

COMMUNITY RIGHT TO CHALLENGE – GUIDANCE

The Right to Challenge is a national process introduced through the Government's [Localism Act](#) that came into force on 27 June 2012 (*the Act itself came into force in November 2011*).

The Right to Challenge makes it easier for voluntary and community groups or local authority employees to bid to run services.

How does the Right to Challenge process work?

1. South Yorkshire Fire and Rescue Authority (SYFRA) opens services for Expressions of Interest (EOI).
2. Relevant bodies submit EOI.
3. EOI either accepted or rejected by SYFRA.
4. SYFRA opens procurement process if EOI accepted.

What is the Right to Challenge?

The Right to Challenge is a national process being introduced through the Government's Localism Act. It makes it easier for voluntary and community groups, or local authority employees, to bid to run services.

The Right to Challenge enables eligible groups to express an interest in running the service:

- It gives them the extra time they need to be able to compete fairly in an open procurement exercise.
- It provides a way of opening up public service delivery to groups and organisations other than those in the public and private sector.

SYFRA must consider Expressions of Interest and, where these are accepted, run a procurement exercise for the service which anyone can compete in. So, rather than a 'right to run' a public service, it is a 'right to compete' in a procurement exercise.

Who has the Right to Challenge?

The following groups are all eligible to express an interest in bidding to run a particular service.

The Right to Challenge is open to 'Relevant Bodies' defined as:

- A voluntary or community body;
- A body of persons or a trust which is established for charitable purposes only;
- A parish council;
- Two or more employees of the relevant authority; OR
- Any other person or body specified by the Secretary of State by regulations.

The Statutory guidance defines relevant bodies as the following:

- **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.

- **Community body** is a body which is not a public or local authority, the activities of which are primarily for the benefit of the local community.

Voluntary and community bodies are intended to cover a wide range of civil society organisations. They reflect the required characteristics of such bodies rather than referring to types of organisational structure. This allows for flexibility to accommodate future forms of civil society organisation.

The definition includes but is not limited to:

- Community benefit societies (a type of industrial and provident society);
- Co-operatives whose activities are primarily for the benefit of the community (another type of industrial and provident society);
- Community interest companies;
- Charitable incorporated organisations; and
- Other incorporated forms of body such as companies limited by guarantee or shares where the company's Memorandum and/or Articles of Association state that the company's objects are in the interest of the community, rather than to make a profit for shareholders.

Further information is available on the regulation and guidance for Right to Challenge <http://www.communities.gov.uk/publications/communities/righttochallengeguide>.

What to consider if you want to use the Right to Challenge

To compete in a procurement exercise and run a public service effectively you will need to think about all the issues related to delivering that service, and the detail of how you are going to get there. The Right to Challenge is effectively a step to running a sustainable and financially viable public service as a business.

The Right to Challenge does not allow for a service to be run for a trial period. If an expression of interest is accepted a procurement process will take place and all providers will be treated equally. This process is open to competition and involves other potential providers (including private sector), not just those submitting the original expression of interest.

Some areas you may need to think about when considering whether to submit an expression of interest:

- Running a service is very complex and requires relevant experience and skills. When deciding who is suitable to provide services through a procurement exercise, we will need to consider factors like your organisation's experience in the sector, whether the size and infrastructure of your organisation is appropriate to provide the service and the technical and professional ability of your organisation. Can you prove your track record and capability to provide the service?
- Procurement processes can take some time to complete. Do you have resources and financial flexibility to continue engaging throughout the process? How will you finance the running of the service and the capital assets required?
- What size of service can you deliver i.e. for the whole county or just one district?
- What kind of legal entity does your group need to become in order to compete in a procurement exercise and deliver the service, for example a social enterprise or a charity?
- What kind of legal structure would best suit the services and deliver your objectives?
- How will your offer be more successful than other potential providers?
- Do you want to join with another organisation to deliver the service?

- What staff will you need to employ and on what terms and conditions?
- How will your offer benefit service users and meet their needs?
- How will your offer benefit the local community more widely e.g. creating jobs, promoting volunteering or improving skills?
- Advice and guidance about these issues can be found from a number of independent organisations that seek to support and coach individuals, groups or small organisations in becoming social enterprises.

Right to Challenge process

1. SYFRA opens up services for expressions of interest

Right to Challenge applies to some of the services that SYFRA provides (there are some exceptions set out in the [statutory guidance](#) . The right only applies to the provision of services, it does not provide for delegation of the functions of SYFRA. The responsibility for the function itself remains with the relevant authority.

We will notify you of the exact date by which we will let you know our decision in writing within 30 days after the receipt of the expression of interest

2. Relevant bodies submit expression of interest

Submitting an expression of interest is the first formal step in using the Right to Challenge.

- Complete an Expression of Interest Form.
- A guide to completing your Expression of Interest Form.

The form requests all the information we are allowed to as set out in the [Statutory guidance](#)

Expressions of interest can only be submitted within a defined time window and we will publish clearly the opening and closing dates.

3. Expression of interest either accepted or rejected by SYFRA

The expressions of interest will be considered by SYFRA Authority Members. We will make a decision using the [national criteria](#) as a guide.

The decision will be one of three options: 'accept', 'accept with modification' or 'reject'.

Accept

The group who has submitted the expression of interest will have presented a strong case that they could provide the relevant service. We will then run a procurement exercise to find the best provider.

Accept with modification

We may seek to agree to an expression of interest being modified if we believe we would otherwise reject it. If an agreement cannot be reached, we may reject the expression of interest.

Reject

Government has set out a series of reasons why an expression of interest can be rejected.

We will reject an expression of interest if:

1. the expression of interest does not comply with any of the requirements specified in the Act or in regulations.

2. the relevant body provides information in the expression of interest which the relevant authority considers to be inadequate or inaccurate.
3. the relevant authority considers, based on the information in the expression of interest, that the relevant body or, where applicable
4. any member of the consortium of which it is a part, or
5. any sub-contractor referred to in the expression is not suitable to provide or assist in providing the relevant service.
6. the expression of interest relates to a relevant service where a decision, made in writing, has been taken by the relevant authority to stop providing that service.
7. the expression of interest relates to a relevant service
8. provided in whole or in part by, or on behalf of, the relevant authority to person who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service, and
9. the continued integration of such services is, in the opinion of the relevant authority, critical to the wellbeing of those persons
10. the relevant service is already the subject of a procurement exercise
11. the relevant authority and a third party have entered into negotiations for provision of the service, where negotiations are at least in part conducted in writing
12. the relevant authority has published its intention to consider the provision of the relevant service by a body that two or more specified employees of that authority propose to establish
13. the relevant authority considers that the expression of interest is frivolous or vexatious
14. the relevant authority considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.

If we decide to reject an expression of interest, we have a legal duty to publish the decision and the reasons for that decision online.

We will notify the groups who have submitted an expression of interest of the decision and we will update the Expression of Interest Register to show the outcomes of the process.

4. Procurement process

If we accept (even with modification) an expression of interest for a service, then we will carry out a procurement exercise to select the most appropriate service provider. The minimum period between the date of our decision to accept an expression of interest and the date on which the procurement exercise will begin is 12 weeks. The maximum period is 26 weeks. The time between the expression of interest acceptance and the procurement process starting provides additional time for the groups who submitted expressions of interest to prepare to compete in the procurement exercise. This is one of the main benefits of Right to Challenge.

To allow this extra time we are obliged to suspend the start of the procurement exercise for a reasonable time to allow the successful organisation time to prepare for procurement. We will publish the exact timescale once an expression of interest has been accepted.

The procurement process will comply with the Public Sector and EU procurement rules. This process is open to competition and involves other potential providers (including private sector), not just those submitting the original expression of interest. The Social Enterprise Coalition offers a useful [procurement and commissioning guide](#). Procurement processes can take some time to complete, and potential providers will need the resources and financial flexibility to continue engaging throughout the process.

[The Public Services \(Social Value\) Act](#) requires us to consider best value (including social, economic and environmental) in our procurement processes.

It is worth remembering that the Right to Challenge does not allow for a service to be run for a trial period. If an expression of interest is accepted a procurement process will take place.

Advice and Guidance

Advice and guidance can be found from a number of independent organisations that seek to support and coach individuals, groups and small organisations in becoming social enterprises.

Support Programme

The Department of Communities and Local Government has appointed a group of organisations to run a support service to help community groups wishing to use the Right to Challenge.

The three year [support programme](#) includes a dedicated advice line, resources and case studies. It also includes grants to help groups use the Right to Challenge and bid to run local public services. [Find out more about the grants](#).

The service is being run by the Social Investment Business in partnership with Locality and the Association of Chief Executives of Voluntary Organisations.

General Information

- [National Information on the Right to Challenge HM Government](#)
- [Right to Challenge regulations and guidance from Government](#)
- [My Community Rights – advice site provided by Locality](#)
- [Department of Business Innovation and Skills](#)
- [Social Return on Investment \(SROI\)](#)
- [Network for community led organisations](#)