

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:	David Hughes
Position:	Chief Executive
Name of organisation (if applicable):	Tonbridge and Malling Borough Council
Address:	Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ
Email:	david.hughes@tmbc.gov.uk
Telephone number:	01732 876002

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 checked="" type="checkbox"/>	
Parish council	<input type="checkbox"/>	
Business	<input type="checkbox"/>	
Other public body (please state)	<input type="checkbox"/>	
Other (please state)	<input type="checkbox"/>	

(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"/>	Mixture or urban and rural

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

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

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

If Yes, why?

The Government has encouraged local authorities to enter into shared service arrangements with other Councils and many such arrangements now exist, delivering substantial savings in consequence. Challenges should not be permitted that do not perpetuate such a shared arrangement by relating only to the service being provided to one authority otherwise an authority that is party to the shared arrangement but not covered by the challenge could face an increase in costs as a result.

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

Explanation/comment:

Services of a regulatory nature 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?

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

Explanation/comment:

There seems to be no reason why Fire and Rescue Authorities should be outside the scope of the legislation subject to appropriate safeguards in relation to certain activities that require the use of fully trained firefighters.

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:

The Bill lists relevant authorities in respect of the Community Right to Challenge as County Councils, District Councils, and London Borough Councils. There seems to be no reason why unitary authorities should not also be included.

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:

If the proposal is to be workable it will be necessary to give relevant bodies sufficient time to consider the specifications for the various services and reach a view as to whether they have the skills and expertise to carry out the service prior to deciding whether to register an expression of interest.

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

Explanation/comment:

This is difficult to determine but three months may be appropriate.

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:

The types of information suggested for inclusion are appropriate and essential for authorities to reach an informed judgement on Expressions of Interest.

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

Explanation/comment:

Depending on the nature of the service that is the subject of the Challenge it may be appropriate for other information to be provided. For example, local authorities may need to know how the Relevant Body will meet statutory requirements relating to Health and Safety. There is a case for giving authorities some discretion in specifying additional information beyond a core requirement where the nature of the service justifies this. It would be difficult to capture all possible requirements in the Bill or secondary legislation.

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?

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?

It would not be unreasonable to set a maximum period. Since the complexity involved in the decision making process will vary, it would be wise to set this at a period that can cater for a particularly complex set of circumstances. Six months might be appropriate.

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:

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

Explanation/comment:

If the Government does not accept the argument made in response to Question 1 then authorities should be able to reject an Expression of Interest where the service is currently being provided on a shared basis with one or more other local authorities and acceptance would mean that one or more of the authorities 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.

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?

It would be very dangerous to specify a minimum period as the situation may be complex where a European procurement exercise is required.

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

If yes, what should the maximum period be?

It would not be unreasonable to specify a maximum but this should be able to cater for complex procurement exercises. A period of nine months may be appropriate.

Section 9 – Support and guidance

Q15. What support would be most helpful?

Explanation/comment:

A very simple explanation of the proposals when enacted will be essential so that community groups have a clear understanding of how the Right to Challenge will operate and their expectations of the process and timescales are managed.

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

Explanation/comment:

Almost certainly DCLG Guidance will be helpful. This should cover all aspects of the process and would probably be best delivered in two versions; one for Relevant Bodies and one for Relevant Authorities.

(c) Additional questions

Do you have any other comments you wish to make?

Whilst recognising that the Community Right to Challenge is an important component of the Government's localism agenda, there is a danger that local authorities will be swamped by the scale of the totality of measures contained within the Localism Bill affecting planning, finance, housing etc. These changes, allied to the Health reforms and the new role for local authorities in the Public Health agenda, come at a time of significantly reduced resources as the Government seeks to reduce the public sector deficit. The Government should reflect carefully, therefore, on when the various parts of the Bill should be implemented and not necessarily bring the Community Right to Challenge into force in April 2012 but consider delaying it until 2013.

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