



## Community Right to Challenge

### What does it mean?

The Community Right to challenge allows voluntary groups, community groups, Parish & Town Councils, and 2 or more local authority employees to challenge the Council to run a local service. [see section 1, \(page 2\)](#)

#### Step 1

A relevant group submits an Expression of Interest to run a Council service –	<a href="#">see section 2, (page 4)</a>
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#### Step 2

The council must consider any proposals received and either:

1. Reject the proposal –	<a href="#">see section 3.1, (page 5)</a>
2. Request that modifications be made –, or	<a href="#">see section 3.2, (page 7)</a>
3. Accept the proposal –	<a href="#">see section 3.3, (page 7)</a>

#### Step 3

If the council accepts the proposal it must instigate a procurement process in-line with current procurement legislation	<a href="#">see section 4, (page 8)</a>
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#### Step 4

The group take over the running of the service If the bid is successful the group will become responsible for delivering the service and agree with the council exactly when and how the service will be taken over.	<a href="#">see section 4, (page 8)</a>
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*Ctrl + click the right hand links to navigate to the relevant pages*

**Some services, however, are excluded from the Right to Challenge –**  
[see section 5, \(page 9\)](#)

## Section 1 – Community Right to Challenge

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The Community Right to Challenge gives communities the right to challenge the local authority to take over local services that they think they can run differently and better. The new right came into force on 27th June 2012.

The Right to Challenge could be used to run a wide range of local council services and there are many examples of community groups already providing local services.

Proposals to provide a local service must be made by a relevant body. Current Government guidance lists relevant bodies as:

### **Voluntary and community bodies –**

A voluntary body is a body that is not a public or local authority, the activities of which are not carried out for profit. It can generate a surplus provided it is used for the purposes of its activities or invested in the community. A community body is a body which is not a public or local authority, the activities of which are primarily for the benefit of the community.

We would normally expect bodies that will be delivering contracts for local authorities and other public bodies to be incorporated with limited liability, to limit the risk to individual members. If a relevant body identifies a need to incorporate in order to be capable of providing a relevant service in its expression of interest, the period between an expression of interest being accepted and a procurement exercise starting will provide an opportunity for this.

### **Relevant authority employees (e.g. local councils and fire and rescue authorities) –**

Two or more relevant authority employees have the right to bid to take over running the service they deliver. The Government is committed to giving public sector workers the right to bid to take over running the services they deliver. It is expected that employees will form an employee-led structure (eg a staff mutual) to take on running services under the right. Employees are not expected to have finalised all of their arrangements before submitting an expression of interest. The period between an expression of interest being accepted and a procurement exercise being carried out will help here.

### **A body of persons or a trust which is established for charitable purposes only –**

Bodies of persons or trusts established for charitable purposes only. May be a voluntary or community body, but are eligible to use the right.

### **A parish council –**

Parish councils are not listed as relevant authorities. They are however relevant bodies and can submit an expression of interest to provide services relating to functions of relevant authorities. The term "parish council" includes those councils of parishes that bear the style of town and call themselves "town councils".

### **Partnership working -**

Whilst only relevant bodies are eligible to submit an expression of interest, they may do so in partnership with other relevant bodies and/or non-relevant bodies. Indeed, such cooperation may strengthen a relevant body's case that it is capable of providing the service. Where a relevant body proposes to deliver a service in partnership with one or more other bodies, certain information must be provided in the expression of interest in respect of all partners.

Some relevant bodies will wish to form, or be part of a joint venture. Incorporated joint ventures (the joint venture is a body in its own right) will need to meet the definition of a relevant body to submit an expression of interest. One or more bodies in a contractual joint venture (co-operative arrangements between two parties that keep their separate identities) must meet the definition of a relevant body.

### **Relevant services -**

The community right to challenge applies to all relevant services. A relevant service is a service provided by, or on behalf of, a relevant authority in the exercise of its functions in relation to England, except services which are excluded from the right in secondary legislation. [See section 5, \(page 9\)](#)

### **Jointly commissioned/provided services and shared services -**

Some services will be shared, jointly commissioned, or jointly provided by two or more relevant authorities, e.g. tri-borough arrangements between Westminster, Hammersmith and Fulham and Kensington and Chelsea Councils for education, adult social care and children's services. Here, those authorities should agree the relevant timescales and arrangements for considering and responding to expressions of interest and, where necessary, carrying out a procurement exercise for services.

#### ***Functions & Services***

***The right only applies to the **provision** of services. It does not provide for delegation of the functions of a relevant authority. The responsibility for the function itself remains with the relevant authority. The things that relevant authorities are required to do or may do - their functions - are many and varied, as will be the services that it may be necessary to provide in order for the relevant authority to carry out those functions.***

***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 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 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.***

## Section 2 – Submitting an Expression of Interest

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A group wishing to take over the running of a local service must firstly submit a proposal to the Council, this is called an 'expression of interest'. Information required in an expression of interest will include:

- Details of the group or organisation
- The service that they want to challenge
- How they plan to deliver that service differently and better

The Council requires the information below to be provided in expressions of interest, and also requires that bodies demonstrate they meet the definition of a relevant body.

[See section 1, \(page 2\)](#)

- Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing, or assisting in providing, the relevant service.
- Information about the relevant service which is sufficient to identify it, and the geographical area to which the expression of interest relates.
- Information about the outcomes to be achieved by the relevant body or, where appropriate, the consortium of which it is a part, in providing or assisting in the provision of the relevant service, in particular:
  - (a) How the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant authority's area; and
  - (b) How it will meet the needs of the users of the relevant service.

Where the relevant body consists of employees of the relevant authority, details of how that relevant body proposes to engage other employees of the relevant authority who are affected by the expression of interest.

## Section 3 – Consideration of Proposals

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The Council must consider the expression of interest, it can then:

**3.1 Reject it** - *If the Council rejects it, it must publish the reasons why. It can only reject it on grounds specified in the law.*

<b>Grounds whereby an expression of interest may be rejected</b>	
<b>Inadequate and inaccurate information</b>	A judgement on the adequacy and accuracy of information supplied by a relevant body must be based only on the information that the relevant authority may require. If a relevant authority considers that the information in an expression of interest is inadequate or inaccurate it should consider asking the relevant body for further information.
<b>Suitability of relevant body</b>	The judgement of suitability must be based on the requirements for information to be included in an expression of interest. For example, a relevant authority may judge that a relevant body does not have the financial resources to undertake the service, or does not have the approved or qualified staff that can carry out the service.
<b>Relevant authority has stopped/decided to stop providing the service</b>	The community right to challenge is not a mechanism to require relevant authorities to provide services that they have stopped providing, or have taken a decision to stop providing. Relevant authorities should be aware that this ground for rejection does not allow an expression of interest to be rejected before the decision is made to stop the service.
<b>Continued integration</b>	A relevant authority may decide to reject an expression of interest related to integrated services (i.e. a relevant service which is provided by or on behalf of a relevant authority to a person who also receives a service provided or arranged by an NHS body) where it considers that the continued integration of the services is critical to the well-being of the persons in receipt of the integrated services. However not all integrated services will be subject to this ground for rejection. The examples below illustrate how this may be assessed for day centres for adults with a learning disability.

<p><b>Authority entered negotiations with a third party</b></p>	<p>This ground for rejection seeks to achieve a balance between giving groups the opportunity to submit expressions of interest and allowing processes, such as negotiations for a grant agreement, that are sufficiently progressed to be concluded. If an authority is merely considering options for future service provision, one of which is to negotiate for a third party to provide the service, this ground for rejection could not be applied.</p>
<p><b>Authority published its intention to consider mutualising the service</b></p>	<p>Under the Government’s public service mutuals policy, employees proposing to establish a public sector mutual are encouraged to do so in a way that that gives employees a high degree of control.</p> <p>This ground for rejection allows relevant bodies to submit expressions of interest before the point at which a relevant authority has published its intention to consider the provision of a relevant service by 2 or more specified employees. Once past that point, this ground for rejection allows such processes that are sufficiently progressed to continue.</p>
<p><b>Frivolous or vexatious</b></p>	<p>We consider a request would be vexatious if it is likely to cause distress or irritation without justification, or if it is aimed at disrupting the work of an authority or harassing individuals in it. A request could be considered frivolous if it is apparent that it is not a genuine offer to provide a service and lacks any serious purpose. This will allow relevant authorities to reject expressions of interest where, for example, a relevant body wishes to make a complaint about a service rather than wishing to compete to deliver it.</p>
<p><b>Likely to lead to contravention of rule of law/statutory duty</b></p>	<p>This ensures that a relevant authority is not required to accept an expression of interest which would put it in breach of the law.</p>

**3.2 Ask for some changes to be made before accepting it** - *The Council can only ask for changes to the proposal to be made if it would otherwise have rejected it.*

If an authority decides to modify or reject an expression of interest, it must give reasons for that decision in its notification to the relevant body. The authority must publish the notification in such a manner as it thinks fit, which must include publication on the authority's website.

If a relevant authority believes it would otherwise reject an expression of interest, it may seek instead to agree to it being modified. Any modification must be agreed with the relevant body. If an agreement cannot be reached, the relevant authority may reject the expression of interest. Some illustrative examples of where a modification may lead to successful submission are given below.

**3.3 Accept it** - *If the Council accepts the proposal, it must start a procurement exercise, this means inviting interested bodies to bid for the contract to run the service.*

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

The Council must make this notification in writing. This must be done within 30 days after the close of any period specified by the authority for submitting expressions of interest or, if no such period has been specified, within 30 days of the Council receiving the expression of interest.

The Council must specify periods between an expression of interest being accepted and a procurement exercise starting. This enables authorities to weigh up the factors below. Depending on local circumstances, this aims to allow relevant bodies the time they need to prepare to compete in the procurement exercise.

In specifying these periods the Council will have regard to:

- a) The need to provide employees of the Council, and other relevant bodies, with a fair, reasonable and realisable opportunity to bid in the procurement exercise for the service;
- b) The nature, scale and complexity of the service being procured. For example, it may take relevant bodies longer to prepare to bid for larger, complex services than smaller more straightforward ones; and
- c) The timescales for any existing commissioning cycle relevant to the service being procured, or any other relevant authority processes. These may include Council Cabinet decision making or budget setting processes.

## Section 4 - Procurement

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If the expression of interest is accepted, the Council must carry out a procurement exercise. This will allow the proposer and other interested parties to bid for the contract to run the service. Though different councils may carry out the exercise in different ways, they must comply with procurement laws.

When a relevant authority accepts one or more expressions of interest for a relevant service, it must carry out a procurement exercise for the service. The procurement exercise must be appropriate having regard to the value and nature of the contract that may be awarded as a result of the exercise. As is already the case, the Council must comply with procurement law.

Where the service is of a value or nature to which the Public Contracts Regulations 2006 apply and/or is not listed as an exempt service in Part B of those regulations, the procurement exercise must follow the procedures for advertising, specifying and awarding contracts set out in those regulations.

Where the Public Contracts Regulations do not apply – i.e. where the service is worth less than the threshold value, or is listed in Part B of the 2006 regulations, it is for the Council to decide how to procure the service. This applies in the same way to procurement exercise triggered by the community right to challenge as those which are not. Generally, Part B services are those that the EU has considered would largely be of interest only to bidders located in the Member State where the contract is to be performed.

The Council has specified the period during which expressions of interest can be submitted in relation to a particular relevant service, and the details are published on the Councils website. Specifying such a period will help the Council manage the flow of expressions of interest and allow these to be synchronised with any existing commissioning cycles for services.

In specifying a period for the submission of expressions of interest, the Council will have regard to the following factors:

- a) The need to provide relevant bodies with sufficient time to prepare and submit expressions of interest.
- b) The nature, scale and complexity of the relevant service for which a period is being specified.
- c) The timescale for any existing commissioning cycle relevant to the service for which a period is being specified, or any other relevant authority processes.

## Section 5 - Excluded services

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The following services are excluded from the community right to challenge, either for a limited period or permanently:

Until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by a relevant authority or by a Primary Care Trust, NHS trust or NHS foundation trust under a partnership arrangement or by a relevant authority and an NHS body or a Strategic Health Authority, acting jointly or a relevant service commissioned by an NHS body on behalf of a relevant authority.

A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.

Services which are commissioned and managed by individuals or their representatives using direct payments, for example under The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 do not fall within the scope of the community right to challenge as the individuals or their representatives, as opposed to the relevant authority, commission the services. Direct payments are one way of giving people more choice and control over the services they receive. Individuals or their representatives are given funding in lieu of services. They use this money to arrange their own care and support which meets their needs in ways that are most appropriate for them.

**More information can be found using the following links:**

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<https://www.gov.uk/>

[www.communities.gov.uk](http://www.communities.gov.uk)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5990/2168126.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5990/2168126.pdf)

<http://www.communities.gov.uk/localgovernment/transparency/transparencyguidance/>

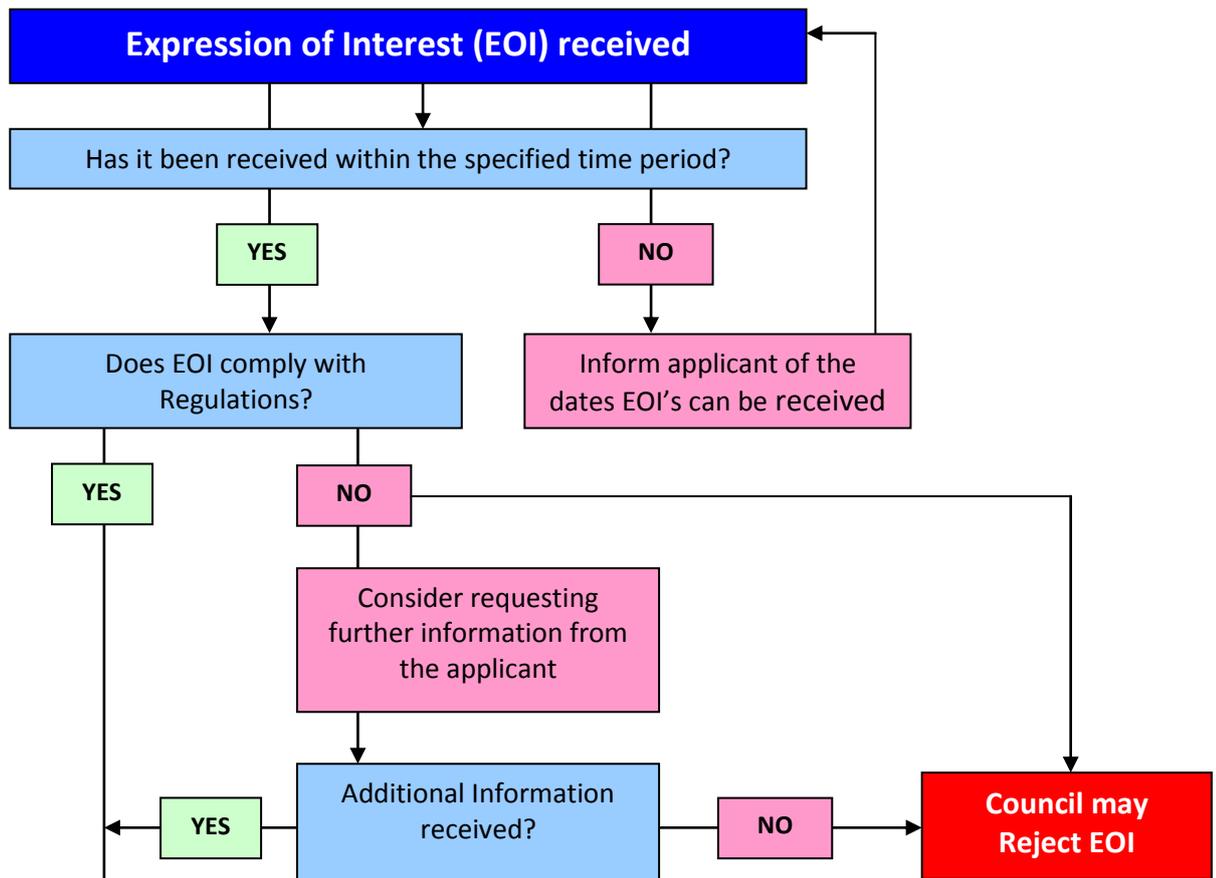
<http://mutuals.cabinetoffice.gov.uk/>

[http://www.fsa.gov.uk/pubs/forms/MS\\_appform\\_notes.pdf](http://www.fsa.gov.uk/pubs/forms/MS_appform_notes.pdf)

[http://www.procurement.ie/sites/default/files/Buying%20Social\\_SocConsidPubProcu\\_101210.pdf](http://www.procurement.ie/sites/default/files/Buying%20Social_SocConsidPubProcu_101210.pdf)

[http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

# Community Right to Challenge Process Map



Council to notify applicant in writing of the date by which it will make its decision on the EOI. This notice must be sent within 30 days of the end of the specified period.

Council to consider EOI and determine to: (a) accept (b) modify (c) reject

(a)

Council must specify periods between the expression of interest being accepted and a procurement exercise starting

**Council must start procurement exercise within specified period**

(b)

Council requests modifications to EOI

Council can only request modifications if it would otherwise reject the EOI.

Council must notify applicant of its decision and seek agreement to modification

Does the applicant agree the 'modification'?

YES

NO

**Council must notify applicant in writing of its decision to reject the EOI and must provide detailed reasons why Council must publish decision (including on Council's website)**

(c)

**Council rejects EOI**

An EOI may only be rejected on one of the grounds set out in the EOI Rejection Regulations