



REPORT OF THE DEPUTY LEADER OF THE COUNCIL

STATEMENT ON THE COMMUNITY RIGHT TO CHALLENGE

Purpose of the Report

1. To consider a statement on the operation of the statutory requirement to introduce a Community Right to Challenge.

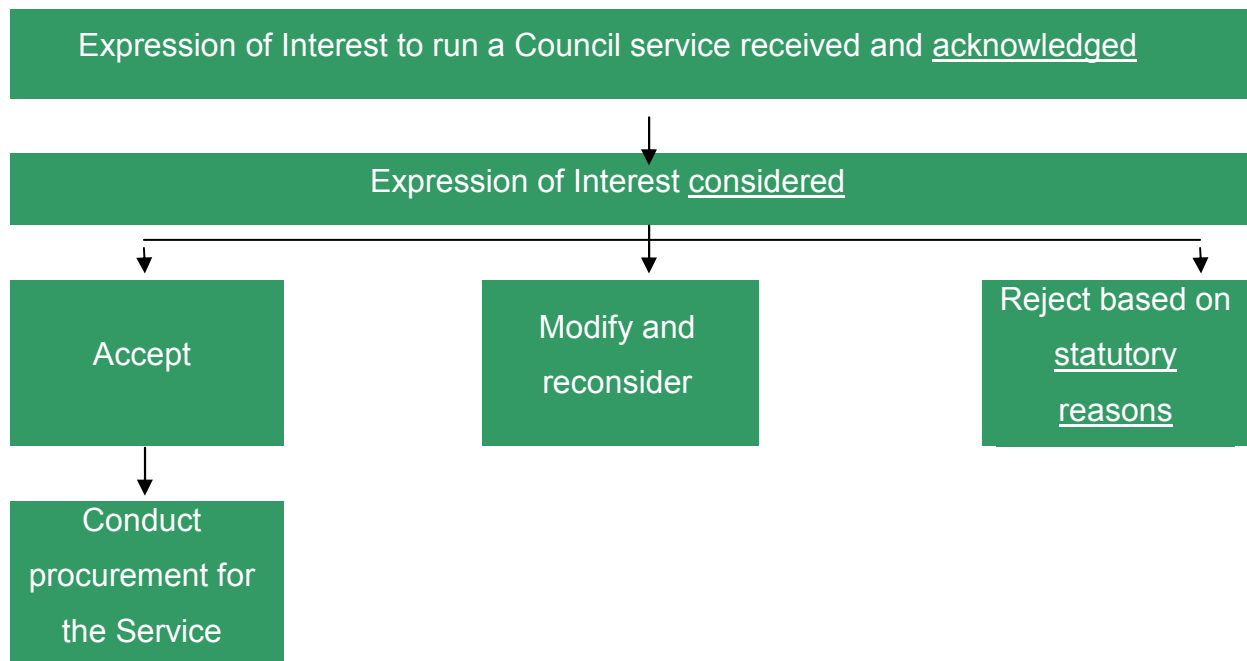
Information and Advice

2. The Council's Strategic Plan for 2010-14 has a specific objective to embrace Localism as part of the priority to foster aspiration, independence and personal responsibility.
3. The County Council is also committed to ensuring that:
 - local people can make decisions about their lives and where they live.
 - communities are involved in the way services are shaped and delivered.
 - communities can be proud of their local area and residents can help to keep their local areas clean, tidy and safe.
4. The Council's Localism Policy was agreed by County Council on 26 January 2012 to progress these commitments and includes an action to develop options for parish/town councils, voluntary and community organisations which might seek to deliver local services. The Policy confirms the County Council's commitment to supporting precepting bodies through consultation and the implementation of a framework for devolving services to parish/town councils seeking to deliver local services.
5. The Policy also includes provision to prepare for new statutory requirements arising from The Localism Act 2011. These statutory requirements include introducing a Community Right to Challenge (to provide services) which is expected to come into force on 27 June 2012.
6. On 26 January 2012 Council agreed that a further report be brought setting out a statement of the Council's intended procedures for the Right to Challenge once further detail became available from the government.

7. The Department of Communities and Local Government has now issued Regulations which are subject to Parliamentary approval. Statutory guidance was published on 21 May 2012 and is effective on 27 June 2012.
8. The requirements placed on the County Council are set out in the report. A draft procedure is attached as Annex A.

Overview of the Community Right to Challenge

9. In brief, the Right to Challenge will operate:



Requirements of the Community Right to Challenge

10. A relevant body will be entitled to submit an Expression of interest for delivering Council services. The Council will have a duty to consider Expressions of Interest for these services and either accept, reject or modify them. The Council is required under the regulation to carry out a procurement exercise for a service where it accepts an Expression of interest. Relevant bodies are described in Annex B but they include parish and town councils, community and voluntary groups and employees of the Council.
11. The Community Right to Challenge applies to all relevant services. A relevant service is defined as "a service provided by or on behalf of the Council in the exercise of its functions, except any services which are excluded from the right in secondary legislation."
12. The Community Right to Challenge only applies to the provision of services. It does not provide for delegation of the functions of a relevant authority. The responsibility for the function itself remains with the relevant authority. Examples of Council services and functions are given at Annex C.

13. The Council may choose to specify periods during which expressions of interest can be submitted in relation to a particular relevant service. In specifying periods for submission of Expressions of Interest the Council must have regard to the factors identified in Annex D. The Council must publish details of any periods specified in a manner as thought fit, including on the Council's website.
14. Should the Council choose not to set periods, expressions of interest can be submitted at any time.
15. The Council may only reject an expression of interest on one or more of the grounds specified in the regulations. These are listed in Annex E.
16. If the Council believes it would otherwise reject an expression of interest, it may seek instead to agree to it being modified. Any modification must be agreed with the relevant body. If an agreement cannot be reached, the Council may reject the Expression of interest.
17. If the Council decides to modify or reject an Expression of interest, it must give reasons for that decision in its notification to the relevant body. The Council must publish the notification in such a manner as it thinks fit, which must include publication on the Council's website.
18. The Council may require the information in Annex F to be provided in Expressions of Interest. The Council may also require bodies to demonstrate they meet the definition of a relevant body.
19. The Council may request further information from relevant bodies but cannot make inclusion of such information a requirement in order for the expression of interest to be considered. The Council should make it clear in any such request that provision of the further information is optional. Information outside the scope of requirements in the regulations may not be used as a ground on which to reject an Expression of interest. The Council should make this clear to relevant bodies.
20. The Council is required to consider the social value of Expressions of Interest in carrying out procurement exercises. This is also reflected in the Public Services (Social Value Act) 2012 and the general duty of best value in the Local Government Act 1999. Expressions of Interest should demonstrate how the proposal might offer social, economic or environmental benefits to the community and take into account social considerations, over and above the provision of the service. This could include creating local jobs, improving local skills, increasing local volunteering opportunities, or improving environmental conditions.
21. It is important that proposals in Expressions of Interest meet the needs of service users. In demonstrating how they will deliver outcomes that meet the needs of users of the relevant service, relevant bodies may refer to evidence such as needs assessments prepared by the Council, or other sources. This

may, for example, include a survey of service users conducted by the relevant body itself.

22. The Council must specify the maximum period that it will take to acknowledge receipt of an Expression of interest.
23. The Council must also notify a relevant body that has submitted an Expression of interest of the timescale within which the Council will notify the body of its decision and publish details of the specification, including on its website. This notification must be made in writing and done within 30 days after the close of any period specified by the Council for submitting Expressions of Interest or, if no such period has been specified, within 30 days of the Council receiving the expression of interest.
24. Different periods may be specified for different cases. In specifying periods for notifying relevant bodies of decisions on expressions of interest, the Council should have regard to the factors detailed in Annex G.
25. The Council must specify periods between an Expression of interest being accepted and a procurement exercise starting. This enables the Council to weigh up the factors described in Annex H. Depending on local circumstances, this aims to allow relevant bodies the time they need to prepare to compete in the procurement exercise.
26. The Council may well already have a contract with a third party to provide a service. In order to take into account its contractual obligations and commissioning cycle it is for the Council to set the period between accepting an Expression of interest and starting a procurement exercise. The guidance states "It would be undesirable if an expression of interest was accepted and there was a lengthy period before a procurement exercise could be started."
27. When the Council accepts one or more expressions of interest for a relevant service, it must carry out a procurement exercise for the service. The procurement exercise must be appropriate having regard to the value and nature of the contract that may be awarded as a result of the exercise. As is already the case, the Council will need to comply with procurement law.
28. The Council should have regard to the Department for Communities and Local Government Code of Recommended Practice on publishing new contracts and tenders information as part of the government's transparency agenda.

Other Options Considered

29. The Council Community Right to Challenge procedures have been developed to implement procedures that ensure compliance with Government Regulations as set out in the report expected to take effect from 27 June 2012.

Reason/s for Recommendation/s

30. The Council's refreshed Strategic Plan for 2010-14 has a specific action to embrace Localism. The County Council's Localism Policy provides a coherent approach for the Council to meet the principles, commitments and actions set out in the Strategic Plan.
31. The adoption of Community Right to Challenge procedures deliver an action from the Localism Implementation Plan and implements statutory requirements arising from the Localism Act 2011.

Statutory and Policy Implications

32. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

- 1) It is recommended that Policy Committee approve the Council's Community Right to Challenge procedure.
- 2) The procedure be reviewed within twelve months.

Councillor Martin Suthers
Deputy Leader of the Council

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Constitutional Comments (SG 01/06/2012)

The Committee is the appropriate body to decide the issues set out in this Report.

Financial Comments (DJK 01.06.2012)

The administration of the process will be contained within existing resources. Service delivery implications will be assessed as part of the Expression of interest decision making process.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Department of Communities and Local Government – Community Right to Challenge, Statutory Guidance.

Nottinghamshire County Council Localism Policy.

The Localism Act 2011.

Electoral Division(s) and Member(s) Affected

All

Procedure – Community Right to Challenge

Introduction

The Council's Strategic Plan for 2010-14 has a specific objective to embrace Localism as part of the priority to foster aspiration, independence and personal responsibility. The Council's Localism Policy was agreed by County Council on 26 January 2012 to progress these commitments and to prepare for new statutory requirements arising from the Localism Act 2011

The County Council is also committed to ensuring that:

- local people can make decisions about their lives and where they live.
- communities are involved in the way services are shaped and delivered.
- communities can be proud of their local area and residents can help to keep their local areas clean, tidy and safe.

The Council already contracts with external providers for the delivery of many services, including with parish/town councils, voluntary and community organisations.

The Council is continually seeking opportunities to enhance the provision of services for our customers and welcomes opportunities to discuss ideas and proposals.

In addition, the County Council provides for the Community Right to Challenge - which gives a number of relevant organisations and groups, including parish/town councils, voluntary and community groups and Council employees the right to be considered for delivering an existing and continuing Council service.

The Community Right to Challenge details are set out in:

Community Right to Challenge Guidance.

Community Right to Challenge procedure – how an expression of interest is handled by the Council.

An Expression of interest submission form.

The Council provides a standard form for use when submitting a Community Right to Challenge Expression of interest. The form can be downloaded from the Council website.



The Community Right to Challenge procedure:

1. Expression of interests will include the information requested on the Council's expression of interest form. They will be received via a generic e-mail address e.g. *CRTC@nottsc.gov.uk* or in writing to (*Service*) Nottinghamshire County Council, (*address.*)
2. The expression of interest will be recorded, (Date, submitting organisation, service, response required by and responsible person at the Council) and this record updated as the Expression of interest is processed.
3. The expression of interest will be acknowledged within 30 days of receipt.
4. The Council will advise, in writing, within 30-days of receiving an expression of interest, to the organisation submitting the expression of interest (and post on the Council website) the latest date that a decision is to be given by. The decision time frame can differ depending on a number of factors including:-

the need to notify relevant bodies of a decision within a reasonable period;

the nature, scale and complexity of the service to which expressions of interest relate (e.g. is the service shared with one or more other relevant authorities, or jointly commissioned with one or more other public bodies);

the complexity of the expressions of interest received (e.g. they propose radical change to the way a service is delivered?)

the likely need to agree modifications to expressions of interest in order to accept them;

the timescales for any existing commissioning cycle relevant to the service which an expression of interest relates to, or any other relevant Council processes (e.g. Council / Committee decision making or budget setting).

5. Brief details of the expression of interest will be posted on the Council web page.
6. The Expression of interest will be checked to ensure that it is valid e.g. it comes from a relevant organisation, it has been submitted within any prescribed timeframes and provides the prescribed information.
7. If valid, confirmation will be sought that the expression of interest refers to a current and continuing service of the Council.
8. All expressions of interest will be considered by the Council's Policy Committee. In considering the expression of interest the Council will have regard to how any subsequent procurement exercise can promote or improve the social, economic or environmental well being of its area. This will ensure the Council takes account of the benefits that relevant bodies and others can provide over and above delivery of the service. The Council will also take account of the best value duty. The regulations require authorities to undertake these considerations in a way that complies with procurement law.
9. The organisation submitting the expression of interest will be informed of the decision and the reasons for any rejection or modification request.
10. Should the expression of interest be approved then the organisation who submitted it will be informed, the decision posted on the Council public website and a procurement exercise put in place. This will follow the normal Council procurement procedure.
11. The Council will specify and publish the minimum and maximum period between an expression of interest being accepted and a procurement exercise starting. Different periods may be specified for different cases. In specifying a period the Council will have regard for:-

the need to provide employees of the Council, and other relevant bodies, with a fair and reasonable and realisable opportunity to bid in the procurement exercise for the service;

the nature, scale and complexity of the service being procured;

the timescales for any existing commissioning cycle relevant to the service being procured, or any other relevant Council processes (e.g. Council Committee decision making or budget setting).

Annex B – Relevant Bodies

Relevant bodies who can submit a Community Right to Challenge expression of interest are:

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.

Partnership working: relevant bodies may submit expressions of interest both with other relevant bodies and with non-relevant bodies. Information in the expression of interest must be provided in respect of all partners.

Joint ventures: An incorporated joint venture would have to meet the definition of a relevant body, however, in a contractual joint venture, in which the parties keep their separate identity, it is sufficient that one organisation meets the definition of a relevant body.

Further detail is provided in the regulations.

Annex C – Functions and Services

The Right to Challenge can be used in relation to services but not function of the Council. The Department of Communities and Local Government has provided two examples of what constitutes a function and a service, which are set out below:

Example 1: Planning

Section 70(1) of the Town and Country Planning Act 1990 gives powers to local planning authorities to grant or refuse planning permission where a planning application is made to the Council. The right does not allow for the function of determining planning applications to be provided by a third party.

The delivery of planning functions, for example the processing of a planning application (not the decision), may be carried out by the local planning authority itself, or by a third party on behalf of the authority.

Example 2: Youth justice

The Crime and Disorder Act (1998) places a duty on local authorities to ensure there is appropriate provision of youth justice services. Decisions (reached following consultation with interested parties as part of the commissioning cycle) on which services are provided, where they are located, funding etc. are a function of the authority. The Community Right to Challenge will not apply here.

Individual (parts of) services with young people to prevent further offending may be provided by the local authority, or by a third party on behalf of the authority. This means the authority would set out the requirements of the service as part of any procurement exercise which potential providers would bid to deliver. This may, for example, include addressing specific difficulties faced by young offenders, such as drug and alcohol problems or homelessness. The right will apply here.

Annex D – Expressions of interest, setting periods for acceptance.

In specifying periods for submission of expressions of interest, the Council should have regard to the following factors:

- a) The need to provide relevant bodies with sufficient time to prepare and submit expressions of interest. In considering this the Council may take account of how much notice they are giving relevant bodies ahead of the period;
- b) The nature, scale and complexity of the relevant service for which a period is being specified. For example, it may take relevant bodies longer to prepare expressions of interest for larger, complex services than smaller more straightforward ones; and
- c) The timescale for any existing commissioning cycle relevant to the service for which a period is being specified, or any other relevant authority processes. These may include Council decision making or budget setting processes.

If the Council should opt to specify periods the regulations encourage considering where such periods can be aligned allowing expressions of interest relating to two or more services to be submitted.

Annex E– Grounds for rejecting an expression of interest

The following form the statutory grounds for rejecting an expression of interest:

- a) The expression of interest does not comply with any of the requirements specified in the Act or in regulations.
- b) The relevant body provides information in the expression of interest which in the opinion of the Council, is in a material particular inadequate or inaccurate.
- c) The Council considers, based on the information in the expression of interest, that the relevant body or, where applicable-
 - any member of the consortium of which it is a part, or
 - any sub-contractor referred to in the expression of interestis not suitable to provide or assist in providing the relevant service.
- d) The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the Council to stop providing that service.
- e) The expression of interest relates to a relevant service -
 - provided, in whole or in part, by or on behalf of the Council to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service; and
 - the continued integration of such services is, in the opinion of the Council, critical to the well-being of those persons.
- f) The relevant service is already the subject of a procurement exercise.
- g) The Council and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.
- h) The Council 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.
- i) The Council considers that the expression of interest is frivolous or vexatious.
- j) The Council 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.

Annex F – Expression of interest requirements

- a) Where the relevant body proposes to deliver the relevant service as part of a consortium or to use a sub-contractor for delivery of any part of the relevant service, the information in paragraphs b and c must be given in respect of each member of the consortium and each sub-contractor as appropriate.
- b) Information about the financial resources of the relevant body submitting the expression of interest.
- c) Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing or assisting in providing the relevant service.
- d) Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates.
- e) Information about the outcomes to be achieved by the relevant body or, where appropriate, the consortium of which it is a part, in providing or assisting in the provision of the relevant service, in particular:
 - how the provision or assistance will promote or improve the social, economic or environmental well-being of the Council's area; and
 - how it will meet the needs of the users of the relevant service.
- f) Where the relevant body consists of employees of the Council, details of how that relevant body proposes to engage other employees of the Council who are affected by the expression of interest.

Annex G - Notifying decisions on expressions of interest

In specifying periods for notifying relevant bodies of decisions on expressions of interest, the Council should have regard to the following factors:

- a) The need to notify relevant bodies of a decision within a reasonable period;
- b) The nature, scale and complexity of the service to which expressions of interest relate (for example is the service shared with one or more other relevant authorities, or jointly commissioned with one or more other public bodies?);
- c) The complexity of the expressions of interest received (for example do they propose radical change to the way a service is delivered?);
- d) The likely need to agree modifications to expressions of interest in order to accept them
- e) The timescales for any existing commissioning cycle relevant to the service which an expression of interest relates to, or any other Council processes. These may include Council decision making or budget setting processes.

Annex H - Period between an expression of interest being accepted and a procurement exercise starting.

In specifying these periods the Council should have regard to:

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