

BRIEFING NOTE: COMMUNITY RIGHT TO CHALLENGE

CLG Community Right to Challenge - Statutory Guidance (Draft)

Communities and Local Government has published statutory guidance on the Community Right to Challenge. This guidance provides further explanation of the legislative framework for the Community Right to Challenge (Part 5, Chapter 2 of the Localism Act 2011).

The Community Right to Challenge provisions will be commenced at the same time as the Regulations come into force, which is expected to be 27 June 2012. The Regulations are subject to Parliamentary approval. As such, this guidance is published in draft, with a final version to be published when provisions come into force later in June.

The community right to challenge refers to the ability of relevant bodies to express interest to deliver services on behalf of the authority.

The Regulations:

- a) Specify information required in an expression of interest
- b) Specify grounds whereby an expression of interest may be rejected
- c) State which kinds of services are excluded from the Right, and
- d) Add certain fire and rescue authorities as relevant authorities.

Section 1: relevant authorities and relevant bodies

The regulations define which bodies the right extends to. It also sets out the requirements that bodies expressing an interest in taking on a service will need to demonstrate e.g. evidence of community benefit.

Whilst only relevant bodies are eligible to submit an expression of interest (EOI) these relevant bodies may do so in partnership with other relevant bodies and/or non-relevant bodies.

Section 2: relevant services

The community right to challenge applies to the provision of all services, except those that are protected by secondary legislation. It does not, however apply to the delegation of functions of an authority. The responsibility of the function remains with the authority. Therefore, for example; functions such as the power to grant or refuse planning permission where an application is made to the authority cannot be delegated to a third party.

Where shared service/joint commissioned/provided arrangements exist, those authorities should agree the relevant timescales and arrangements for considering and responding to EOIs.

Certain services are excluded from the community right to challenge, either for a limited period or permanently. Those include;

- a) A service commissioned in conjunction with one or more health services by a relevant authority or by a Primary Care Trust, NHS trust or foundation trust under a partnership arrangement or by a relevant authority and a NHS body acting jointly. This will apply until 1 April 2014.
- b) A relevant service commissioned by an NHS body on behalf of a relevant authority. This will apply until 1 April 2014.
- c) A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.
- d) Services which are commissioned and managed by individuals or their representatives using direct payments

Section 3: submitting expressions of interest

It is recommended that relevant authorities specify periods during which EOIs can be submitted in particular to a relevant service. These dates should be mindful of; the need to provide sufficient time for bodies to prepare EOIs, the nature and scale of the service being offered to EOIs and correlation with existing commissioning cycles relevant to the service.

Section 4: expressions of interest requirements

Relevant authorities must consider an EOI submitted by a relevant body which is in writing and meets the other requirements (as specified in the Regulations)

The regulations set out the information required in an EOI e.g. information about financial resource, the relevant body will be capable of providing or assisting the service etc. Relevant bodies will also need to demonstrate how they will deliver outcomes that meet the needs of users of the relevant service.

Section 5: notifying decisions on expressions of interest

Relevant authorities must specify the maximum period that it will take to notify the relevant body of its decision and publish details of the specification including on its website. Different periods may be specified for different cases.

Notification of the decision made must be made in writing. This must be done within 30 days after the close of any period specified by the authority for submitting EOI, or if no such period has been specified, within 30 days of the relevant authority receiving the EOI

Section 6: grounds whereby an expression of interest may be rejected

Relevant authorities may only reject an EOI on one or more of the grounds specified in the Regulations e.g.

- a) The EOI does not comply with any of the requirements specified in the Act or in regulations
- b) Information provided in the EOI is inadequate and inaccurate
- c) The relevant body or any sub-contractor is not suitable to provide or assist in providing the relevant service
- d) The EOI relates to relevant service where a decision has been taken by a relevant authority to stop providing that service
- e) The EOI relates to NHS body and authority, where the continued integration of such services is deemed as critical to the wellbeing of those persons
- f) The relevant service is already the subject of a procurement exercise
- g) The relevant authority and a third party have entered into negotiations for provision of the service
- h) The relevant authority has published its intention to consider the provision of the service by a body that 2 or more specified employees of that authority propose to establish.
- i) The relevant authority considers that the EOI is frivolous or vexatious
- j) The relevant authority considers that acceptance of the EOI is likely to lead to contravention of an enactment or other rule of law or breach of a statutory duty.

Any judgement must be based only on the information that is included in the EOI.

A local authority must continue to comply with its best value duty when procuring services.

Section 7: modifying an expression of interest

If a relevant authority believes it would otherwise reject an EOI, it may seek instead to agree to it being modified. If agreement cannot be reached, the relevant authority may reject the EOI.

Section 8: period between an expression of interest being accepted and a procurement exercise starting

It is for the relevant authority to set the period between accepting an EOI and starting a procurement exercise. If an authority does not set this period then a relevant body may submit an EOI at any time.

Section 9: The procurement exercise

Procurement exercises must be appropriate to the value and nature of the EOI. Relevant authorities are responsible for determining how in-house bids will be considered.

Points to Consider:

- Resource/financial cost of ensuring appropriate procurement systems are in place to respond to EOIs
- Need to consider which services are eligible for EOI within the authority

- Need to liaise with partners and other local authorities as to the services potentially open to EOI and the mechanisms that will facilitate the right
- Need to decide on the timescales that will be applied to the submission and acceptance or rejection of EOIs