



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:	Naomi Phillips
Position:	Head of Public Affairs
Name of organisation (if applicable):	British Humanist Association
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Telephone number:	020 7079 3585

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 checked="" type="checkbox"/>	
Relevant authority (i.e. district, London borough, county council)	<input 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"/>	National

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

If Yes, why?

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

Explanation/comment:

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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 type="checkbox"/>

Explanation/comment:

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

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 type="checkbox"/>

Explanation/comment:

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

Explanation/comment:

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:

The proposed information seems sensible although we recommend under Question 8 additional key information we think vital to include in an Expression of Interest.

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

Explanation/comment:

Mention of equalities or human rights are absent from this consultation. Although relevant authorities will be bound by the Equality Act 2010 when procuring services under the 'Community Right to Challenge', or under another commissioning process, we believe that this may not be enough to prevent discrimination against service users or discrimination against

employees working in that service, should the relevant body or group be a religious organisation.

The Equality Act 2010 contains significant contentious exceptions that exempt religious organisations from parts of the law, permitting potentially wide discrimination by those organisations against their employees and against service users, even when they are working under contract to provide public services. This makes them unique among service providers. There are a number of features which could be incorporated to the 'Community Right to Challenge' in terms of Expressions of Interest, guidance and regulations that will help and enable relevant authorities throughout this process.

Implementation of our suggestions would help to create a truly level playing field and at the same time ensure that relevant authorities meet their duties under the Equality Act 2010, the Human Rights Act 1998 and under the Localism Bill.

We have submitted a memorandum of evidence to the parliamentary Localism Bill Committee for its scrutiny of the Localism Bill. That memorandum, available from the BHA or from the Committee website, sets out in particular and in detail our concerns about the 'Community Right to Challenge' and our suggested ways to ensure that the process and the outcome are equal and protect against religious discrimination in local services. The memorandum also sets out details and evidence relating to the specific provisions in the Equality Act 2010 that we are concerned with and which are directly relevant to this consultation. We recommend that memorandum is read in conjunction with this consultation response, which itself focuses more specifically on the questions asked.

Ethos based on religion or belief

Against that background, we would strongly recommend that the information on whether the organisation or group is a religious organisation or has an ethos based on religion or belief should be included in the Expression of Interest. This measure would be a vital and an enabling measure for the relevant authority, helping it to identify straightaway whether it may need to take further measures to ensure equality and non-discrimination in any future procurement processes or contracts, given that equality law applies differently and in a weaker way to those groups than to secular groups.

This information would be an extremely important inclusion in an Expression of Interest. It is not known how many religious organisations are already working under public contract to provide services. Local authorities and government departments do not even know, ask or record if bodies they are contracting with are religious.

In 2010, the BHA made a Freedom of Information request to over 300 local authorities asking them about their contractual relationships with religious organisations. Of those that replied, 81% did not know if any of the organisations with which they had contracts to run services were religious. They therefore had no way of monitoring to see if such organisations were using – let alone using legitimately – their legal exemptions in delivering services on behalf of and at the expense of the council. Only 3% of the local authorities which answered our request said that their contracts with external organisations running services on their behalf explicitly disallowed any discrimination in delivery and employment above that of legal duties.

This indicates that there may be many authorities that are contracting with religious organisations, or could be in the future, but have no way of monitoring or knowing if they are using their legal exemptions to discriminate.

As the 'Community Right to Challenge' only applies to delivery of services on behalf of the relevant authority, it is vitally important that the relevant authority has all the information it needs to ensure that it does not breach its own duties in regard to equalities and rights, and to ensure that the service will be fully inclusive, non-discriminatory and not used as a vehicle through which to promote any particular religion or belief.

The significant exemptions from equalities legislation for religious organisations which apply even when they are working under contract to provide public services means that unless relevant authorities are made aware of whether a relevant body has an ethos based on religion or belief in the Expression of Interest, there is a risk that equalities considerations specific to those bodies could be missed.

Equality statement

We would recommend that information about the relevant body's commitment to equality and to non-discrimination across all protected characteristics (at a minimum) should be included in an Expression of Interest. If the relevant body has an ethos based on religion or belief, it should be required to give information about whether it intends to proselytise or provide the service in a religious, rather than inclusive, way.

We would also recommend that information about whether the relevant body commitment to human rights and whether it would behave in the delivery of the service as if it were a public authority, under the meaning of the Human

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 type="checkbox"/>

If yes, what should this be?

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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?

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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:

The proposed information seems sensible although we recommend under Question 12 additional key information we think vital to include in an Expression of Interest.

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

Explanation/comment:

Equality statement

Religious groups submitting an Expression of Interest should make a clear statement that they will not make use of the Equality Act 2010 exceptions under Schedule 23 and under Schedule 9 – that they will not discriminate against service users or against employees – and they should state that they will not proselytise or seek to evangelise when delivering the service. If the relevant body does not do this, this should be a clear ground for a relevant authority to reject the Expression of Interest.

Social, economic and environmental well-being

Under Clause 68, 'Consideration of expression of interest', in the Localism Bill, the relevant authority must consider 'social, economic or environmental well-being of the authority's area'. However, this is vague as set out in the Bill, which states that grounds for rejection are specified by the Secretary of State through regulations which are not yet published.

If the Bill is not amended to prevent religious groups discriminating in the provision of public services, we believe that relevant authorities will have difficulties in meeting their duties under Clause 68. Religious discrimination in public services, whether in employment, against service users, or by preferring religious groups over secular groups, will be damaging socially and economically to local areas. For example, if there is a religious test for receiving a service (something permitted under the Equality Act 2010), then the service will not be inclusive nor accessible to all people in the area. Similarly, if a group will only hire staff of their own religious denomination, only a minority of people in the area would ever be able to apply for a job, severely restricting economic opportunities and potentially leading to the appointment of less qualified staff, as has happened already in cases of which we know.

We recommend that in considering the 'social, economic or environmental well-being of the authority's area', the relevant authority must take into consideration the specific equalities and economic problems that could arise should religious groups be awarded public contracts. Relevant authorities should ensure that Expressions of Interest that come from religious groups (we recommend under Question 8 that they should declare if they have a religious ethos) stipulate how they are committed in employment and in provision of services to full equality, non-discrimination and will not proselytise when providing the service. If these basic conditions are not met, then that should be grounds for rejection of the Expression of Interest, if it cannot be modified.

We believe that this will help relevant authorities in proceeding with the following procurement processes, confident that the relevant body can meet the social, economic or environmental well-being of the local area as specified under Clause 68 of the Localism Bill.

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 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 type="checkbox"/>

If yes, what should the maximum period be?

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Section 9 – Support and guidance

Q15. What support would be most helpful?

Explanation/comment:

Consultation on the proposed regulations will be vital.

Q16. Are there issues on which DCLG should provide guidance in relation to the Community Right to Challenge?

Explanation/comment:

We recommend that accompanying guidance refers to the specific equalities issues regarding the contracting of public services to religious organisations, as outlined above and detailed in our memorandum of evidence to the Localism Bill Committee.
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We recommend that guidance is clear that a religious group (i.e. relevant body which has an ethos based on religion or belief) and which is awarded a contract to provide a public service on behalf of a relevant authority under the 'Community Right to Challenge', cannot use the relevant exceptions in the Equality Act 2010 and so may not discriminate in employment, or in the provision of services, or proselytise in the delivery of a public service.

We recommend that the regulations and guidance should detail what is meant by 'social, economic and environmental well-being' and include references to non-discrimination.

We recommend that the guidance should be statutory.

(c) Additional questions

Do you have any other comments you wish to make?

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