

**My Community**

**Community** Right to Challenge

# Understanding the Community Right to Challenge



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# Understanding the Community Right to Challenge

The Community Right to Challenge is one of a raft of new initiatives introduced in the Localism Act 2012, and is in force from 27 June 2012.

The Community Right to Challenge is the Right for community organisations to submit an expression of interest in running services of local authority and fire and rescue authorities on behalf of that authority. If a community group, charity, parish council or group of staff of the authority identify a service they would like to run, they will need to submit an expression of interest to the authority. If the authority accepts the expression of interest, they must run a procurement exercise for the service. The interested group will need to compete with others who may wish to run the service.

Where the service is delivered as part of a statutory duty the public authority retains the statutory duty, even if they commission delivery of services to meet their statutory duties externally. This is the same as when services are commissioned out now – for example homelessness services can be contracted, but the legal duty towards homeless people remains with the local authority.

Community Right to Challenge aims to give communities more opportunities to shape and run local public services where they believe they can do so differently and better. They may think they could deliver services better or cheaper, make them more responsive to local needs, offer additional social value, or deliver better value for money. The services may be at any scale of activity from very local and small to authority wide.

How the Community Right to Challenge is to be implemented is set out in the Localism Act and regulations, and explained further in statutory guidance.

## Background

### The Localism Act

The Localism Act, enacted in November 2011, included new freedoms and flexibilities for local government, reforms to make the planning system more democratic and effective, and reforms to ensure that decisions about housing are taken locally.

It also introduced new rights and powers for communities and individuals. These included the Community Right to Challenge, Community Right to Bid and Community Right to Build.

## The other Community Rights

### Community Right to Build

Community Right to Build is a new power that gives people the right to bring forward small-scale site specific community-led developments. The proposals formed part of the Neighbourhood Planning provisions contained in the Localism Act 2011.

Communities in both rural and urban areas can use the power where they want to provide more local affordable developments such as market housing or provide for new community shops and services. It will be for communities themselves to determine the type of development they want to see.

Development proposals will need to meet a minimum criteria through an independent examination and have the agreement of more than 50 per cent of local people that vote through a community referendum. The Local Planning Authority will be under a duty to assist and advise community organisations. Community organisations will be free to involve other partners if they wish to do so such as developers or housing associations.

### **Community Right to Bid**

The Government has aimed to address the concerns that too often local buildings and land that are of great value to the community, such as a village hall or local pub, go up for sale and are purchased by a private bidder before the community has the opportunity to put together the funding to take it over themselves. The Community Right to Bid gives communities the power to submit assets (buildings or land) of community value to be kept on a list by the local authority. If any of these assets are put up for sale a six week window of opportunity is triggered, during which any local community group may express an interest to purchase the asset. If they do express an interest a further four and a half months window of opportunity is given so that the group may have time to find funding and put together a bid to purchase the asset on the open market.

### **Other relevant areas of policy and law**

#### **Public Service Reform**

In the Open Public Services White Paper published in July 2011 the Government set out its plans for changing how public services are owned, delivered and funded. It is based on the following principles: Choice of providers for service users, decentralisation, diversification of providers, fair access to public services and accountability to users and tax payers.

Community Right to Challenge is one of the ways that the Government is implementing the white paper.

#### **Social Value Act**

The Public Services (Social Value) Act 2012 became law on 8th March 2012. This places a legal duty on public bodies to consider the social, economic and environmental wellbeing of an area in making decisions on commissioning and procurement. Public bodies will have to abide by this when making decisions on contracting out public services, including contracting triggered by using the Community Right to Challenge process.

#### **Best Value Statutory Guidance**

Authorities also have a general duty to consider 'best value' under the Local Government Act 1999, and in compliance with Best Value Statutory Guidance Sept 2011. This is defined as "having regard to a combination of economy, efficiency and effectiveness" as well as the overall value, including economic, environmental and social value, when reviewing service provision. In this they have a duty to consult before deciding how to fulfil their Best Value Duty, honour local compacts and, when considering de-commissioning, actively engage community organisations and service users and consider options for how to reshape the service or project.

#### **Which groups can use the Community Right to Challenge?**

There are four broad categories of groups who can use the Community Right to Challenge to submit an expression of interest in running a service:

- Voluntary and community bodies;
- Charities;
- Parish / Town councils;
- Two or more employees of the relevant authority.

These are called 'relevant bodies' and are defined in the Localism Act and explained in more detail in the statutory guidance.

Relevant bodies may submit an expression of interest in partnership with other relevant bodies, and/or non-relevant bodies. So, for example, a local community group could submit a joint expression of interest with a parish council (other relevant body) or with a commercial business (non-relevant body).

### **Which public authorities must consider expressions of interest through the Community Right to Challenge?**

All relevant authorities must consider expressions of interest. The Localism Act lists which are relevant authorities :

- County councils;
- District councils;
- London borough councils;
- Certain fire and rescue authorities.

### **What services can Community Right to Challenge apply to?**

The Community Right to Challenge applies to all 'relevant services'. The default position is that unless expressly excluded, all services provided by, or on behalf of, a relevant authority are defined as 'relevant services' and so can be open to a Community Right to Challenge.

Exceptions to this are services which are excluded by legislation. Some services are excluded permanently. These are:

- Individual packages of services for continuing health and social care for named individuals with complex needs, provided/commissioned by a local authority or NHS body (or jointly).

Some services are excluded up until 1st April 2014. These are:

- Services commissioned by a relevant authority or NHS body, in conjunction with one or more health services, or by an NHS body acting on behalf of a relevant authority.

In addition, services which are commissioned and managed by individuals or their representatives using direct payments do not fall within the scope of the Community Right to Challenge.

You should be able to find out if a service is subject to the Community Right to Challenge by contacting your authority.

### **When can an expression of interest in taking over a service be submitted?**

Relevant authorities may choose to specify periods during which expressions of interest may be submitted for any relevant service. These dates must be published, including on the authority's website.

If authorities choose to specify a window of opportunity, they must have regard to the time needed for relevant bodies to prepare submissions of interest, the scale, nature and complexity of the service in question, and timescales for any existing commissioning cycle relevant to the service, or other relevant authority process for making decisions or setting budgets.

If an authority does not choose to specify a period for submitting expressions of interest then they can be submitted at any time.

## How to submit an expression of interest

Expressions of interest have to be in writing, and must include certain pieces of information. Authorities can refuse to consider an expression of interest that either doesn't include all the required information, or is outside of the time period they specified.

Information that authorities can require to be included in an expression of interest:

- Financial resources of the relevant body submitting the expression of interest;
- Evidence to demonstrate that by the time of any procurement exercise the relevant body will be capable of providing the service;
- Information that identifies the services and the geographical area that the expression of interest relates to;
- Information about the outcomes to be achieved by the body providing the service, specifically how the service will promote or improve the social, economic or environmental well-being of the area and how it will meet the needs of the service users;
- Where the expression of interest is for a consortium, or proposes using a sub contractor to deliver any part of the services they must also provide information on their financial resources, and demonstrate they will be capable of providing the service by the time of the procurement exercise;
- Where the relevant body is made up of employees of the authority the expression of interest needs to include details of how it will engage other employees affected by it.

## Social value

Authorities must consider the social value of expressions of interest, and in the procurement exercise it may trigger. This is required in the rules for Community Right to Challenge. It is a duty contained in the Public Services (Social Value) Act 2012. There is also a duty for authorities to consider best value, which includes economic, environmental and social value, as set out in the Best Value Guidance 2011.

Expressions of interest should demonstrate how a proposal for a service might offer social, economic or environmental benefits to the community. This could include, for example, creating local jobs, increasing local volunteering opportunities, or improving environmental conditions.

## Service user needs

In demonstrating how they will deliver outcomes to meet the needs of service users of a service, the group submitting an expression of interest may use evidence published by the authority (e.g. local needs assessments) or other sources (e.g. a survey of service users).

## Timetable for decision-making on expressions of interest

The authority must publish the maximum length of time that it will take them to make decisions on expressions of interests, including on their website. These may vary depending on the service. The authority must also specifically tell a group who has submitted an expression of interest of how long it will take them to inform them of their decision. This notification must be within 30 days after the end of the period for submitting expressions of interest (or if there is no specified period, 30 days after the authority received the expression of interest).

In deciding how long they need to make a decision, the authorities will consider what is a 'reasonable' period, the nature, scale and complexity of the service in question, the complexity of the expression of interest, the likely need to agree modifications in order for expressions of interest to be agreed, and timetable of the commissioning cycle, council decision making or budget setting processes.

### **When can an expression of interest be rejected?**

Relevant authorities can reject an expression of interest on grounds listed in the regulations. The authority must give reasons for its decision, and publish these, including on the authority's website.

The reasons that can lead an expression of interest to be rejected are:

- It does not include all the required information;
- The information is considered by the authority to be inadequate or inaccurate;
- The authority considers that the relevant body (or member of consortium or sub contractor referred to in the expression of interest) is not suitable to provide the relevant service;
- The expression of interest relates to a service provided by or on behalf of an authority to people also receiving a service provided or arranged by an NHS body which is integrated with this service, and continued integration of the service is considered by the authority to be critical to the wellbeing of service users;
- The authority has taken the decision to stop providing the service, evidenced in writing;
- The service is already subject to a procurement exercise;
- The authority and a third party have entered into negotiating that are at least in part conducted in writing to provide the service;

- The authority has published its intention to consider the provision of the service by a body that 2 or more of its employees propose to establish;
- The authority considers the expression of interest to be frivolous or vexatious;
- The relevant authority considers that acceptance is likely to lead to a contravention of the law or a breach of statutory duty.

### **Triggering a procurement exercise**

When an authority accepts one or more expressions of interest for a service in line with the Localism Act and regulations, it must carry out a procurement exercise for the service.

Authorities must say how long it will be before an expression of interest is accepted and a procurement exercise starts. In doing so, they should have regard to the need to give groups submitting expressions of interest time to be able to compete in the procurement exercise; the nature, scale and complexity of the service being procured; and the timescales for any existing commissioning cycle, including authority decision-making and budget-making processes.

Procurement must be done in compliance with procurement law, Public Contract Regulations. This sets out the rules for the UK, from the European Union procurement directives, for advertising, specifying and awarding contracts. It also sets out which services are subject to procurement law, and which can be exempted. This could be because the contract is valued at less than the threshold set (currently 200 000 Euros) or because it comes under a list of services known as Part B services, which include health, educational, recreational, cultural and sporting services.

If an expression of interest is accepted to run a service which is exempt from Public Contract Regulations then it is up to the

authority how to decide to procure the service, in accordance with EU Treaty principles.

Authorities must consider in procurement how bids will improve the economic, social and environmental wellbeing of their area. They may include social clauses in contracts. Guidance on what they can and can't do on this is in the EU Commission publication *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*.

Visit our route map to find out how the Community Right to Challenge process works.

## Glossary

### Best value

Best Value was introduced in England and Wales in the 1999 Local Government Act. The aim was to improve local services in terms of both cost and quality in a range of activities including almost all local authority functions, including for example social services, environmental health, housing and planning. New statutory Best Value Guidance was published in 2011 and replaces previous guidance.

### Commissioning

Commissioning is the process by which public bodies, in consultation with others, plan and decide what work or services are needed and how best to arrange for these to be delivered (including by procurement).

### Local Compact

A local Compact is a mutually agreed document and approach to partnership working between public sector and voluntary and community sector organisations locally. It contains principles and commitments on a number of issues, including funding and procurement.

### Public sector procurement

The process by which public bodies buy goods or services from other organisations, decided on in the commissioning process.

### Relevant authority

Public authorities who must consider a Community Right to Challenge expression of interest, listed in the Localism Act

### Relevant service

Services that a Community Right to Challenge expression of interest can be submitted for, except those listed as excluded services the regulations.

### Relevant body

Bodies who can submit expressions of interest under the Community Right to Challenge.

### Social value

The economic, social and environmental wellbeing of the area. The Community Right to Challenge requires that authorities consider social value of expressions of interest and bids in procurement exercises triggered by a successful expression of interest.