Introducing new powers to save local facilities threatened with closure (Community Right to Buy).
 - Creating new rights which will make it simpler for communities to provide homes for local people (Community Right to Build).

- Supporting the creation and expansion of mutuals, co-operatives, charities and social enterprises to have greater involvement in public service delivery.
- 2.6 The consultation document seeks to hear views on the principles and the process that is to be followed.
- 2.7 Within the consultation document there is also a focus on which services should not be subject to change. The Bill only applies to services which are provided by, or on behalf of, relevant authorities. It does not apply to functions of relevant authorities. In general a function is a duty of power.
- 2.8 The Fire and Rescue Service is identified as an example of such a service. This is because legislation exists which requires the authority to deliver that service, the Fire and Rescue Services Act. Therefore employing fire fighters to put out fires and respond to road traffic collisions would be excluded from challenge.
- 2.9 However, within the consultation the government seeks the opinion of whether the Community Right to Challenge should be extended to apply to all Fire and Rescue Authorities. The government is minded to do this and asks whether this is agreeable, whilst excluding certain core services.
- 2.10 The consultation also looks at the processes of when expressions of interest should be considered, what information should be included in an expression of interest, timeframes, when expressions can be modified and rejected and any associated procurement exercise. Support and guidance is also referenced.
- 2.11 Clearly from a Fire and Rescue perspective the core functions of the Service, operational response, appear to be exempted. However, if the Right to Challenge is extended, all other functions within the Service could be subject to challenge. This aspect has not yet been decided and it is important that Nottinghamshire and City of Nottingham Fire and Rescue Authority express their views with regard to this specific question.

3. FINANCIAL IMPLICATIONS

There are no direct financial implications arising out of this consultation process for the Fire Authority.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

There are no direct human resources or learning and development implications arising out of this consultation process for the Fire Authority.

5. EQUALITY IMPACT ASSESSMENT

There are no direct equalities implications arising out of this consultation process for the Fire Authority.

6. CRIME AND DISORDER IMPLICATIONS

There are no crime and disorder implications arising from this report.

7. LEGAL IMPLICATIONS

As explained in the previous report to Policy and Strategy Committee, the Localism Bill will make amendments to the Fire and Rescue Services Act 2004. Likewise, if the Community Right to Challenge is extended to Fire and Rescue Authorities and only the operational elements quoted are excluded, then other duties currently within the provisions of the Act may have to be withdrawn.

8. RISK MANAGEMENT IMPLICATIONS

By submitting a response to the consultation the Fire Authority mitigate the risk of the Right to Challenge delivering outcomes which the Fire Authority do not consider appropriate.

9. RECOMMENDATIONS

It is recommended that Members:

- 9.1 Note the current consultation of the Community Right to Challenge.
- 9.2 Advise the Chief Fire Officer on whether they wish the Community Right to challenge to be extended to Fire and Rescue Authorities.
- 9.3 Task the Chief Fire Officer with submitting a response on behalf of the Fire Authority.

10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

None.

Frank Swann
CHIEF FIRE OFFICER



Proposals to introduce a Community Right to Challenge **Consultation paper**



Proposals to introduce a Community Right to Challenge **Consultation paper**

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.communities.gov.uk

If you require this publication in an alternative format please email:
alternativeformats@communities.gsi.gov.uk

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

February 2011

ISBN: 978-1-4098- 2803-7

Contents

Consultation overview	4
Ministerial foreword	9
Glossary	11
Section 1: Introduction	12
Section 2: Which services should not be subject to challenge?	18
Section 3: Relevant bodies and relevant authorities	21
Section 4: When a relevant authority will consider Expressions of Interest	23
Section 5: Information to be included in an Expression of Interest	25
Section 6: Period during which a relevant authority must reach a decision on an Expression of Interest	28
Section 7: When an Expression of Interest may be modified or rejected	30
Section 8: Period between an Expression of Interest being accepted by a relevant authority and a procurement exercise relating to the provision of the service beginning	33
Section 9: Support and guidance	35
Annex A: Summary of consultation questions	36
Annex B: Consultation criteria	38

The Consultation Process and How to Respond

Scope of the consultation

Topic of this consultation:	Community Right to Challenge
Scope of this consultation:	The statutory framework for the Community Right to Challenge is provided in Part 4, Chapter 3 of the Localism Bill. This Bill was introduced on 13 December 2010 and is outside the scope of this consultation. However, the Bill includes a number of powers to specify further detail underpinning the Community Right to Challenge in regulations. This consultation invites views on these aspects.
Related consultation:	<p>Alongside this consultation, we have published a consultation on the Community Right to Buy. This is available at www.communities.gov.uk/corporate/publications/consultations</p> <p>For all enquiries, and to respond to the Community Right to Buy consultation, please email crtbuy@communities.gsi.gov.uk or write to:</p> <p>Community Right to Buy Consultation Team Department for Communities and Local Government 5/A3 Eland House Bressenden Place London SW1E 5DU</p>
Geographical scope:	England
Impact Assessment:	The impact assessment for this policy has been published on the DCLG website at: www.communities.gov.uk/publications/localgovernment/localismrighttochallenge

Basic Information

To:	This consultation is aimed primarily at relevant authorities (county, district and London Borough councils) and relevant bodies (voluntary and community bodies, charities, parish councils and relevant authority employees). We also welcome views of individual service users.
Body responsible for the consultation:	The Department for Communities and Local Government is responsible for this consultation.
Duration:	This consultation will be open for 12 weeks, from 4 February 2011 to 5pm on 3 May 2011.
Enquiries and how to respond:	<p>For enquiries, and to respond to this consultation, please email crtchallenge@communities.gsi.gov.uk or write to:</p> <p>Community Right to Challenge Consultation Team Department for Communities and Local Government 5/A3 Eland House Bressenden Place London SW1E 5DU</p> <p>For more information, please see www.communities.gov.uk</p>
Additional ways to become involved:	<p>Throughout the consultation period we will be speaking to a wide range of interested parties. We will be organising consultation events which will be publicised on the Department's website: www.communities.gov.uk</p> <p>If you would be interested in attending a consultation event, please email crtchallenge@communities.gsi.gov.uk or write to the consultation team at the above address.</p>
After the consultation:	A summary of the responses to the consultation will be published on the Department's website within three months of the closing date of the consultation.
Compliance with the Code of Practice on Consultation:	This consultation complies with the Code of Practice on Consultation (a summary of which is at Annex B).

Background

<p>Getting to this stage:</p>	<p>The <i>Coalition Programme for Government</i>¹ committed to ‘introduce new powers to give communities the right to bid to take over local state-run services.’ Services referred to in this consultation that would be subject to challenge are those delivered by, or on behalf of, a relevant authority (county, district or London Borough council).</p> <p>HM Treasury published a call for evidence on Public Service Reform in November 2010.² The Open Public Services White Paper is due to be published in February 2011. Cabinet Office also published the Modernising Commissioning Green Paper in December 2010.³ These both sought views on whether the Community Right to Challenge should be extended to apply to other public bodies as relevant authorities. Responses to these documents will be considered in exploring which public bodies the Community Right to Challenge may be extended to in the future.</p>
<p>Previous engagement:</p>	<p>Initial discussions have been held with representatives from local government and voluntary and community bodies.</p>

How to respond

1. Questions on which we are seeking input are raised throughout this document. These are repeated at Annex A. We encourage you to use the Word format questionnaire associated with this consultation paper. Responses to this consultation must be received by 5pm on 3 May 2011.
2. You can respond by email to crtchallenge@communities.gsi.gov.uk or write to:

Community Right to Challenge Consultation Team
 Department for Communities and Local Government
 5/A3 Eland House
 Bressenden Place
 London SW1E 5DU

¹ www.cabinetoffice.gov.uk/news/coalition-documents

² www.hm-treasury.gov.uk/consult_publicservice_reform.htm

³ <http://download.cabinetoffice.gov.uk/green-paper/commissioning-green-paper.pdf>

3. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please give a summary of the people and organisations it represents and, where relevant, who else you have consulted in reaching your conclusions.

Additional copies

4. This consultation paper, complete with electronic response form, is available on the Department for Communities and Local Government website at www.communities.gov.uk. You may obtain a hard copy of this consultation paper from the address given at paragraph 2 above.
5. If you require this publication in an alternative format please email crtchallenge@communities.gsi.gov.uk

Or online via the website at www.communities.gov.uk

Confidentiality and data protection

6. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
7. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.
8. The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
9. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Help with queries

10. Questions about the policy issues raised in the document can be sent to the address given at paragraph 2 above.
11. A copy of the consultation criteria from the Code of Practice on Consultation is at Annex B. Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please email:

consultationcoordinator@communities.gsi.gov.uk or write to:

DCLG Consultation Co-ordinator
Zone 8/J6
Eland House
Bressenden Place
London SW1E 5DU

Ministerial foreword

"...we've got to get rid of the centralised bureaucracy that wastes money and undermines morale and in its place we've got to... open up public services to new providers... so we get more innovation, diversity and responsiveness to public need. We need to create communities with oomph – neighbourhoods who are in charge of their own destiny, who feel if they club together and get involved they can shape the world around them."

Prime Minister, Liverpool, 19 July 2010.

In the early days of the new Government, the Prime Minister gave a speech in Liverpool, setting out one of the major shared principles uniting the two parties in power. That principle is localism. For too long, decision-makers have sought to improve public services by exercising power and influence from central government. Central targets and directions create bureaucracy and swallow up public money; they stifle local innovation, and stop people making their own decisions about things that matter to them.

This Government has a different vision. We want to restore power to local people and their democratically elected representatives. We want to help them make their own decisions. And we want to give free rein to the creativity, the ingenuity and the initiative of communities up and down the country.

Since May 2010, we have started putting that vision into practice. We have cut back town hall bureaucracy and created local flexibility to decide how best to spend taxpayers' money. We've laid the foundations for a new generation of free schools and set out our plans to make the police more responsive to local people's needs. But this is only a start. The Localism Bill, published in December 2010, represents a further step forward.

The Localism Bill has the potential to transform national life. It will give town halls far more discretion to get on with the job of responding to what local people want. It will make the planning system more responsive to communities and allow for much greater local control over social housing. Crucially, it will also pass new rights and powers direct to local communities.

Under the Bill, it will become easier for local people to give the green light to the building of shops, businesses and homes where they are most needed. Voluntary and community groups, parish councils and authority employees will be able to challenge to take over the running of local public services. And when important local amenities and buildings – such as old town halls, village shops or pubs – come up for sale, communities will have extra time to prepare a bid to take them over, making it easier to keep much-loved assets in public use and part of local life.

In order to make the most of the Bill’s potential to achieve swift, widespread and lasting change, the Government is beginning consultation now on how it might use the community rights provisions in the Bill to best effect.

This consultation is about the right for community and voluntary bodies, parish councils and authority employees to bid to take over the running of local authority services. Many local authorities already recognise the unique role that these groups can play in designing and delivering local services – often offering new ideas, a deeper understanding of service users’ needs, and good value for taxpayers’ money. In other places, however, sensible suggestions can fall on deaf ears.

The “Community Right to Challenge” in the Localism Bill will give these groups the ability to bring their proposals to take on the running of a service to the attention of the local council and require it to give them proper consideration. Regulations will be needed to ensure this right works effectively in practice. We want to make sure that they are well-designed and that this new right makes the biggest possible difference, giving local people a means to exercise influence. This consultation document sets out a series of questions – relevant to voluntary and community groups, parish councils, local authorities and others – which explore aspects of how the right might operate.

We look forward to hearing your comments on how we can make this new right work effectively in practice, and put real power in the hands of local people.

Greg Clark
Minister for Decentralisation

Glossary

Relevant authority

Authorities that are required to consider Expressions of Interest to run services which they are responsible for. The Localism Bill lists relevant authorities as **county and district councils and London borough councils**. The Bill provides that the Secretary of State may add further 'relevant authorities' in secondary legislation

Relevant body

Bodies who may make an Expression of Interest to run a service. If accepted, this will trigger a procurement exercise relating to the provision of that service. The Localism Bill lists relevant bodies as **voluntary and community bodies, charities, parish councils and two or more staff of a relevant authority**. The Bill provides that the Secretary of State may add further 'relevant bodies' in secondary legislation

Relevant service

A service provided by, or on behalf of, a relevant authority in the exercise of any of its functions. The Localism Bill provides that the Secretary of State may exempt services from the Community Right to Challenge in secondary legislation (see Section 2). Importantly, all functions of a relevant authority are outside of the scope of the Community Right to Challenge and accordingly, unable to be challenged. In other words, the new right does not enable a local authority's functions themselves, including decision making about service provision, to be contracted out to third parties

Section 1:

Introduction

What is the Community Right to Challenge?

- 1.1 The Community Right to Challenge is an important part of the Government's plans to shift power from Whitehall to councils, and beyond to citizens and communities – and to help build a Big Society where everyone plays their part.
- 1.2 Many local authorities already make good use of the talents of voluntary and community bodies, charities, social enterprises, mutuals and co-ops. They already successfully run local services including in education, tackling worklessness, the environment and social care. But in other places good suggestions do not get a fair hearing. The Community Right to Challenge enables these bodies to express an interest in running a service, which may trigger a procurement exercise relating to the provision of relevant authority services on the authority's behalf.
- 1.3 The Right will hand the initiative to communities and the bodies that represent them who have innovative ideas about how services could be shaped to better meet local needs, or could be run more cost effectively. It will ensure these ideas get a fair hearing and give them the time they need to organise themselves and develop their ideas to be able to bid to run the service.
- 1.4 The Coalition Programme for Government committed to "give communities the right to bid to take over local state-run services". The Community Right to Challenge gives effect to this commitment. This is linked to another coalition agreement to give public sector workers a new right to form employee-owned co-operatives and bid to take over the services they currently deliver, on which Cabinet Office is leading, called Rights to Provide. Other linked policies from the Coalition Programme for Government include:
 - Introducing new powers for communities to save local facilities threatened with closure (Community Right to Buy).
 - Creating new rights that will make it simpler for communities to provide homes for local people (Community Right to Build).

- Supporting the creation and expansion of mutuals, co-operatives, charities and social enterprises, and enable these groups to have much greater involvement in the running of public services (see Modernising Commissioning Green Paper⁴).
- 1.5 The Community Right to Challenge will encourage greater diversity of service provision, has the potential for reduced costs of service provision for local public bodies, and improved innovation and responsiveness. It will help stimulate the behaviour change necessary to empower communities and citizens by creating neighbourhoods who feel their involvement can shape the world around them.
 - 1.6 The Localism Bill was introduced to Parliament on 13 December 2010 and sets out the framework for the Community Right to Challenge. This consultation invites views on proposals for the detailed workings of the Right, which will be set out later in regulations. Subject to Parliamentary consideration, it is expected that the provisions will be commenced from either April or October 2012.
 - 1.7 In this consultation document, we have sought to identify which elements of Community Right to Challenge ought to be applied consistently across all services and relevant authorities in regulations and where this should be determined locally to suit local circumstances. For example, we are proposing that relevant authorities should have flexibility to decide which Expression of Interest is accepted if more than one is submitted.
 - 1.8 We are particularly interested to hear views on whether these proposals achieve the appropriate balance between ensuring that relevant bodies everywhere can expect a fair hearing without facing a disproportionate burden, whilst giving local authorities the information they need to make a judgement. We would also welcome views on whether there are issues on which guidance to relevant authorities and/or others could be usefully provided.
 - 1.9 The primary legislation (as introduced) specifies the following:
 1. A requirement for a 'relevant authority' to consider an Expression of Interest submitted by a relevant body.
 2. Lists who is a 'relevant authority' and 'relevant body'.
 3. Defines who is a 'voluntary body' and 'community body' (both of which are relevant bodies).
 4. Enables a relevant authority to set periods during which Expressions of Interest can be submitted.

⁴ <http://download.cabinetoffice.gov.uk/green-paper/commissioning-green-paper.pdf>

5. Requires a relevant authority to accept, accept with modification (if relevant body agrees) or decline an Expression of Interest.
6. Requires a relevant authority to consider how the Expression of Interest and procurement exercise relating to the provision of the service might promote/improve the social, economic or environmental well-being of the authority's area.
7. Requires an authority to carry out a procurement exercise relating to the provision of the service on behalf of the relevant authority, in line with relevant legal requirements, where they accept an Expression of Interest.
8. Requires relevant authorities to have regard to any guidance issued by the Secretary of State on the Community Right to Challenge.

1.10 The Localism Bill (as introduced) gives the Secretary of State powers to do the following in regulations:

1. Add further 'relevant authorities' and 'relevant bodies' and amend the definitions of voluntary and community body.
2. Set minimum periods that authorities may specify for submission of Expressions of Interest.
3. Set minimum and maximum periods between Expressions of Interest being accepted and the procurement exercise relating to the provision of the service on behalf of the relevant authority.
4. Specify grounds on which an Expression of Interest may be rejected.
5. Set maximum periods during which a relevant authority must reach a decision on an Expression of Interest.

What is not within the scope of the Community Right to Challenge?

1.11 The Community Right to Challenge is not any of the following:

- A right to deliver the service if an Expression of Interest is submitted or accepted – it is for the relevant authority to decide, in line with statutory provisions, whether or not to accept an Expression of Interest, and where it accepts it, it must carry out a procurement exercise relating to the provision of the relevant service in which the relevant body can bid alongside others. This means the relevant body that triggers the exercise may not eventually be the provider of that service.
- Delivering a service independently of the relevant authority – the Right applies only to delivery of services *on behalf of* the relevant authority.

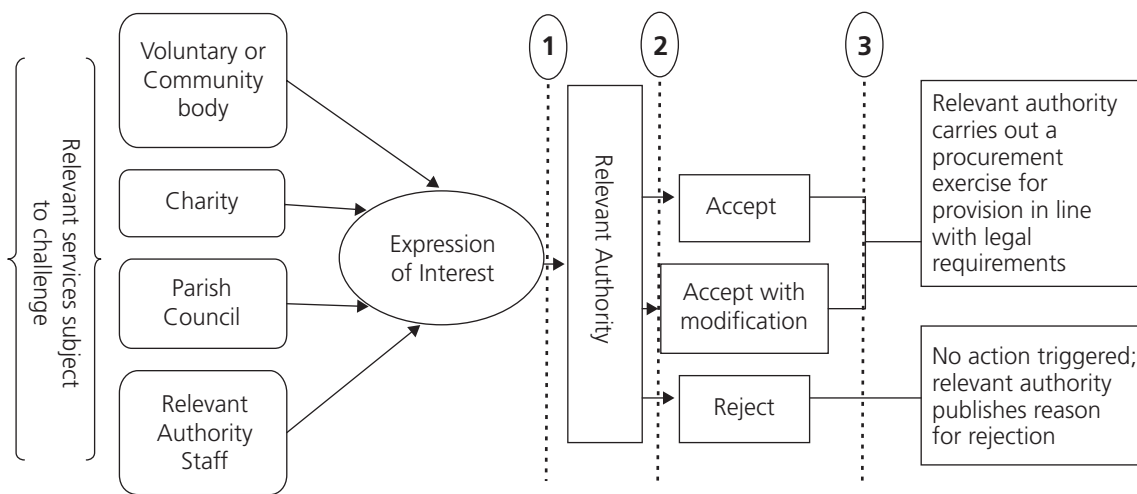
- A way of requiring a relevant authority to continue providing a service it has decided to stop – although the Right will enable relevant authorities to make best use of the innovation, responsiveness and cost savings that relevant bodies and other bidders in a procurement exercise can offer. The Community Right to Challenge applies only to relevant services, i.e. those which are provided by, or on behalf of, the relevant authority.
- A way for service users to complain to the relevant authority if they are dissatisfied with how the service is currently being delivered or with decisions the relevant authority has made about what services it will deliver. Different relevant authorities have existing complaints procedures, and good commissioning processes should allow service users the opportunity to give their views on service provision in their area. The Community Right to Challenge enables relevant bodies to submit Expressions of Interest to deliver a relevant service; bodies should intend to participate in any subsequent procurement exercise relating to the provision of the relevant service.

What we are consulting on

- 1.12 The Localism Bill sets the statutory framework for the Community Right to Challenge. Subject to Parliamentary approval of the Localism Bill, we intend to include the necessary detail of how this proposed Right will work in regulations. Subject to the relevant Parliamentary scrutiny, we intend to introduce secondary legislation as soon as practicable after Royal Assent. Secondary legislation will be in the form of regulations. Issues which may be covered in regulations, and which are the subject of this consultation, are:
- services that should be exempted from this new Right (Section 2)
 - if relevant authorities opt to specify periods during which they will consider Expressions of Interest, the minimum length of such periods (Section 4)
 - information to be included in an Expression of Interest (Section 5)
 - the maximum period between a relevant authority receiving an Expression of Interest and deciding to accept, accept with modification, or reject (Section 6)
 - grounds on which a relevant authority may reject an Expression of Interest (Section 7)
 - the minimum and maximum period between a relevant authority accepting an Expression of Interest and initiating a procurement exercise relating to the provision of the relevant service (Section 8).
- 1.13 This consultation seeks views on where regulation is necessary, and if so what should be included in the regulations.

1.14 We recognise that some relevant bodies may be less able to take advantage of the Community Right to Challenge without some support. This consultation therefore seeks views on what form that support might take (Section 9). Finally, the Localism Bill includes a power to provide guidance on the Community Right to Challenge, and this consultation asks whether there are any issues on which guidance might be welcomed.

Community Right to Challenge Process



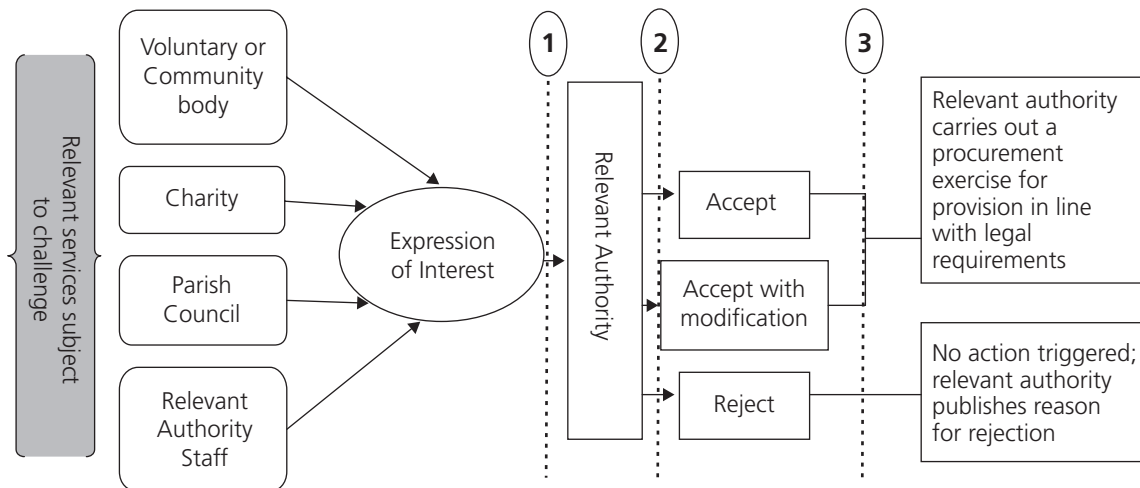
1. All relevant authority (county, district and London borough council) services are subject to Community Right to Challenge, unless excluded in regulations (Section 2).
2. Relevant bodies (voluntary and community bodies, charities, parish councils and two or more staff of the relevant authority) may submit an Expression of Interest to deliver all or part of a service on behalf of the relevant authority (Section 3).
3. Relevant authorities may specify periods of time during which Expressions of Interest may be submitted to deliver particular services or parts of services. This is to enable authorities to align this with their commissioning cycles (timeline 1 in the diagram, Section 4).
4. The Expression of Interest must include specified information (Section 5).
5. The relevant authority has a certain period of time in which it must consider and reach a decision on Expressions of Interest (timeline 2 in the diagram, Section 6).
6. The relevant authority must accept, accept with modification, or reject Expressions of Interest. If it accepts with modification or rejects an Expression of Interest, it must publish the reasons for its decision (Section 7).

7. If an Expression of Interest is accepted, the relevant authority must carry out a procurement exercise relating to the provision of that service. This should be appropriate to the nature and value of the contract. So where the contract is for a service, or it is of a value to which the Public Contracts Regulations 2006⁵ apply, the authority must follow the procedures for advertising, tendering and awarding contracts set out in those regulations. Where the service is of a nature or value that the Public Contracts Regulations 2006 do not apply (i.e. where it is listed in the regulations as being exempt, or is below the threshold of £156,000) then the authority will need to decide what sort of exercise to run – just as it will already do when contracting out a service. Other organisations may bid in the procurement exercise that follows a successful challenge relating to the provision of the service – these could include other relevant bodies, or private sector organisations. The Localism Bill includes provision to specify in regulations minimum and maximum periods between an authority accepting an Expression of Interest and starting an exercise (timeline 3 in the diagram, Section 8).

⁵ www.legislation.gov.uk/uksi/2006/5/contents/made

Section 2:

Which services should not be subject to challenge?



2.1 The Localism Bill applies the Community Right to Challenge to all relevant authority services, with the power to identify exemptions in regulations. This consultation seeks views on which services should be exempted in regulations.

Functions and services

2.2 The Bill applies the Community Right to Challenge only to *services* which are provided by, or on behalf of, relevant authorities. It does not apply to *functions* of relevant authorities. Generally speaking, a function is a duty or power that requires decision-making by the responsible person or body, whereas a service does not. For example, decisions on planning applications would be a function, but waste collection is a service. This means that the relevant authority takes all the necessary decisions so that it is able to set out in the documentation the extent and type of service that it wishes to contract out.

2.3 Where services are jointly commissioned whether that service is subject to the Community Right to Challenge would depend on whether the body responsible for the function that the service relates to is a relevant authority or not. For example, if a service relates to the function of a County Council (a relevant authority) but is jointly commissioned by the authority and the NHS, it would be subject to the Community Right to Challenge, but if the responsible body for the function was the NHS it would not.

Case Study 1: What constitutes a function and a service?

Youth Justice Services

The Crime and Disorder Act (1998) places a duty on local authorities to ensure there is appropriate provision of youth justice services. Decisions (reached following consultation with interested parties as part of the commissioning cycle) on which services are provided, where they are located, funding etc. are a **function** of the authority. The Right to Challenge will not apply here.

Individual (parts of) **services** with young people to prevent further offending may be delivered by local authority staff, or may be procured. This means the authority would set out the requirements of the service in a specification to which potential providers would bid to deliver. This may for example include addressing specific difficulties faced by young offenders, such as drug and alcohol problems or homelessness. The Community Right to Challenge will apply here.

Case Study 2: Which services can be challenged?

Local Authority Maintained Schools

The law places a number of duties directly on Governing Bodies of schools in England. This gives them a strategic role within schools and they have responsibility for awarding contracts for many of the services delivered in that school – these are delivered on behalf of the Governing Body as the commissioning body. These services would not be subject to the Community Right to Challenge as the commissioning body in this case would not be a relevant authority. Where the Local Education Authority is the commissioning body for services delivered in schools, these would be subject to the Community Right to Challenge.

Exemptions due to existing legislation

- 2.4 In some cases there is existing legislation that requires services to be delivered by the authority. These will not be subject to the Community Right to Challenge, and will be listed as excluded services in regulations.
- 2.5 For example, in relation to Fire and Rescue, the 2004 Fire and Rescue Services Act effectively requires that certain core activities are specifically delivered by employees of Fire and Rescue Authorities, some of which are the County Council (see also Section 3.9). The following activities will be excluded from the Community Right to Challenge:

- Fire and Rescue Authorities employ fire-fighters to put out fires and undertake rescues from fires.
- Fire and Rescue Authorities respond to road accidents – fire-fighters undertake this role, jointly with fire fighting.

Exemptions for other reasons

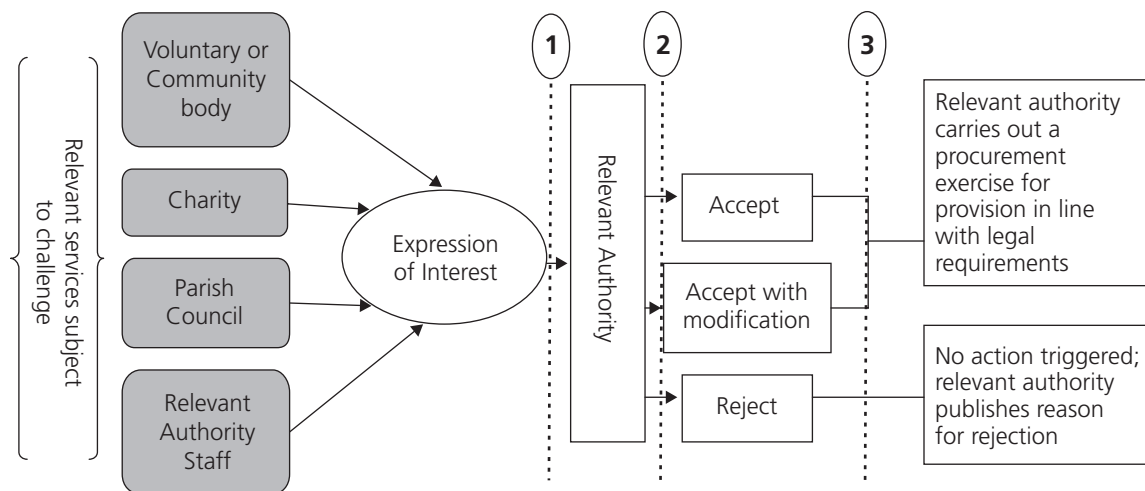
2.6 There may also be other reasons why there is a case for excluding particular activities from the Community Right to Challenge. This may relate to those integrated with services that are excluded due to existing legislation, such as Fire and Rescue Authorities responding to other emergencies, including collapsed buildings and hazardous materials. Or there may be a case for exclusion where there is a need to retain impartiality, such as advice given before and after planning applications are made to local planning authorities.

Q1. Are there specific services that should be exempted from the Community Right to Challenge? If yes, why?

Q2. Are there any general principles that should apply in considering which services should be exempt?

Section 3:

Relevant bodies and relevant authorities



Relevant bodies

3.1 The Community Right to Challenge provisions in the Localism Bill list the relevant bodies as:

- a voluntary or community body
- a body of persons or a trust which is established for charitable purposes only
- a parish council
- in relation to a relevant authority, two or more employees of that authority.

3.2 All of these bodies represent communities in different ways – whether they are made up of members of the community, work in – or for the benefit of – the community, or already deliver services for the community. Community in this instance can refer to either a community of interest or part or all of the population within the relevant authority area.

3.3 These bodies are eligible to submit an Expression of Interest. They will need to provide the required information (see Section 5) and intend to bid in the procurement exercise that follows a successful challenge relating to the provision of the service – these could include other relevant bodies, or private sector organisations.

- 3.4 The Cabinet Office is working to develop Rights to Provide for public sector workers who want to run the services they deliver as mutual organisations. The Community Right to Challenge enables employees of a relevant authority that want to deliver the service as a mutual to submit an Expression of Interest in this. The Community Right to Challenge will be the mechanism for implementing a Right to Provide for local authority employees.
- 3.5 The Localism Bill defines ‘voluntary body’ and ‘community body’ as follows:
- “Voluntary body” means a body, other than a public or local authority, the activities of which are not carried on for profit. The fact that a body’s activities generate a surplus does not prevent it from being a voluntary body so long as that surplus is used for the purposes of those activities or invested in the community.*
- “Community body” means a body that carries on activities primarily for the benefit of the community.*
- 3.6 As organisations that are not part of the state but re-invest any profit, this includes social enterprises and many co-operatives and mutuals.
- 3.7 There is provision in the Bill to add relevant bodies, and to amend the definitions of voluntary and community bodies, through regulations.

Relevant authorities

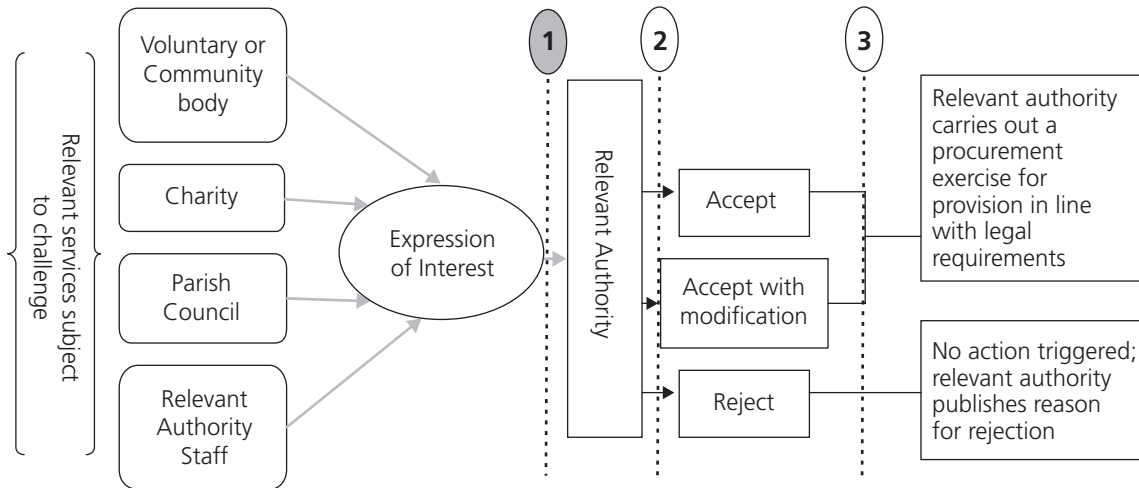
- 3.8 The Bill lists relevant authorities in respect of the Community Right to Challenge as County Councils, District Councils, and London Borough Councils.
- 3.9 There is provision in the Bill to enlarge the current definition of relevant authority by extending the Community Right to Challenge to apply to other bodies carrying out a function of a public nature. Section 2.5 explains that some Fire and Rescue Authorities are the County Council and some are not. We are minded to extend the Community Right to Challenge to make all Fire and Rescue Authorities relevant authorities in regulations, whilst excluding certain core services (see Section 2).

Q3. We are minded to extend the Community Right to Challenge to apply to all Fire and Rescue Authorities. Do you agree?

Q4. Should the current definition of relevant authority under the Community Right to Challenge be enlarged in future to apply to other bodies carrying out a function of a public nature? If yes, to which bodies?

Section 4:

When a relevant authority will consider Expressions of Interest



- 4.1 The Community Right to Challenge provisions in the Localism Bill enable relevant authorities to specify periods during which Expressions of Interest may be submitted either for all services or for particular services. This is designed to limit the burden on relevant authorities by enabling the process of submitting Expressions of Interest to form part of commissioning cycles for services. Where a service is already delivered by a provider other than the authority this will enable the authority to consider Expressions of Interest alongside the future of the service, prior to the expiry of the contract. If authorities opt to specify periods, they may refuse to consider Expressions of Interest submitted outside of that time. If periods are not specified then Expressions of Interest may be submitted at any time.
- 4.2 The Bill allows for the Secretary of State to specify in regulations minimum periods that may be set by relevant authorities during which Expressions of Interest can be submitted and requires that relevant authorities publish details of each specification in such a manner that it sees fit (which must include publication on the authority’s website). In considering a minimum period, it is important to consider that this would need to be appropriate across the wide range of services that are expected to be subject to challenge and allow sufficient time for relevant bodies to prepare Expressions of Interest. There are also likely to be variations in the advance notice of periods during which Expressions of Interest may be submitted.

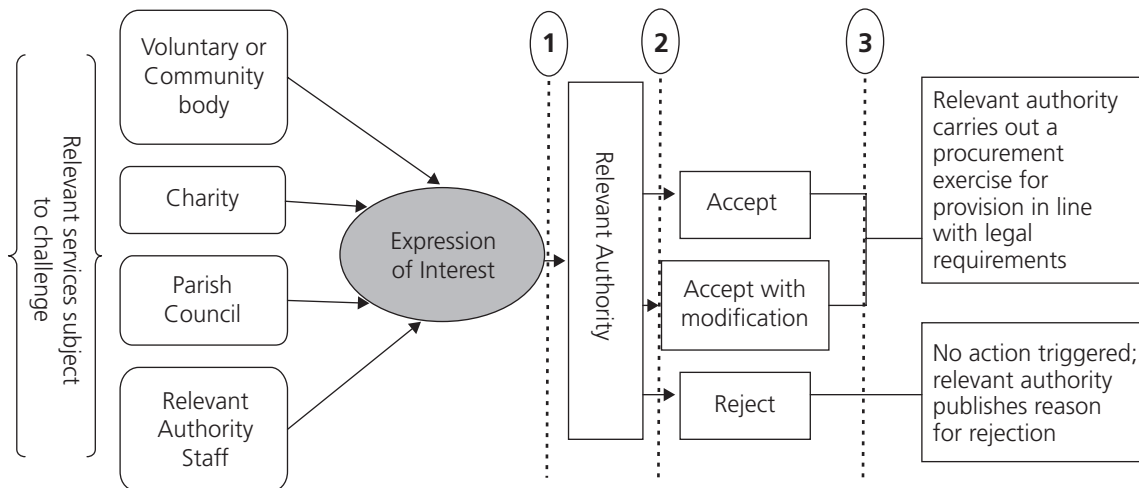
- 4.3 Where an authority specifies a period during which Expressions of Interest may be submitted, we would expect the time for relevant authorities to reach a decision to apply from the end of that period (Section 6). This would allow the authority to consider all Expressions of Interest and avoid giving an unfair advantage to those able to submit first. Where no periods are specified, it will be for the authority to decide how it will manage this in a fair and transparent way.

Q5. Should regulations specify a minimum period during which relevant authorities must consider Expressions of Interest? If yes, what should this be?

Q6. If a minimum period is specified, what should this be?

Section 5:

Information to be included in an Expression of Interest



- 5.1 Community Right to Challenge provisions in the Localism Bill require that in order to initiate a challenge a relevant body must submit an Expression of Interest to a relevant authority to deliver an existing relevant service. If the Expression of Interest is accepted, this triggers a procurement exercise relating to the provision of the service.
- 5.2 This section seeks views on what information should be included in an Expression of Interest. We are seeking to achieve a balance whereby the relevant authority has sufficient information on which to reach a decision on whether or not to accept the Expression of Interest (see Section 7), and avoiding a disproportionately high burden on the relevant body.
- 5.3 We propose that the following information should be included in any Expression of Interest. This should be proportionate and appropriate to the service(s) (or parts thereof) the Expression of Interest relates to. It should also include where relevant information relating to how the relevant body is proposing to deliver the service differently:
- Details of the relevant body submitting the Expression of Interest.
 - Details of the relevant service(s) to which the Expression of Interest relates (including for example the precise geographical area the body wishes to deliver that service).

- Details of the outcome to be achieved by the relevant body's provision or involvement in provision of the relevant service(s). In particular this would include the 'social value' of a proposal – whether it promoted or improved the social, economic or environmental well-being of the relevant authority's area including that of individual service users. It could also include the relevant body's case that it would be able to deliver good value for money.
- The relevant body's case for providing or being involved in providing the relevant service(s) i.e. why it is submitting the Expression of Interest.
- Details of the relevant body's financial situation.
- The relevant body's case that they will be able to participate in any procurement exercise relating to the provision of the relevant service(s); and
- The relevant body's case that they are capable of providing or being involved in providing the relevant service(s), or are taking steps to ensure they will be in such a position ahead of the procurement exercise.

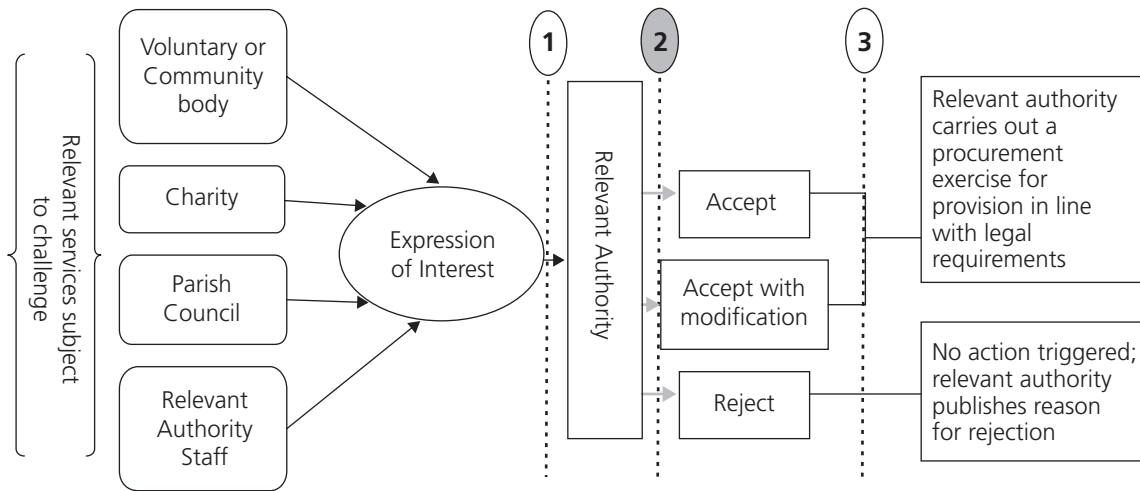
- 5.4 Whilst in many cases the relevant body will be in a position to compete in a procurement exercise at the time they submit an Expression of Interest, others will need to take steps to be in such a position. We expect this to apply in particular to small or newly formed voluntary and community organisations and local authority employees. This may, for example, include accessing support, raising finance, or gaining appropriate accreditation. We would expect authorities considering such Expressions of Interest to allow for such relevant bodies to set out the action they will take in advance of a procurement exercise to ensure they are in a position to compete (see also Section 8).
- 5.5 In relation to details of the relevant body's financial situation, this might include information to support the rest of their Expression of Interest – so for example they may have said they will invest in new equipment, office space, or an extra member of staff. They may also have said they plan to seek funding from elsewhere, and details of how much and their approach may be included here.
- 5.6 Relevant bodies submitting an Expression of Interest may propose to deliver the service in partnership with one or more other delivery bodies. These may be either other relevant bodies or non-relevant bodies, including private sector partners. So, for example, staff of the relevant authority may propose to deliver a service as a joint venture with another organisation.

Q7. Do you agree with the proposed information to be included in an Expression of Interest?

Q8. Is there further information you believe should be provided as part of an Expression of Interest? If yes, what else should be included?

Section 6:

Period during which a relevant authority must reach a decision on an Expression of Interest



6.1 The Community Right to Challenge provisions in the Localism Bill require a relevant authority to consider Expressions of Interest submitted by a relevant body and either accept, accept with modification or reject them. It gives a power to specify in regulations minimum and maximum periods that must elapse between the date of the relevant authority's decision to accept an Expression of Interest and the date on which it begins a procurement exercise. In establishing common periods, it will be important to acknowledge that this would need to cover a range of circumstances. There are instances where a longer period may be appropriate, for example:

- where there are multiple Expressions of Interest relating to the same service
- where the relevant authority wishes to propose a possible modification to an Expression of Interest that would allow it to accept it
- where an Expression of Interest makes proposals for radical change to the delivery of a service; or
- where services are currently delivered jointly across two or more relevant authorities.

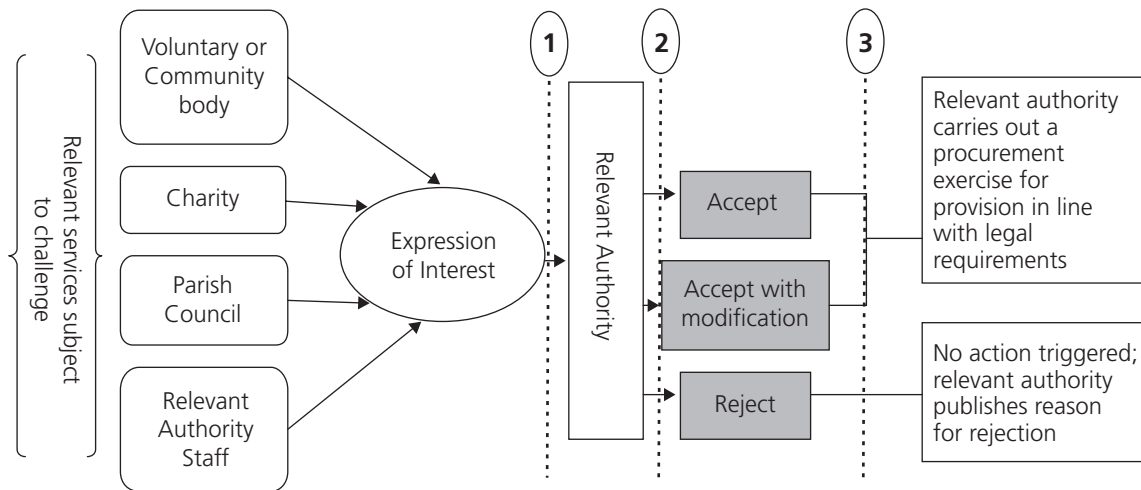
- 6.2 Where an authority specifies periods during which Expressions of Interest may be submitted we would expect the period between receiving an Expression of Interest and reaching a decision to apply from the end of that period (Section 4). This would allow the authority to consider all Expressions of Interest in a service.

**Q9. Should regulations specify a minimum period during which a relevant authority must reach a decision on an Expression of Interest?
If yes, what should this be?**

**Q10. Should regulations specify a maximum period during which a relevant authority must reach a decision on an Expression of Interest?
If yes, what should this be?**

Section 7:

When an Expression of Interest may be modified or rejected



7.1 The Community Right to Challenge provisions in the Localism Bill require that an Expression of Interest must be accepted, accepted with modification, or rejected by a relevant authority. It gives a power to specify in regulations grounds for rejecting an Expression of Interest.

Accept with modification

7.2 The option to ‘accept with modification’ as part of the Community Right to Challenge is included in the Localism Bill in order to allow some flexibility and maximise the number of Expressions of Interest that are accepted. Any modification must be agreed with the relevant body submitting an Expression of Interest. We envisage that this would not permit wholesale change to an Expression of Interest, but it may be appropriate for example where minor changes would allow the authority to act in accordance with the Best Value duty and accept the Expression of Interest. We do not plan to cover this issue in regulations.

Reject

7.3 The Bill states that a relevant authority may reject an Expression of Interest only on one or more of the grounds specified by the Secretary of State in regulations. We propose that the following should be grounds for rejecting an Expression of Interest:

- The relevant body is not capable of providing or being involved in providing the relevant service.
- The relevant body is not otherwise a suitable person or body to provide or be involved in providing the relevant service.
- The relevant service is excluded from the Community Right to Challenge.
- The service has been stopped or de-commissioned (i.e. is no longer a relevant service) or a decision has been taken to do this.
- The Expression of Interest is submitted outside of a period specified by the relevant authority during which it will consider Expressions of Interest for the service (see Section 4). This may apply both to services currently delivered by the relevant authority, and to those currently delivered on behalf of the authority under an existing contract (or grant agreement).
- The relevant service is already the subject of a procurement exercise relating to the provision of the relevant service (or of negotiations for a grant agreement).
- The Expression of Interest does not contain all the required information.
- The Expression of Interest is frivolous or vexatious.
- Acceptance of the Expression of Interest could mean the authority would not comply with the duty in section 3(1) of the Local Government Act 1999 (best value authorities: general duty) or accepting the Expression of Interest would mean that the service would deliver poorer value for money.
- Another Expression of Interest has been accepted. For example, if three Expressions of Interest are submitted for the same service then the authority would be able to accept the one that offered the best service and reject the other two.

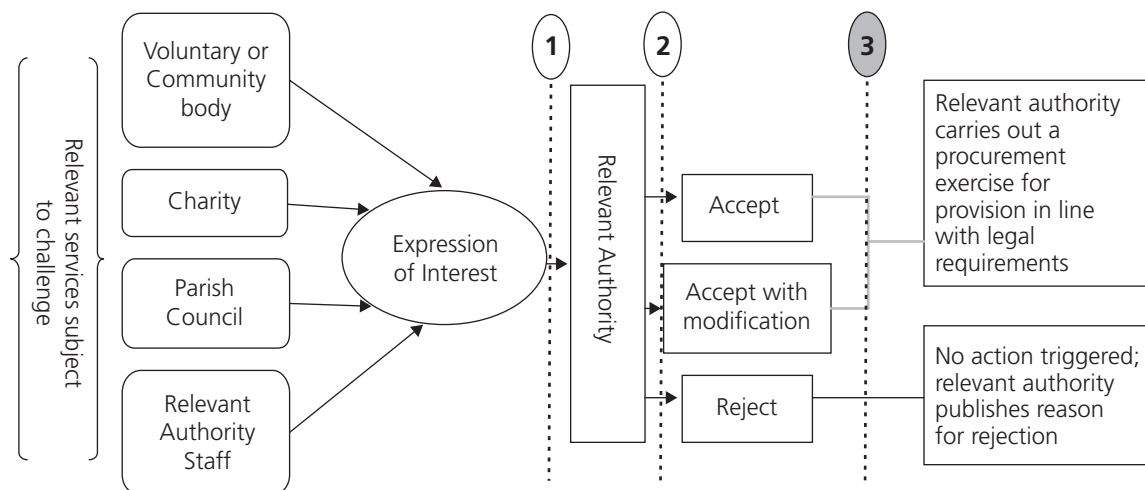
7.4 It should be noted that in some of the instances listed above, it may be appropriate for the relevant authority to seek to modify an Expression of Interest with agreement of the relevant body, for example where particular information has not been completed.

Q11. Do you agree with the above listed grounds whereby an Expression of Interest may be rejected?

Q12. Are there any other grounds whereby relevant authorities should be able to reject an Expression of Interest?

Section 8:

Period between an Expression of Interest being accepted by a relevant authority and a procurement exercise relating to the provision of the service beginning



- 8.1 The Community Right to Challenge provisions in the Localism Bill require a relevant authority that accepts an Expression of Interest must carry out a procurement exercise relating to provision of the service to which the Expression of Interest relates. The relevant body which has submitted an Expression an Interest would then have the opportunity to bid alongside others for the contract.
- 8.2 It gives a power to specify in regulations the minimum and maximum periods that may elapse before the relevant authority carries out a procurement exercise relating to the provision of that service on behalf of the authority. This consultation seeks views on whether a minimum and/or maximum period should be specified, and if so what should be the length of these periods. The initiation of such an exercise is understood to be when the tender is publicised; relevant authorities will need to build in time to complete the commissioning phase as part of this period.

- 8.3 We expect that in most cases the body submitting an Expression of Interest will need to satisfy the relevant authority that they already have the capacity and organisation to deliver the service they have expressed an interest in running. However, in some cases both the body that has expressed an interest, and others who were not the successful challenger but may wish to compete in the subsequent procurement exercise, will need time to make the necessary preparation to be in a position to do so. This may particularly apply to small and newer voluntary and community organisations and relevant authority employees wishing to deliver the service as a mutual.
- 8.4 A minimum period between an Expression of Interest being accepted and the start of a procurement exercise relating to provision would enable employees, where they are not the challengers to decide whether they want to bid, and to prepare themselves to do so. It would also enable newer and smaller voluntary and community bodies to prepare themselves to bid.
- 8.5 A maximum period would ensure that the procurement exercise is not delayed for an unnecessarily long time.
- 8.6 The Community Right to Challenge will not impact on the requirements relevant authorities must follow in conducting a procurement exercise relating to provision of a service. The process should be appropriate to the nature and value of the contract. This means that if the contract is for a service, or is of a value, to which the Public Contracts Regulations 2006 apply the authority must follow the detailed procedures for advertising, tendering and awarding contracts set out in those regulations. Where the service is of a nature or value not covered by the regulations (i.e. where it is listed in Part B of the regulations as being exempt, or is below the threshold of £156,000) then the authority will need to decide what sort of exercise to run, just as it will already do when contracting out a service.

Q13. Should a minimum period between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations? If yes, what should the minimum period be?

Q14. Should a maximum period between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations? If yes, what should the maximum period be?

Section 9:

Support and guidance

- 9.1 The Community Right to Challenge aims to open up delivery of services to new providers who can deliver services differently or better with space for new ideas and innovation. We are aware that relevant bodies may benefit from support to improve their skills and expertise to prepare effective expressions of interest and compete successfully in any procurement exercise which follows, in particular small and new voluntary and community sector organisations.
- 9.2 Subject to Parliamentary approval we anticipate that the Localism Bill will obtain Royal Assent in Autumn 2011, and that the Community Right to Challenge will be commenced from April 2012 at the earliest. The Bill is introducing a range of new community rights alongside the Community Right to Challenge – the Right to Buy, to Build and to develop neighbourhood plans. These also link to the Cabinet Office Rights to Provide for public sector workers to form mutuals.
- 9.3 We are considering what support measures could be made available to help people in communities, as well as local authorities, other public bodies, and private businesses understand what each right can and cannot do, how they can be used together, and what further support could be made available for groups wanting to use them.
- 9.4 The Bill also requires relevant authorities to have regard to guidance issued by the Secretary of State on the Community Right to Challenge. We would welcome views on whether there are any issues on which guidance could usefully be provided – whether or not the guidance is statutory.

Q15. What support would be most helpful?

Q16. Are there issues on which DCLG should provide guidance in relation to the Community Right to challenge?

Annex A:

Summary of consultation questions

Section 2 – Which services should be subject to challenge

- Q1. Are there specific services that should be exempted from the Community Right to Challenge? If yes, why?
- Q2. Are there any general principles that should apply in considering which services should be exempt?

Section 3 – Relevant bodies and relevant authorities

- Q3. We are minded to extend the Community Right to Challenge to apply to all Fire and Rescue Authorities. Do you agree?
- Q4. Should the current definition of relevant authority under the Community Right to Challenge be enlarged in future to apply to other bodies carrying out a function of a public nature? If yes, which bodies?

Section 4 – When a relevant authority will consider Expressions of Interest

- Q5. Should regulations specify a minimum period during which relevant authorities must consider Expressions of Interest?
- Q6. If a minimum period is specified, what should this be?

Section 5 – Information to be included in an Expression of Interest

- Q7. Do you agree with the proposed information to be included in an Expression of Interest?
- Q8. Is there further information you believe should be provided as part of an Expression of Interest? If yes, what else should be included?

Section 6 – Period for a relevant authority to reach a decision on an Expression of Interest

- Q9. Should regulations specify a minimum period during which a relevant authority must reach a decision on an Expression of Interest? If yes, what should this be?
- Q10. Should regulations specify a maximum period during which a relevant authority must reach a decision on an Expression of Interest? If yes, what should this be?

Section 7 – When an Expression of Interest may be modified or rejected

- Q11. Do you agree with the above listed grounds whereby an Expression of Interest may be rejected?
- Q12. Are there any other grounds whereby relevant authorities should be able to reject an Expression of Interest?

Section 8 – Period between accepting an Expression of Interest and initiating an exercise for the provision of a contract for that service

- Q13. Should a minimum period between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations? If yes, what should the minimum period be?
- Q14. Should a maximum period between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations? If yes, what should the maximum period be?

Section 9 – Support and guidance

- Q15. What support would be most helpful?
- Q16. Are there issues on which DCLG should provide guidance in relation to the Community Right to challenge?

Annex B:

Consultation criteria

The Government has a code of practice on consultations. The criteria below apply to all UK public consultations on the basis of a document in electronic or printed form, and will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements, the instructions below should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

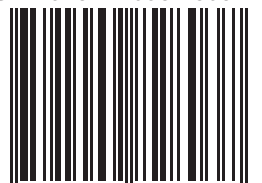
1. Formal consultation should take place at a stage when there is scope to influence the policy outcome
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience

The full consultation code may be viewed at:

www.bis.gov.uk/policies/better-regulation/consultation-guidance

ISBN: 978-1-4098-2803-7

ISBN 978-1-4098-2803-7



9 781409 828037