

Taunton Deane Borough Council

Executive – 13 April 2011

Proposals to Introduce a Community Right to Challenge – Consultation Document

Report of the Legal and Democratic Services Manager

(This matter is the responsibility of the Leader of the Council, Councillor John Williams)

1. Executive summary

<p>A consultation paper has been released by the Department for Communities and Local Government concerning the proposals to introduce a Community Right to Challenge.</p>
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2. Background

- 2.1 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 paper invites views on these aspects. A précis of the consultation document is attached to this report at Appendix 1.
- 2.2 The consultation was considered by the Community Scrutiny Committee on the 8 March 2011 and their responses are set out in the response form attached to this report at Appendix 2.

3. Finance comments

- 3.1 There are no financial implications in this report although if the proposals are implemented there will be resource implications and those implications will be reported upon at a future date.

4. Legal comments

- 4.1 There are no legal implications in this report.

5. Links to Corporate Aims

- 5.1 There are no implications regarding the Corporate Aims.

6. Environmental and community safety implications

- 6.1 There are no implications for the environment or community safety.

7. Equalities impact

7.1 An impact assessment is not required in respect of this report.

8. Risk management

8.1 There are no implications from a risk management perspective

9. Recommendation

9.1 The Executive is requested to provide their views on this consultation document and approve it for submission to the Department for Communities and Local Government.

Contact

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Appendix 1

Proposals to introduce a Community Right to Challenge

Precis of Consultation Document

Sections 1 and 2 - What is the Community Right to Challenge?

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.

This right is likely to come into force between April – October 2012.

The primary legislation requires the Council to consider an Expression of Interest which is submitted by one of the defined relevant bodies. A relevant body does not relate to a private company.

The council will be able to set periods during which these Expressions of interest can be submitted and the Council will be able to either accept, accept with modification or decline an Expression of Interest.

An expression of interest and the subsequent procurement process must demonstrate how it might promote/improve the social, economic or environmental well-being of the authority's area.

The authority must carry out a procurement exercise relating to the provision of the service on behalf of the authority, in line with relevant legal requirements, where they accept an Expression of Interest.

Authorities must have regard to any guidance issued by the Secretary of State on the Community Right to Challenge.

It should be noted that this proposal will only relate to services and not to functions.

A function is a duty/power that requires decision making by the responsible person or body.

Q1 Therefore we need to say whether there are any specific services that should be exempted if so why?

Legal Services – this service would need to be regulated by the Law Society.

Q.2 Are there any general principles that should apply in considering which services should be exempt?

Any service that is regulated by a statutory body

Section 3 - Who are the relevant bodies?

A relevant body is defined as:-

- A voluntary or community body
- A charity or trust
- A parish council
- 2 or more employees of that relevant authority, i.e., to be run as a mutual organization.

Q3. Should the community right to challenge apply to all Fire and Rescue authorities?

Q4. Should other bodies carrying out functions of a public nature be allowed to use the community right to challenge? If so which bodies?

Section 4 - When an expression of interest can be considered

At this stage it seems that authorities will be able to specify periods during which expressions of interest can be submitted. However the bill provides that the Secretary of State can specify in regulations minimum periods that may be set by authorities and requires authorities to publish details of each specification for a service. Time must be built in to allow for an expression of interest to be submitted and considered.

Q5 Should regulations specify a minimum period during which the authorities must consider expressions of interest? If yes what should this be?

No each authority should be able to decide for itself in the spirit of localism and decentralization as there are too many variations and no one size will fit all.

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

If a minimum period is submitted this should be no more than twice a year.

Section 5 - Information to be included in an expression of interest

The consultation document provides details of what should be included in an expression of interest such as;-

- Details of the body;
- Details of the service they are interested in;
- Details of the outcome to be achieved by their involvement, including the social value of the proposal, i.e. whether it would promote the social, economic or environmental well-being of the area;
- Why they are submitting the expression of interest;
- The body's financial situation;
- Confirmation that they will participate in any procurement exercise;
- They are capable of being in a position to enter into the procurement exercise.

Q7. Do you agree with the proposed information to be included in the expression of interest?

Q8. Is there any further information to be provided in the expression of interest?

Section 6 - Period during which an authority must reach a decision on an expression of interest

The secretary of state has power to make regulations stipulating minimum and maximum time periods between receipt of an expression of interest and the start of a procurement exercise.

It is acknowledged that there may be times when longer periods may be appropriate such as:

- where there are multiple expressions of interest relating to the same service;
- where the authority wishes to propose a modification that would allow it to accept that expression;
- where the expression makes proposals for a radical change to the delivery of the service;
- where the services are currently delivered jointly between two or more authorities.

Q9 Should regulations specify a minimum period during which an authority must reach a decision, if yes what should it be?

Each authority should be able to set its own minimum period for what it feels is appropriate in the spirit of decentralization and localism.

Q10 Should regulation specify a maximum period during which an authority must reach a decision on an expression of interest and if yes what should that be?

Each authority should be able to set its own maximum period for what it feels is appropriate for the reason set out above.

Section 7 - When an expression may be modified or rejected

Any modification must be agreed by the body making the submission although this should not be a wholesale change but it may be appropriate for minor changes that would allow the authority to accept the expression of interest.

However an authority can reject an expression of interest and the secretary of state may specify those grounds for rejection. At the moment they are proposed to be:

- The body is not capable of providing or being involved in providing the service.
- The body is not a suitable person or body to provide or be involved in providing the service.
- The 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 authority during which it will consider Expressions of Interest for the service 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 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.

Q11 Do you agree with the above listed grounds where an expression may be rejected?

Q12 Are there any other grounds whereby an authority should be able to reject an expression of interest?

Section 8 - Period between an expression of interest being accepted and a procurement exercise relating to the provision of the service beginning

This section is looking at whether there should be regulations stipulating minimum and maximum periods between the acceptance of an expression of interest and the procurement exercise being implemented.

Qs 13 and 14 Should there be minimum and maximum periods stipulated between acceptance of an expression of interest and the authority initiating a procurement exercise. If yes what should those periods be?

This again should be up to the authority to decide as it should link in with any procurement strategies an authority may have

Section 9 - Support and Guidance

This section simply asks if any support is required and whether or not guidance from the DCLG would help with this.



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:	Tonya Meers
Position:	Legal & Democratic Services Manager
Name of organisation (if applicable):	Taunton Deane Borough Council
Address:	Deane House, Belvedere Road, Taunton, TA1 1HE
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Telephone number:	01823 356391

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"/>	We are urban, suburban 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?

Legal Services as they are regulated by the Law Society and there are stringent controls that would need to be put in place.

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

Explanation/comment:

Any service that is regulated by a statutory body

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:

Members thought that due to the nature of the service that this could put lives at risk.

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 type="checkbox"/>
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No	<input checked="" type="checkbox"/>
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Explanation/comment:

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

Explanation/comment:

Each authority should be able to decide for itself in the spirit of localism and decentralisation as there are too many variations and no one size will fit all.
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Q6. If a minimum period is to be specified, what should this be?

Explanation/comment:

If a minimum period is submitted this should be no more than twice a year.
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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:

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

Explanation/comment:

Again members thought that this should be for the local authority to decide.

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?

Each local authority should be able to set its own minimum period for what it believes is appropriate.

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?

see the response to Q9

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:

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

Explanation/comment:

Again this should be for the local authority to decide.

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?

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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?

Again members thought that the local authority should set its own processes and procedures for this.
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Section 9 – Support and guidance

Q15. What support would be most helpful?

Explanation/comment:

Access to funding to enable local communities to be able to bid for some of these services. In addition members thought that some guidance on the legal framework that would be required if community groups wished to run these services.
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Q16. Are there issues on which DCLG should provide guidance in relation to the Community Right to Challenge?

Explanation/comment:

(c) Additional questions

Do you have any other comments you wish to make?

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