



Localism Bill: community right to challenge
Impact assessment



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Impact assessment

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Title: Localism Bill: community right to challenge Lead department or agency: Department for Communities and Local Government Other departments or agencies:	Impact Assessment (IA)
	IA No: DCLG 0046
	Date: January 2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

1) Some local services are not being delivered as efficiently or effectively as they could be. Only 44 per cent of people feel local public services act on the concerns of local residents and 33 per cent feel their council provides value for money in the provision of services. 2) Voluntary and community sector bodies tell us they face challenges in bidding for public sector contracts. Only 2 per cent of spend on public services goes to voluntary and community sector bodies. The Government has committed to "give communities the right to bid to take over local state run services". This commitment is part of the Government's plans to build a Big Society, in particular by stimulating the behaviour change necessary to:

- reform public services by increasing diversity of provision, innovation and responsiveness; and
- empower communities and citizens by creating neighbourhoods who feel their involvement can shape the world around them.

What are the policy objectives and the intended effects?

The objective of this policy is to give communities the right to challenge to run local services where they believe they could do this differently and better. This is in order to:

- encourage greater diversity of service provision, and improved innovation and responsiveness - alongside building fair access and ability for voluntary and community sector bodies when competing to run services;
- reduce the costs of service provision for local public bodies
- empower communities and citizens

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing.

Option 2: Legislate to give clearly defined groups with a direct link or interest in a service a right to bid to run that service.

Option 3: Legislate to give communities a right to challenge to run local services which could lead to a procurement exercise for that service. Option 3 is the preferred option. It best fulfils the policy objective and will make a bigger contribution to building the Big Society by empowering communities and reforming public services, as it will apply to the widest range of services and a wider range of bodies. Undertaking procurement exercises to run services should also deliver greater cost savings. Option 2 would present difficulties in identifying groups with a direct link or interest; and compliance with procurement law would need to be considered in each case. Bodies other than the groups identified may be able to deliver services better and for less.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed
04/2015

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Greg Clark..... Date: January 2011

Summary: Analysis and Evidence

Policy Option 2

Description:

Legislate to give clearly defined groups with a direct link or interest in a service a right to bid to run that service)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise costs for this option.

Other key non-monetised costs by 'main affected groups'

Local public bodies: costs of assessing expressions of interest and business cases. It has not been possible to monetise these costs as a result of a lack of supporting information in relation to similar rights.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise benefits for this option.

Other key non-monetised benefits by 'main affected groups'

Service users and communities: increased diversity of provision, improved innovation and responsiveness of local services; and greater community empowerment.

Local public bodies: potential cost savings.

However, both of these benefits will be limited by the difficulties of identifying a clear group with a direct link to or interest in a service to which this right could apply, and the need to ensure compliance with procurement law.

Key assumptions/sensitivities/risks

Discount rate (%)

A lack of supporting information on similar rights has meant it has not been possible to monetise costs and benefits for this option. On cost savings, the Julius Review suggested savings of 20 per cent could typically be made from contracting out, but estimates would be dependent on the services this right could apply to and efficiencies already made. More reliable estimates would require assessment across the range of local public services that might be affected - this complex exercise would not be proportionate.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England			
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?					
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes/No			
Does implementation go beyond minimum EU requirements?		Yes/No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		Yes/No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes/No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes/No	
Small firms Small Firms Impact Test guidance	Yes/No	
Environmental impacts		
Greenhouse gas assessment	Yes/No	
Wider environmental issues	Yes/No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes/No	
Human rights Human Rights Impact Test guidance	Yes/No	
Justice system Justice Impact Test guidance	Yes/No	
Rural proofing Rural Proofing Impact Test guidance	Yes/No	
Sustainable development Sustainable Development Impact Test guidance	Yes/No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 3

Description:

Legislate to give communities a right to challenge to run local authority services which could lead to a procurement exercise for that service.

Price Base Year	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£3.2m	£28.6m

Description and scale of key monetised costs by 'main affected groups'

Local authorities: assessing expressions of interest and running procurement exercises where expressions of interest accepted - £2.8m-£3m a year between 2012-13 and 2014-15.

Central Government: proposed support to community groups - £16m between 2011-12 and 2014-15 (this includes: £1.5m capital and £14.5m resource expenditure - partially offset by repayment of loans) Government is considering the approach to implementation, which will have an impact on final costs.

Other key non-monetised costs by 'main affected groups'

There are no non-monetised costs for this option.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

It is not possible to monetise the benefits of the community right to challenge. However the order of magnitude suggested by the illustrative analysis below strongly indicates that the benefits of this option will outweigh its costs.

Other key non-monetised benefits by 'main affected groups'

Local authorities: potential cost savings where expression of interest leads to a procurement exercise. Using the assumptions made to calculate costs, if the average value of a local service contract is £200,000, the estimated number of expressions of interest is between 497 and 530 a year, 60 per cent of expressions of interest result in a procurement exercise, and if cost savings from procurement exercises resulting from the community right to challenge are typically 20 per cent as found by Dr DeAnne Julius, then savings would be worth between £11.9m and £12.7m a year. However this estimate should be treated with caution given a) the large uncertainties around the number of expressions likely to be submitted each year and b) the service areas for which they will be submitted; c) when contracts for different services are due to expire and therefore may be subject to an expression of interest; d) the current costs of providing these services; and, e) what the possible cost savings for these services are likely to be.

Service users and communities: greater empowerment through being able to challenge to run services; increased diversity of provision, improved innovation and responsiveness of local services.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<p>Assumption: number of expressions of interest submitted (497-530 a year based on Place Survey data); percentage of expressions of interest leading to a procurement exercise (60 per cent); average costs of assessing expressions of interest and running procurement exercises (£2.8m-£3m per year).</p> <p>Sensitivities: uncertainty around level of take up; difficulties in monetising the likely cost savings of the community right to challenge because of uncertainties around a) the services likely to be subject to the right b) which services will be subject to expressions of interest c) when contracts for different services are due to expire and therefore may be subject to an expression of interest, and d) what the possible cost savings for these services is likely to be.</p> <p>Risks: some community groups do not have the necessary skills or knowledge to exercise the right.</p>		

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB: 17.1	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/04/2012				
Which organisation(s) will enforce the policy?	Local authorities				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties² Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	16
Small firms Small Firms Impact Test guidance	No	17
Environmental impacts		
Greenhouse gas assessment	No	17
Wider environmental issues	No	17
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	17
Human rights Human Rights Impact Test guidance	No	17
Justice system Justice Impact Test guidance	No	17
Rural proofing Rural Proofing Impact Test guidance	No	17
Sustainable development Sustainable Development Impact Test guidance	No	17

² Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
1	<i>The Coalition: our programme for government</i> HM Government. 2010
2	<i>Public Services and the Third Sector: Rhetoric and Reality</i> House of Commons Public Administration Select Committee Eleventh Report of Session 2007-08
3	Walsh, K. and Davis, H (1993) <i>Competition and Service</i> . London: HMSO
4	<i>Place Survey 2008, England: (Headline Results and Further Results)</i> . DCLG. 2009
5	<i>Understanding the Public Services Industry: How big, how good, where next? A review by Dr. DeAnne Julius CBE</i> . Department for Business Innovation & Skills. July 2008.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉	Y ₁₀
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	6.0	6.9	6.9	6.4	1.5	1.5	1.5	0.7	0.7	0.7
Total annual costs	6.0	6.9	6.9	6.4	1.5	1.5	1.5	0.7	0.7	0.7
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Issue under consideration

1. The Government wants to create a Big Society – a society where people and not the State make more decisions about issues affecting peoples' everyday lives and those of their communities. In a speech on 19 July 2010, the Prime Minister set out the Big Society's three strands:
 - **public service reform (“what the State can do for us”)**: removing centralised bureaucracy which wastes money and undermines morale and replacing it with greater professional freedom and the opening up of public services to providers like charities, social enterprises and private companies, bringing innovation, diversity and responsiveness to public need
 - **community empowerment (“what we can do for ourselves”)**: the creation of neighbourhoods who feel their involvement can shape the world around them
 - **social action (“what we can do for others”)**: the Government must foster a new culture of voluntarism, philanthropy and social action to encourage ordinary people to give their time, effort and money to the causes around them
2. The Prime Minister also set out three methods for achieving the Big Society:
 - **decentralisation**: pushing power away from central government towards local government and from local government to the ‘nano’ level – communities, neighbourhoods and individuals
 - **transparency**: giving citizens the information they need to be able to take a more active part in society – to hold public services to account and even to run services themselves
 - **providing finance**: paying public services by results, encouraging value for money and innovation at the same time. This includes providing start up capital to small organisations through a Big Society Bank
3. As part of creating the Big Society, the coalition programme for government committed to “*give communities the right to bid to take over local state-run services*”³. This is linked to another coalition commitment to give public sector workers a new right to form employee owned co-operatives and bid to take over the services they currently deliver. Other linked policies from the coalition programme for government include:
 - introducing new powers for communities to save local facilities and services threatened with closure
 - creating new rights that will make it simpler for communities to provide homes for local people
 - supporting the creation and expansion of mutuals, co-operatives, charities and social enterprises, and enable these groups to have much greater involvement in the running of public services

³ *The Coalition: our programme for government* HM Government 2010. P12

Background

4. Many public services are already provided by others on behalf of the public bodies responsible for them. Decisions on how a service should be provided will often be taken as part of a commissioning cycle which will include user and community engagement and needs analysis; strategically planning for services; implementing plans and securing services and outcomes including through procurement; and monitoring the delivery of outcomes, evaluating and challenging services. Some public bodies – principally local authorities – are under a general duty of best value to make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Policy objective

5. The objective of this policy is to give communities the right to challenge to run local services where they believe they could provide them differently and better.

Rationale for intervention

6. Some local public services are not being run as efficiently or effectively as they could be and this is affecting public confidence. The most recent available figures⁴ show that only 44 per cent of people feel that local public services act on the concerns of local residents and only 33 per cent feel that their council provides value for money in the provision of services. In addition, voluntary and community sector bodies tell us that they face challenges when competing for public sector contracts - borne out by the fact that only 2 per cent of spend on public services goes to voluntary and community sector bodies⁵.
7. Public service reform is essential to address this problem as part of creating the Big Society - specifically opening up local public services to different providers to bring improvements in the innovation and responsiveness of public services. Communities, and the bodies that represent them, are an essential part of this reform and need to be given an increased role in running public services. But without the leverage to advocate different or better ways of running services and the necessary skills and knowledge to put their case across, these bodies may lose out to other sectors in local service delivery. A statutory community right to challenge will give a legally enforceable right to question the way services are delivered, suggest different and better ways of delivering services and require local public bodies to consider these.
8. A community right to challenge will help to achieve the following outcomes, which are linked:
 - **Reforming public services by increasing the diversity of local service providers, improving innovation and responsiveness.** In particular the Prime Minister has talked about opening up public services to bodies including charities and social enterprises, as well as private sector companies. Communities, and the bodies that represent them, will have a good understanding of their needs, enabling them to better respond in delivering services, and many provide added value over and above delivery of the service, including by reinvesting profits in their activities or the community. Service providers who are innovative can respond more effectively to changes in public needs and expectations, and improve delivery and outcomes for services. Introducing a community right to challenge will enable communities that think they could run services differently and better the right to have their proposal considered. It will also continue to encourage behaviour change in local public bodies to ensure that service provision is diversified and innovation and responsiveness improved.

⁴ See *Place Survey: England – Headline Results 2008* and *Place Survey: England – Further results 2008*.

⁵ See *Public Services and the Third Sector: Rhetoric and Reality* p. 19

- **Reducing the cost of service provision.** Innovation can help to contain costs and increase efficiency whilst improving delivery and outcomes. Value for money is paramount in the current economic climate, in which public bodies need to reduce spending. Introducing a community right to challenge will enable communities, and the bodies that represent them, that are able to see how services could be maintained or improved whilst reducing costs the right to have their proposal considered, and help local public bodies make savings.
- **Empowering communities and citizens.** Getting people to exercise the opportunities and freedoms that decentralisation will bring is essential to unlocking the potential of a Big Society. There are currently a number of ways in which communities and citizens can voice their dissatisfaction with a particular service - for example through existing complaints procedures, local councillors, or different forms of community engagement. However a community right to challenge will go further, giving communities that think they can run services differently or better the right to have their proposals considered. This liberation of local energy and imagination should revitalise local services so they better meet the needs and priorities of local communities.

Options, their costs and benefits, and assumptions made

OPTION 1: DO NOTHING

9. No right would be given to challenge to run local services. It is difficult to determine how far service provision would be diversified, innovation and responsiveness improved, and cost savings made without this right. This would depend on factors including how many services local public bodies chose to tender out. Local public bodies would not, however, be under any specific duty to consider proposals made to deliver services differently or better. As a result, opportunities to provide a service more effectively or efficiently could be missed. This is not the Government's preferred option.

OPTION 2: LEGISLATE TO GIVE CLEARLY DEFINED GROUPS WITH A DIRECT LINK OR INTEREST IN A SERVICE A RIGHT TO BID TO RUN THAT SERVICE

10. There are a couple of examples of clearly defined groups with a direct interest in or link to a service being given the opportunity to run it. For example, the right to request in the NHS enables staff to form a social enterprise and request to their Primary Care Trust that they take over management of the service they deliver. And tenants in local authority housing can form tenant management organisations to take over management of their housing estates.
11. Where a group with a direct interest or link could be identified, this option could work in a similar way to the right to request, by enabling them to submit an expression of interest in running that service to the relevant public body, followed by a business case where the expression of interest was accepted.
12. In each case where this right was given, compliance with procurement law would have to be considered.

Benefits

13. This option would further objectives around diversifying service provision, improving responsiveness and innovation, and empowering communities and citizens - but to a limited extent, as it would only apply to certain groups and certain services.

Costs

14. The disadvantages of this option are that it is likely to be difficult to identify just one clear group with a direct interest or link to a particular service. For example, a local park may not just be used by the people living within the immediate area. Both this, and the need to comply with procurement law, may restrict the number of local services this right could apply to. If the right is only available to a limited number of services this could also impede innovation, for example through integrating service delivery in a particular neighbourhood.
15. Giving this right to just one group of people for each service would limit diversity of service provision. It may also limit potential cost savings as another body may be able to provide a better service more cost effectively than the group identified.
16. The contribution this option could make to improving diversity of service provision, innovation and responsiveness, and cost savings is therefore limited.
17. There would be costs to public service providers responsible for the services to which the right applied of assessing expressions of interest and business cases.
18. This is not the Government's preferred option.

OPTION 3: LEGISLATE TO GIVE COMMUNITIES A RIGHT TO CHALLENGE TO RUN LOCAL SERVICES WHICH COULD LEAD TO A PROCUREMENT EXERCISE FOR THAT SERVICE

19. This option would give communities a right to express an interest in running a local service. This expression of interest could trigger a procurement exercise, in which the challenging body would be able to participate, alongside any others that wanted to bid. Where the expression of interest is declined, the local public body would be required to provide reasons for this and make decisions publicly available on their website.
20. As this is the Government's preferred option, further work has been done to develop it. In particular:

Application

- The right will apply initially to local authority (London borough, district and county councils) services, ensuring that local authorities are exemplars for this right.
- The right to express an interest will be given to voluntary and community sector bodies (including charities, social enterprises, mutuals and co-ops) parish councils and local authority employees delivering the service. This will give local authority employees the opportunity to express an interest in running the services they deliver, implementing the Right to Provide for public sector workers in local authorities. Cabinet Office is working with other Government departments to implement this right in other parts of the public sector.

Operation

- The Department for Communities and Local Government has already asked local authorities to make available data on spend over £500, including contracts. This will provide communities with information that will help them understand the opportunities available.
- Local authorities will be able to specify periods when the right will apply to services in their area. This will enable them to synchronise submission of expressions of interest with any planned commissioning cycles. This includes specifying periods when expressions of interest can be submitted for services that are already contracted out, to enable them to be considered alongside the future of the service, prior to the expiry of the contract.

- Local authorities should be able to accept an expression of interest (with or without modification) and undertake a procurement exercise in line with relevant legal requirements, or decline it, in certain circumstances. Modifying an expression of interest will provide an alternative to declining it.
- Local authorities will be required to consider the relevant and proportionate social, economic and environmental value of both expressions of interest, and bids in any subsequent procurement exercise (subject to compliance with the EU procurement regime).
- There will be a minimum time period between an expression of interest being accepted and a procurement exercise starting to enable local authority employees to consider whether they wish to bid if they are not the challengers, and put themselves in a better position to do so successfully. This would also enable voluntary and community bodies and parish councils time to prepare for a procurement exercise.

21. The broad framework for this right will be set out in the Localism Bill, with further detail in secondary legislation. We will consult with interested parties before making secondary legislation, which is likely to include the following detail:

- any services that will be exempt from this right
- the information that an expression of interest should include
- the timescales associated with the process – including the time period for a local authority to respond to an expression of interest and the minimum period between an expression of interest being accepted and a procurement exercise starting
- the circumstances in which a local authority can decline an expression of interest

Benefits

Empowering communities and citizens

22. This option should be the most effective at empowering communities and citizens. A wider range of bodies will be able to express an interest in running a much wider range of services than under option 2. The ability to express an interest, and potentially trigger a procurement exercise, will also mean that communities are not reliant on a local authority choosing to tender a service they think they could run differently or better, as they would be under option 1. The potential to trigger a procurement exercise should mean communities are better able to participate in that exercise, although local authorities will need to ensure that all procurement exercises comply fully with the relevant law and consequently, meaning other bidders may win the resulting contract. This should all better help to stimulate behaviour change in communities.

Public service reform – increasing diversity of provision, improving innovation and responsiveness

23. This option should also be the most effective at increasing diversity of provision, improving innovation and responsiveness. Again, it will enable a wider range of bodies to express an interest in a much wider range of services than option 2. And as a successful expression of interest will lead to a procurement exercise, the local authority can ensure service users get the best possible service at the best price. The benefits of competition in relation to diversifying provision and improving innovation and diversity are explored in paragraph 24 below. Again, the ability to express an interest, and potentially trigger a procurement exercise will ensure that these benefits are not reliant on local authorities choosing to tender services, as they would be under option 1. And the very fact that communities have a right to challenge may stimulate behaviour change in local authorities, resulting in a beneficial impact on innovation, responsiveness and costs of services.

24. There is recognition that the best way to ensure public services continually develop and transform to improve, meet future challenges and give everyone access to high quality services is to break apart the monopolies that have held back sustainable innovative improvement, both on the demand and supply side⁶, to diversify supply. On the supply side this means creating competition and/or contestability between providers.⁷ Competition in public services creates incentives for suppliers to operate more efficiently and innovate to improve services, and reduce costs. Basing the competition on the quality of different provider offers rather than cost can drive up the quality of services. The source of improvement is not “privatisation” but competition, which improves management and drives down costs.⁸
25. An increase in communities and the bodies that represent them running services, where they are successful in procurement exercises following a challenge, may particularly contribute to increased innovation and responsiveness. They may have a better understanding of the community or client group they represent than other bodies, enabling them to better respond to the needs of service users in delivering services. Voluntary and community sector bodies may also provide added value over and above delivery of the service, including by reinvesting profits in their activities or the community.

Reducing the cost of service provision

26. This option is also likely to lead to the greatest cost savings. Paragraph 24 explained that competition can reduce costs. Although cost savings may be made under option 2, the group that the right is given to may not necessarily be able to provide the best service most cost effectively. Under option 1, cost savings would be reliant on an authority choosing to tender services.
27. The Public Services Industry Review conducted by Dr DeAnne Julius found that savings of 20 per cent could typically be achieved through competitive tendering. These cost savings accrued whether the body that won the contract was a voluntary and community sector body, a private sector company or an in-house team.
28. Using the assumptions made to calculate costs below, if the average value of a local service contract is £200,000, the estimated number of expressions of interest is between 497 and 530 a year, and 60 per cent of expressions of interest result in a procurement exercise, then the community right to challenge may lead to procurement exercises for between £59.6m and £63.6m worth of contracts a year. If cost savings from procurement exercises resulting from the community right to challenge are typically 20 per cent, as found by DeAnne Julius, then they would be worth between £11.9m and £12.7m a year.
29. However, this estimate is made on the basis of very limited evidence. There are risks with making assumptions about cost savings given uncertainties around: the number of expressions of interest likely to be submitted each year; the services for which they may be submitted; when contracts for different services are due to expire and therefore may be subject to an expression of interest; the current costs of providing these services; and, what the possible cost savings for these services is likely to be. This impact assessment therefore does not monetise the benefits of the community right to challenge, although the order of magnitude suggested by the illustrative analysis above strongly indicates that the benefits of this option will outweigh its costs.

⁶ See *The Other Invisible Hand: Delivering Public Services through Choice and Competition*, Julian Le Grand (2007)

⁷ See *Choice and Competition in Public Services: A guide for policy makers*, a report prepared for the OFT by Frontier Economics (2010)

⁸ See *The determinants of price and quality in competitively tendered contracts*, Domberger et al, *Economic Journal*, (1995)

Costs

30. There are also costs to implementing this option successfully. The Government is still considering how to meet these costs. The following proposed approach may be subject to change:

- **Resource expenditure** - funding that we propose to make available to community bodies to help stimulate behaviour change by exercising this right, by building skills and knowledge. We will ensure that this support is given in a manner which is consistent with competition law and are considering the best way to achieve this. We estimate that this support will consist of £14.5m of expenditure between 2011-12 and 2014-15.
- **Capital Expenditure** - funding that we propose to make available to community bodies where the community right to challenge may involve the acquisition of an asset. The funding would be made available in the form of grants and loans. Based on the experience of the Communitybuilders Programme we assume that 60 per cent of this expenditure will be in the form of loans and 40 per cent grants. We estimate that this could consist of £0.5m a year over three years (2011-12- 2013-14) - it is anticipated that any additional funding required will be covered by grants and loans from other bodies, such as Community Finance organisations.
- **Repayments of loans** - the loan element of the capital expenditure would be repayable - we estimate that this would be repaid over a 5 year period (minus the amount that is defaulted on - see below)
- **Default on loans** - our estimates assume that some of the loans made will be defaulted on. Based on evidence on the default rates of community finance loans made to social enterprises and community groups we have assumed a default rate of 12 per cent on the value of loans made⁹.
- **Additional burdens on local authorities.** The main costs will be to local authorities of assessing expressions of interest, and undertaking procurement exercises where they accept them.

Assessing expressions of interest

31. The Department for Communities and Local Government does not hold data on the number and type of services that are currently contracted out and provided in house by local authorities. We have estimated the number of expressions of interest likely to be submitted by using responses to the 2008 Place Survey on satisfaction with local services. The total sample size of the 2008 Place Survey was 543,713. We looked at the number of local authorities scoring 10 per cent below the average score on the question of satisfaction with different local services¹⁰. This gives an indication of the number of local services where there is dissatisfaction with the service, and which may therefore be subject to interest from voluntary and community bodies under the community right to challenge. We estimate that there would be 331 services which may be subject to expressions of interest from these bodies in each of the first three years of this policy being in force.

⁹ See *Community Finance Loans for Social Enterprise: Solving the Problem* - May 2008 <http://www.idea.gov.uk/idk/core/page.do?pageld=8309883&aspect=full> and *Promoting the growth of the community development finance sector* - New Economics Foundation (2001) <http://www.jrf.org.uk/publications/promoting-growth-community-development-finance-sector>

¹⁰ Those services were refuse collection, transport, sports and leisure, libraries, and parks and open space. Note however that the services which will be exempted from the community right to challenge have yet to be finalised.

32. However, this estimate only looks at services which are subject to expressions of interest because of dissatisfaction with the service. Additional expressions of interest may arise because:
- there may be other service areas, not covered by the Places Survey questions on dissatisfaction, for which expressions of interest may be submitted under the right
 - an expression of interest may be submitted in running part of a wider service
 - the estimate does not take into account expressions of interest from parish councils and local authority employees
33. We have also considered that:
- local authorities already contract out services, and that bodies may be less likely to express an interest in running a service where they know that a service is already contracted out
 - we propose to enable local authorities to specify periods when the right will apply to services in their area, helping them to manage the flow of expressions of interest
34. Given these factors we therefore looked at two scenarios for take up:
- high – where there are an additional 60 per cent expressions of interest on top of the 331 estimated
 - low – where there are an additional 50 per cent expressions of interest on top of the 331 estimated
35. We have assumed it would take one and a half days of staff time to process and respond to an expression of interest, including the time of an administrative member of staff and a more senior member of staff. The cost per day is estimated to be £165.41, which comes from the Office for National Statistics Survey Control Unit, and includes the wage, National Insurance and Pensions contributions and cost of overheads. We have also assumed that expressions of interest will be dealt with by those in local authorities that already deal with procurement exercises. Based on our low and high estimates for take up, this would mean the cost to local authorities of assessing expressions of interest will be between £120,000 and £130,000 per year.

Undertaking procurement exercises

36. We have assumed that 60 per cent of expressions of interest will lead to a procurement exercise. We believe this is a reasonable estimate reflecting that the majority of expressions of interest will lead to procurement exercises. A minority will not - for example because the service is already contracted out, or one of the other grounds on which a local authority can decline an expression of interest (which will be set out in secondary legislation) is met. Although it may be unlikely that an expression of interest will be submitted in a service that is already contracted out, they may do so if they wish to register that they believe their proposal should be considered prior to expiry of the contract. Some communities may not be aware that the service they are expressing an interest in is already contracted out.
37. Our estimates indicate that there could be between 298 and 318 extra procurement exercises per year as a result of the submission of expressions of interest. A small sample of local authorities suggested a cost per procurement exercise of £9,100 (this includes staff time spent carrying out the exercise). Information provided informally by some local authorities indicates an average contract value of nearly £200,000, making the cost as a percentage of contract value 4.6 per cent.

Taking into account social value

38. We are assuming that the costs of requiring local authorities to consider the relevant and proportionate social, economic or environmental value of both expressions of interest and bids in any subsequent procurement exercise are *de minimis*. This is because:

- We will not specify the methodology that contracting local authorities must follow in considering the economic, social or environmental well-being of proposals. This is intended to allow local authorities to use existing infrastructure and resources as far as possible.
- The Cabinet Office has already invested in tools and resources to help contracting bodies to undertake the process of assessing social value. This includes specific guidance tailored for commissioners. The tools developed are publicly available and accessible to all contracting bodies free of charge. As such, there are no additional costs for local authorities in developing a methodology for taking economic, social or environmental well-being into account.
- The Cabinet Office has run a three year training programme for contracting authorities, which includes information and guidance on how to use these tools. Under the Spending Review 2010, the Cabinet Office is committed to continuing this programme and retaining the provision of information on how to take economic, social or environmental well-being into account.

Administrative burden

39. Based on the assumptions made above, we estimate that the additional burden imposed on all local authorities as a result of this policy will total between **£2.8m and £3m per year**, depending on whether take up is in line with our high or low estimates outlined above. Subject to Royal Assent, the right is likely to come into force in April 2012, although could potentially come into force in October 2011, in which case we estimate that the total costs on local authorities in 2011-12 as a result of this policy will be between **£1.4m-£1.5m**.

40. We have assumed that the number of expressions of interest and procurement exercises will steadily decline after 2014-15, as services are contracted out, including under the community right to challenge, although other services may be able to be challenged as contracts come close to expiry. We have assumed that from 2015-16 to 2017-18 there will be a 50 per cent reduction in expressions of interest and from 2018-19 to 2020-21 there will be a 75 per cent reduction in expressions of interest. Costs will therefore be £1.4m-1.5m per annum from 2015-16 to 2017-18 and £700,000-£760,000 per year between 2018-19 to 2020-21.

Other costs

41. Although there will be costs involved in submitting an expression of interest, and preparing a bid as part of the tendering process, this is dependent on a decision by a body to exercise this right. The cost of submitting an expression of interest will depend on the information that it is required to include – which we are proposing should be set out in secondary legislation, following consultation with interested parties. They have not therefore been included in these estimates.

42. In order to mitigate the risk that newer and smaller community bodies will need to build skills and knowledge in order to be able to express an interest in, and bid to run, services we are proposing to provide funding to support community groups to help stimulate behaviour change. We will ensure that this support is given in a manner which is consistent with competition law and are considering the best way to ensure this. This funding is the capital and resource expenditure set out in the table at Annex 2. However, this funding and the way

it is to be used, is still to be finalised. We will be consulting with voluntary and community sector bodies on where any funding is targeted.

The overall costs of the community right to challenge

43. See separate table attached at Annex 2.

RISKS

44. Due to the uncertainty around the estimates of take up, sensitivity analysis was carried out on the estimates of the additional burdens cost to local authorities. As described above, we looked at two scenarios for the number of expressions of interest submitted and procurement exercises, one where there was an additional 50 per cent expressions of interest on top of the 331 expressions of interest which were originally estimated, and one where there was an additional 60 per cent expressions of interest. This produced the cost range outlined above of between £2.8m-£3m per annum.

45. One of the key risks to the community right to challenge is that community groups do not have the skills and knowledge to take advantage of the opportunities presented by the right. The ability to bid, and bid successfully, to run public services is an issue that is raised with Government by those representing voluntary and community bodies. The ability of community bodies to express an interest in any service (subject to exemptions) will enable them to do so for services in which they have a particular interest, and a better chance of bidding for successfully. But support is still likely to be necessary to help build fair access and ability to this right and stimulate behaviour change.

46. The funding that we have bid for to provide support to community bodies wishing to exercise this right will help build fair access and ability. However, this funding is subject to decisions to be taken following the spending review. But there is also work going on across Government (in particular, for example, the Cabinet Office's work on modernising commissioning) as well as in the sector to build fair access and ability.

Specific impact tests

STATUTORY EQUALITIES DUTIES

47. An equalities impact screening has taken place for the community right to challenge. No significant impact has so far been identified for any of the protected groups identified in the Equality Act 2010, however the equalities impacts of this policy will be kept under review.

COMPETITION ASSESSMENT

48. We do not believe the community right to challenge will impact adversely on competition. Indeed, the preferred option should increase competition by increasing the number of procurement exercises undertaken by local authorities. Local authorities will be able to set out when the right will apply to services in their area, and be required to make publicly available on their website decisions on expressions of interest and reasons where they are declined, or accepted but with modifications. The Department for Communities and Local Government is also asking local authorities to make contracts and tenders for expenditure over £500 publicly available. So the same information will be available to all bodies wishing to express an interest. The transparency of the community right to challenge process, the minimum period between the acceptance of an expression of interest and the start of a procurement exercise should benefit not just voluntary and community bodies, parish councils and public sector workers but any body thinking of bidding in a procurement exercise. Local authority procurement exercises will continue to be free and fair. Whilst local

authorities will have to consider, where appropriate, the social, economic or environmental value of bids, any bidding body will have the opportunity to demonstrate this. The information made available to bidding bodies will be covered by existing procurement law and practice.

SMALL FIRMS

49. There is no foreseeable impact on small firms. Our preferred option should provide small voluntary and community sector bodies with an opportunity to express an interest in, and bid to run, services in their area. Any small or medium sized enterprise will be able to bid in procurement exercises triggered by expressions of interest and should benefit from the minimum time period between expression of interest acceptance and the start of the procurement exercise to prepare itself for the bidding process.

GREENHOUSE GAS

50. There are no greenhouse gas impacts as a result of the community right to challenge.

WIDER ENVIRONMENTAL ISSUES

51. There are no environmental impacts as a result of the community right to challenge.

HEALTH AND WELLBEING

52. There are no foreseeable effects on health and wellbeing as a result of the community right to challenge.

HUMAN RIGHTS

53. There are no human rights implications for the community right to challenge.

JUSTICE

54. There are no significant effects on the justice system as a result of the community right to challenge.

RURAL PROOFING

55. There are no significant effects on rural areas as a result of the community right to challenge.

SUSTAINABLE DEVELOPMENT

56. There are no significant effects on sustainable development as a result of the community right to challenge.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

Review existing policy.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

Proportionate check that legislation is operating as expected.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

It will be difficult to prove a causality between the community right to challenge and any improvements in its success criteria. The success of this policy should therefore be reviewed as part of an over-arching plan for monitoring of the community right to challenge policy along with other policies in the Bill that promote responsive local services through analysis of achievements against the success criteria outlined below and outcomes realised for those within the scope of these policies (potentially including greater innovation and better service delivery to meet local needs). DCLG will informally seek to monitor this policy in consultation with local authorities, through their monitoring mechanisms, for example through surveys of residents (where available); or through a tailored bespoke survey commissioned by DCLG focusing on monitoring impact and outcomes linked to the success criteria referred to below: including responsiveness of local services; the degree residents feel services provide value for money and user satisfaction. We believe this is a proportionate approach to reviewing this policy given its cost and the Government commitment to reduce bureaucracy and decentralise power as part of creating the Big Society. Outside of these actions, and in line with decentralisation, it is for individual local authorities to monitor the operation of specific applications of this policy and ensure decisions on expressions of interest are made in a fair and transparent manner. We would expect that these are captured in a fair way.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The 2008 Place Survey's indication that only 33 per cent of service users questioned in England think that their council provides value for money in the provision of services and only 44 per cent think that local public services act on the concerns of local residents. An indication of the current scale of diversity of bodies providing services is shown through the latest available figures which

show only 2 per cent of public sector spending is on voluntary and community sector delivery. Where available, the residents surveys of individual local authorities will also provide useful baseline data from which to provide a high level measure of impact. We anticipate that we may need to supplement this existing baseline with some additional bespoke research which will be worked up in more detail at a later stage.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

It will be difficult to prove a causal link between the community right to challenge and any changes linked to its key objective areas. The following success criteria will be monitored and measured as part of an over-arching post implementation review of Localism Bill policies. The success criteria are likely to include: statistically significant improvements in perceptions about local services compared to the baseline figures on: a) evidence that residents feel more empowered; b) evidence that services are more responsive to local requirements ; c) greater value for money in local service provision; and d) diversification of local service provision.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

Data will be collected on the success criteria above as part of the over-arching post implementation review linked to the local government theme and the associated policies under this theme. It is likely to include data from available residents surveys from individual local authorities.

Reasons for not planning a PIR:

Annex 2: Annual profile of monetised costs and benefits

NB: capital and resource expenditure figures are estimates and may be subject to change

		2011-12	2012-13	2013-14	2014- 15	Total over Spending Review period (£m)	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Costs												
Capital (£m)¹¹		0.5	0.5	0.5	-	1.5						
Resource (£m)		4.0	3.5	3.5	3.5	14.5						
Additional Burdens (£m)	High	1.5*	3.0	3.0	3.0	10.6	1.5	1.5	1.5	0.8	0.8	0.8
	Low	1.4*	2.8	2.8	2.8	9.9	1.4	1.4	1.4	0.7	0.7	0.7
Total Cost (£m)	High	6.0	7.0	7.0	6.5	26.6	1.5	1.5	1.5	0.8	0.8	0.8
	Low	5.9	6.8	6.8	6.3	25.9	1.4	1.4	1.4	0.7	0.7	0.7
	Midrange	6.0	6.9	6.9	6.4	26.3	1.5	1.5	1.5	0.7	0.7	0.7
Default on loans¹²		0.04	0.04	0.04		0.1						
Repayments of loan¹³		0.16	0.16	0.16	0.16	0.6	0.16					
Net cost after repayment (£m)¹⁴	High	5.9	6.9	6.9	6.4	26.0	1.4	1.5	1.5	0.8	0.8	0.8
	Low	5.8	6.7	6.7	6.2	25.3	1.3	1.4	1.4	0.7	0.7	0.7
	Midrange	5.8	6.8	6.8	6.3	25.6	1.3	1.5	1.5	0.7	0.7	0.7

¹¹ Assumes that 60 per cent of capital expenditure is in form of loans and 40 per cent is grants, as it was with Community Builders Programme

¹² Assumes default rate of 12 per cent on loans based on evidence on the default rates of community finance loans made to social enterprises and community groups

¹³ Assumes that loan element is repaid in 5 years time, minus the element that was defaulted on

¹⁴ This subtracts the net repayments of the loan element of capital spending from the total cost

*These costs will only be incurred if the community right to challenge is implemented in 2011.