



Community Right to Challenge

Consultation response form

We are seeking your views on the following questions on the Government's proposals to introduce a Community Right to Challenge.¹ **If possible, we would be grateful if you could please respond by email.**

Please email: crtchallenge@communities.gsi.gov.uk

Alternatively, we would be happy to receive responses by post. Please write to:

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

The deadline for submissions is 5pm on Tuesday 3 May 2011.

(a) About you

(i) Your details

Name:	Ceri Jones
Position:	Head of Policy and Research
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¹ DCLG (2011) Proposals to introduce a Community Right to Challenge: Consultation paper. see: www.communities.gov.uk/corporate/publications/consultations

(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response	<input checked="" type="checkbox"/>
Personal views	<input type="checkbox"/>

(iii) Please tick the *one* box which best describes you or your organisation:

Voluntary sector or charitable organisation	<input type="checkbox"/>	
Relevant authority (i.e. district, London borough, county council)	<input type="checkbox"/>	
Parish council	<input type="checkbox"/>	
Business	<input type="checkbox"/>	
Other public body (please state)	<input type="checkbox"/>	
Other (please state)	<input checked="" type="checkbox"/>	Membership body.

(iv) Do your views or experiences mainly relate to a particular type of geographical location?

City	<input type="checkbox"/>	
London	<input type="checkbox"/>	
Urban	<input type="checkbox"/>	
Suburban	<input type="checkbox"/>	
Rural	<input type="checkbox"/>	
Other (please comment)	<input checked="" type="checkbox"/>	They reflect the views and experiences of our nationwide membership

(vi) Would you be happy for us to contact you again in relation to this consultation?

Yes	<input checked="" type="checkbox"/>
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No	<input type="checkbox"/>
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(b) Consultation questions

Section 2 – Which services should not be subject to challenge?

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

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If Yes, why?

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

Explanation/comment:

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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?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Explanation/comment:

<p>There are few areas of the public sector where the Community Right to Challenge would not be appropriate. Fire and Rescue services already do a huge amount of work that falls outside of what would be traditionally considered to be their 'core' functions.</p> <p>Such services include preventative services. Often such services can be</p>
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better delivered if done in partnerships with organisations that have better connections with the populations the authorities aim to reach. This can result in both more 'proportional' and therefore cost effective solutions. On a similar not social enterprises that have emerged from Fire and Rescue services are able to diversify their income in a way that the public sector can not thereby creating greater efficiencies and value for money.

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?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

This has already been extended through the right to provide to health authorities.

Justice agency services would also benefit from such an approach.

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?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

There must be a sufficient time period for all relevant bodies to prepare an Expression of Interest. The relevant bodies that may challenge the delivery of a service differ in capacity, expertise and experience. In order to ensure a level playing field for all relevant bodies a minimum time period must be agreed to allow for the development of the Expression of Interest.

From our experience of working with our members and other voluntary and community and social enterprise organisations tendering for public services, clearly stated and well communicated/advertised timeframes for decision making are needed to ensure that organisations can plan effectively. One of the common criticisms we hear is that the timeframes are often not clear and not definitive.

Setting clear and structured timeframes and sticking to them will help organisations with their business planning and allow them to allocate their resources more efficiently. Not specifying timeframes confers an advantage to

larger corporate providers who have the capacity to create bidding teams specifically for this purpose.

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

Explanation/comment:

A standard requirement should be a minimum three months window period each year for any relevant services. The relevant authority should publicise when the three months period will fall in respect of particular types of service.

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

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

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

We are particularly pleased to see the reference to social value outcomes. The requirement for the relevant body to provide details of their financial situation should be accompanied by guidance that emphasises the importance of proportionality. At present many community groups are excluded from tendering opportunities because of standardised requirements for multi-million pound balance sheets/turnovers – in most cases this will be wholly unnecessary. Moreover, where a relevant body proposes to deliver a service in conjunction with another body, their combined financial strength should be taken into account in determining any financial thresholds, as a means to encourage the formation of partnerships by community groups.

Q8. Is there further information you believe should be provided as part of Expressions of Interest?

Explanation/comment:

Yes.

There should be a requirement to demonstrate local community support for the proposal.

There should also be a requirement that a relevant body which is not local submitting an expression of interest should demonstrate that they have

explored the possibility to work collaboratively with local agencies to produce locally integrated solutions. This will encourage locally-driven small/large and local/national partnerships whilst ensuring that the Localism Bill meets its main objective of devolving greater power and voice to local communities.

Please note, in formal consultation with members this point was very strongly supported (by 95% of those responding). One pointed to a danger that "outside organisations parachute in for the length of the tender then disappear again" and suggested that " the emphasis should be on strengthening local infrastructure as well as value for money". Another said "organisations that are not locally based should have support from several local organisations and should demonstrate real partnership with the local community - this must be well defined and enforced".

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?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If yes, what should this be?

The relevant authority should undertake the task as quickly as possible, so there is no merit in setting a minimum period.

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?

Yes. The maximum period should be two months. This is a reasonable time for a relevant authority to consider all expressions of interest received and to decide whether to accept, reject, or modify them.

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?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

However, in reference to "The relevant body is not capable of providing or being involved in providing the relevant service", the regulations must make it clear that where organisations have the potential capability to provide or be involved in providing the relevant service they should not be rejected (this is necessary to achieve consistency with paragraph 5.4 of the consultation document).

It is also essential that grounds for assessing capability is clearly given, to prevent against public bodies determining 'capability' to meet their own objectives.

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

Explanation/comment:

No

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

Q13. Should minimum periods between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If yes, what should the minimum period be?

This is a very complex process and we believe it is impossible to stipulate a time frame for all cases. The variety of services and complexity of process needs to be taken into consideration. The experience of the Right to Request is that there are a huge variety in services, process to be followed, support from the assuring body and as such the process has taken up to 3 years to complete.

Staff groups for example have a range of factors that will influence their ability to embark on a procurement exercise. They may well be expected to continue to do their day jobs at the same time leaving them little time to prepare.

This also needs to take account of the needs of small community organisations, but the length of time required for this will vary according to the procurement route adopted, and the complexity and scale of the service.

What needs to be clear is that at the outset of the process the local authority sets out a clear time frame for the journey so that all participants know the time frame they are responding to. This should ideally be done in collaboration with the various stakeholders. However, the public body should be allowed the flexibility to determine what such a time table is on a case by case basis.

Q14. Should maximum periods between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If yes, what should the maximum period be?

See above.

Section 9 – Support and guidance

Q15. What support would be most helpful?

Explanation/comment:

The Social Enterprise Coalition has extensive experience of supporting staff groups in particularly through this process.

Our guide - the 'Right to Run' available on our website
<http://www.socialenterprise.org.uk/pages/publications.html>

It explains the complexity of going through this journey and aims to provide a routemap.

This written guidance needs to be reinforced with practical guidance from experts that understand the process clearly.

It is also clear that obtaining such support can be expensive and the lessons from how the Social Enterprise Investment Fund supported the Right to Request organisations should be drawn upon.

However, support requirements include:

Business planning

Market and competition analysis

Financial modeling and cash flow management - this is particularly complex when spinning something out from the public sector where it has not previously been accurately costed. Understanding the tax implications.

Legal support - for creating a new entity, contract negotiation, premises, staff TUPE etc etc

Communications

Stakeholder management and communication

Premises, leases and asset management.

Governance and Board recruitment and development.

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

Explanation/comment:

Good practice guidance for relevant authorities in how they can communicate the Right to Challenge opportunities, timetables, and procedures, in ways which are easily accessible for all sections of a local community and staff groups.

(c) Additional questions

Do you have any other comments you wish to make?

What needs does need to be clear is that at the outset of the process the local authority sets out a clear time frame for the journey so that all participants know the time frame they are responding to. This should ideally be done in collaboration with the various stakeholders. However, the public body should be allowed the flexibility to determine what such a time table is on a case by case basis.

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