

8. Community Right to Challenge Consultation

Purpose of report

1. To consider the implications for the Fire and Rescue Authority of the Community Right to Challenge provisions set out in the Localism Bill.
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Recommendations

The Chief Fire Officer recommends that:

- i) The Authority notes the report on the Community Right to Challenge consultation; and***
- ii) The Authority agrees to the proposed response to the consultation being submitted on its behalf.***

Introduction and Background

2. The Localism Bill, currently before Parliament, sets a framework for the introduction of a Community Right to Challenge. This provision would allow voluntary and community groups, employees of relevant authorities and parish councils to challenge and deliver local public services on behalf of the authority that they feel could be better delivered by the community. Relevant authorities will have a duty to consider any such expressions of interest. Although combined Fire and Rescue Authorities are not specifically included as 'relevant authorities' in the Bill, the provision states that the Secretary of State may specify by regulation the inclusion of "such other person or body carrying on functions of a public nature." (*Localism Bill, Pt 4, Ch 3*)
3. Further to that provision, the Government published a consultation document on 4 February 2011 to assist in developing the detail of how the regulations would apply. The consultation states that the Government is "minded to extend the Community Right to Challenge to make all Fire and Rescue Authorities relevant authorities in regulations, whilst excluding certain core services." (*Consultation paper – para. 3.9*)
4. Responses to the consultation are required by 3 May 2011, and, subject to Parliamentary approval, it is expected that the provisions will commence from either April or October 2011.

Implications for Fire and Rescue Authorities

5. There are two main implications of note for the Fire and Rescue Authority; the proposal to make all Fire and Rescue Authorities subject to the Community Right to Challenge (*Consultation paper – Section 3*); and the proposal to exempt certain services from challenge under the Community Right to Challenge. Fire and Rescue Authorities are invited to give their views on these proposals. There are also some general limitations on the scope of the Community Right to Challenge.

All Fire and Rescue Authorities to be subject to the Community Right to Challenge

6. The introduction of a Community Right to Challenge will give 'relevant bodies' the right to challenge 'relevant authorities' to deliver a 'relevant service' on behalf of the authority. It is important to note that the Community Right to Challenge relates to services and not to functions. A function is a duty or power that requires decision-making by the relevant authority, whereas a service does not. This means that "the relevant authority takes all the necessary decisions so that it is able to set out ... the extent and type of service that it wishes to contract out." (*Consultation paper – para. 2.2*)
 - a. relevant authorities are listed in the Bill as "county and district councils and London borough councils." These authorities are required to consider Expressions of Interest to run services which they are responsible for. The Bill adds that the Secretary of State may add further relevant authorities in secondary legislation.
 - b. relevant bodies are listed as "voluntary and community bodies, charities, parish councils and two or more staff of a relevant authority." These bodies may make an Expression of Interest to run a service and, if accepted by the relevant authority, this will trigger a procurement exercise relating to the provision of that service. The Secretary of State may add further relevant bodies in secondary legislation.
 - c. relevant services are those services provided by, or on behalf of, a relevant authority in the exercise of any of its functions. The Secretary of State may exempt some services from the Community Right to Challenge in secondary legislation.
7. The consultation paper notes that some Fire and Rescue Authorities are the County Council, and thus are included as relevant authorities. The paper proposes to include all other Fire and Rescue Authorities as relevant authorities, which will make Hereford & Worcester Fire and Rescue Authority subject to the Community Right to Challenge.

Specific services to be exempted from challenge

8. The consultation paper outlines some specific services that are to be exempted from challenge in the regulations. There is existing legislation that requires services to be delivered by the authority. In relation to Fire and Rescue, the paper notes that "the 2004 Fire and Rescue Services Act effectively requires that certain core activities are specifically delivered by employees of Fire and Rescue Authorities, including:
 - a. Fire and Rescue Authorities employ firefighters to put out fires and undertake rescues from fires;
 - b. Fire and Rescue Authorities respond to road accidents – firefighters undertake this role jointly with fire fighting." (*Consultation paper – para. 2.5*)

9. The paper also notes that there may be other reasons for excluding particular activities from the Community Right to Challenge. It gives the example of “those integrated with services that are excluded due to existing legislation, such as Fire and Rescue Authorities responding to other emergencies, including collapsed buildings and hazardous materials.” (*Consultation paper – para. 2.6*)
10. The consultation seeks views on what services should be excluded for other reasons.

General limitations

11. A relevant body that wishes to register a challenge must do so by submitting an Expression of Interest. Section 5 of the consultation paper sets out what information should be included in an Expression of Interest, which the relevant authority must consider. Sections 6 and 7 of the consultation set out proposals for the period of time within which a decision on the Expression of Interest needs to be made and the grounds upon which decisions can be made. Where an Expression of Interest is accepted, the relevant authority must then carry out a procurement exercise relating to the provision of the service, and Section 8 of the consultation discusses how long there should be between the Expression of Interest and the beginning of the procurement exercise.
12. The consultation makes it clear that the Community Right to Challenge is not:
 - a. a right to deliver the service if an Expression of Interest is submitted or accepted – the relevant authority decides whether or not to accept an Expression of Interest, and where it accepts it, it must then carry out a procurement exercise for the provision of that service in which the relevant body can bid alongside others, including the private sector. This means the relevant body that triggers the procurement exercise may not eventually be the provider of the service.
 - b. delivering a service independently of the relevant authority – i.e. the Right applies only to delivery of services *on behalf of* the relevant authority.
 - c. a way of requiring a relevant authority to continue providing a service it has decided to stop
 - d. a way for service users to complain to the relevant authority if they are dissatisfied with how the service is currently being delivered – there are other procedures already in place for complaints

Discussion

13. The proposal set out in the consultation paper is to include the Fire and Rescue Authority in the list of relevant authorities that are to be subject to the Community Right to Challenge. During cross-examination in the Committee stage of the Localism Bill on 10 February 2011, the Minister of State, Greg Clark, was asked why the Government was now minded to extend the Community Right to Challenge to all Fire and Rescue Authorities. His response was that this is consistent with the extension of the general power of competence to all Fire and Rescue Authorities also proposed in the Localism Bill, and that this approach was designed to avoid anomalies.

14. The proposal also sets out some services that are exempt from the Community Right to Challenge. During the Committee stage of the Localism Bill on 10 February 2011, a concern was expressed that the exemptions did not include “other functions, such as giving advice in the community about safety and fire alarms. Most importantly, [Fire and Rescue Services] deal with other emergencies such as floods.” The first point about firefighters undertaking their community role was seen as complementary to their overall function, while in relation to flooding the concern was that this could be subject to tenders for contracting out, which if the contractor failed could be life-threatening in a flood situation.
15. A further point made during the Committee stage commented that “fire prevention activity has been crucial in recent years in driving down fire deaths and improving the performance of fire authorities, I am concerned that owing to pressures, including financial cuts, that trend of improving fire safety will not continue. It would be alarming if fire authorities were challenged about their fire prevention work.” The point continues: “another organisation might be well intentioned, but it would almost certainly not have the kind of expertise and understanding that makes a fire and rescue authority best placed to perform that role, given the authority’s access to advice, inherent expertise and knowledge of the characteristics of its area.”
16. The Minister of State, Greg Clark, responded that the specification of which services should be excluded from the right to challenge was “designed precisely so that we are able to capture these points, but it is important to maintain the consistency that we have with the right to challenge in other areas.” He added that “if we were to put an exhaustive list of exclusions in the Bill, it would create a burden for not just local authorities, but communities, because the list would no doubt be interpreted by the courts to have a particular significance, and anything that was not on it could be interpreted as being deliberately left off it, rather than accidentally. The use of guidance is well established as a means of proceeding in such situations.”

Conclusion/Summary

17. Members will wish to give their views on the proposals set out in the consultation and, in particular, to consider the potential implications of which services are and are not excluded from the Community Right to Challenge.
18. Should the Authority receive an Expressions of Interest under the terms of the Community Right to Challenge, it will need to follow the procedures set out in the consultation paper, including undertaking a procurement exercise for a service that they may wish to contract out. Members will wish to assure themselves that contractors will be able to carry out the service to the Authority’s satisfaction.

Financial Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are financial issues that require consideration	No	

Legal Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	Yes	whole report

Additional Considerations

19. The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e paragraph no.
Resources (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	N	
Strategic Policy Links (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	N	
Risk Management / Health & Safety (e.g. risk management and control measures, risk register score).	N	
Consultation with Representative Bodies	N	

Supporting Information

Appendix 1 – Community Right to Challenge – consultation response form

Background Papers

Public Bill Committee – Localism Bill – 12th Sitting, 10 February 2011, © Parliamentary Copy

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