



## Localism Bill Briefing: the Community Right to Challenge

This briefing has been prepared by the leading representative bodies for community and voluntary organisations across the country.

We believe that the proposal in the Localism Bill to create a ‘Community Right to Challenge’ is a significant step which could provide communities with the means and opportunity to exert real influence over local services. It is a vital component of the Government’s plans to empower citizens, charities and community organisations, and to ensure that community involvement remains at the heart of the public service reform agenda.

This briefing sets out the benefits of the proposals and explains their importance to local communities and the voluntary sector across the country. It also addresses some specific alterations to the provisions suggested as amendments during the Lords Committee Stage, and explains why these changes would negate many of the benefits of the ‘Community Right to Challenge,’ and should be resisted.

### 1. What is the ‘Community Right to Challenge’ and why is it important?

The ‘Community Right to Challenge’ will allow groups of citizens, community groups and voluntary organisations (known as ‘relevant bodies’) to identify local public services which could be improved, and to suggest ways of doing so. These defined groups (excluding private companies) will be able to submit an Expression of Interest to the local authority, explaining how they could run local services more effectively. The local authority would then be required to give the suggestion due consideration, and could either accept the suggestion, reject it in certain defined circumstances, or suggest modifications and improvements to the proposals. When an Expression of Interest is ultimately accepted, the local authority would begin a procurement exercise for the service in question.

Local authorities already frequently make use of the voluntary and community sector in service delivery, and many councils are looking at ways they can work more with voluntary groups and involve their local citizens more in the design and delivery of services. The right to challenge would allow voluntary and community bodies to play a pro-active role in identifying local services where their expertise, local knowledge and capacity for innovation could enable more effective delivery. The relevant body would then work with the local authority to draw up a plan to provide better local services through the dialogue that the modification process would provide. This would create the conditions for a more diverse, innovative and efficient environment for local public service delivery.

### 2. Misconceptions about the right to challenge

It is important to remember that the right to challenge does not give relevant bodies a right to deliver public services on behalf of the local authority. Instead, it allows community and



voluntary groups to work with the local authority to suggest ways in which services could be improved, and develop a plan to harness the strengths of citizens and communities to improve service delivery. When an Expression of Interest reaches the stage where it can be accepted, the local authority will undertake a procurement exercise for the relevant service, which will be open to other bodies, as well as the one which submitted the Expression of Interest.

### 3. Opposition to the right to challenge

During the Committee Stage of the Localism Bill's passage through the House of Lords, the right to challenge faced a degree of opposition. A number of amendments were proposed which we believe would effectively neuter the right to challenge entirely if passed.

The suggested amendments included the following:

- Remove the Secretary of State's power to specify in regulations the grounds on which a relevant authority may reject an Expression of Interest
- Remove the Secretary of State's power to specify in regulations minimum periods for the submission of Expressions of Interest
- Remove the Secretary of State's power to specify in regulations periods between accepting an Expression of Interest and starting a procurement exercise
- Remove the Secretary of State's power to add relevant authorities and bodies
- Require Expressions of Interest to include evidence that a 'substantial number' of service users affected support the Expression of Interest
- Require that 'a majority of the workforce' likely to be affected by a procurement exercise consent to it before it can go ahead
- Enable a relevant authority to reject expressions of interest when EU procurement or competition law is likely to apply
- Give local authorities the choice whether or not to respond to an Expression of Interest with a procurement exercise.

#### a. Removal of the Secretary of State's powers of regulation

The power to specify minimum periods for submission of expressions of interest is important where a local authority may fail to ensure that relevant bodies have enough time to prepare them, while the power to specify periods between the acceptance of an Expression of Interest and the start of a procurement exercise would enable other groups to decide whether to submit a bid of their own, and to have enough time to prepare it. It is important that relevant bodies know where they stand in this process, and can plan on the basis of clear and consistent timeframes. This is especially important for smaller, local groups, which would be severely disadvantaged if the timeframes determined by their local authority were too short. While these time periods should ideally be set in accordance with local cross-sector agreement, the Secretary of State should reserve the power to intervene on behalf of community groups when necessary.



The power to add relevant authorities and bodies would allow the Secretary of State to extend the scope of the right in future, as it becomes better established and better understood. The grounds for rejection of Expressions of Interest should be set out by the Secretary of State in order to ensure consistency and clarity across the country. It would be unacceptable if certain local areas were unable to benefit from the ideas and energy of community and voluntary groups due to overly broad grounds for rejection.

#### **b. Requirements for applications**

The requirement for Expressions of Interest to include evidence of the support of a 'substantial number' of service users affected would place an unrealistic and expensive bureaucratic requirement on relevant bodies wishing to improve a service, which would have the effect of excluding many smaller and less well-resourced local community organisations. The requirement that 'a majority of the workforce' likely to be affected by a procurement exercise consent to it before it can go ahead would place a requirement on procurement exercises under the right to challenge which does not apply to procurement exercises undertaken outside the right. It would therefore create a disproportionate impediment to the exercising of the right to challenge. In addition, it risks creating a conflict of interest by requiring the consent of employees who may have a vested interest in the continuation of the status quo. It should also be recalled that the requirement for employers to inform and consult affected employees already applies.

#### **c. Local authority latitude to reject applications**

Enabling a relevant authority to reject expressions of interest whenever EU procurement or competition law is likely to apply would allow local authorities to reject Expressions of Interest in all but the very smallest services (those valued at £156,000 or less). Giving local authorities the choice whether or not to respond to an Expression of Interest with a procurement exercise would negate the right to challenge entirely, by effectively allowing local authorities to ignore Expressions of Interest. Both these amendments would entirely undermine the Community Right to Challenge. Instead, it should be required that local commissioners are fully trained in and make use of the flexibilities allowed within EU procurement law, and do not apply Part A regulations where the simpler Part B regulations apply.

#### **4. Conclusion**

In conclusion, we very much hope that supporters of citizen-led, community and voluntary action will support the original intention of the Community Right to Challenge during the Lords Report Stage, which is scheduled to begin on September 5th. We hope as well that this briefing will be helpful to those seeking to support the right. If you would like further details on this issue, please contact [alex.massey@acevo.org.uk](mailto:alex.massey@acevo.org.uk).