

How does the Right to Challenge process work?

1. Expression of interest

An expression of interest form must be completed by relevant bodies wishing to be considered for providing or assisting in the provision of a service.

Timetables for submitting expressions of interests for particular services will be published on the Council's public website. Timescales may vary due to a number of factors.

Expressions of interest may be received at any time for a service which has no particular specified timetable.

An expression of interest form must be completed by relevant bodies wishing to be considered for providing or assisting in the provision of a service.

The expression of interest will be acknowledged within 30 days of receipt, with advice on the latest date the decision will be given by.

Expressions of Interest can be submitted to: corporate.procurement@nottscc.gov.uk by completing the expression of interest form.

See the [statutoryguidance](#) for further details and definitions.

Relevant bodies

Relevant bodies listed in the Localism Act 2011, are organisations or groups which can express an interest in providing a relevant service. They 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 County Council
- 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.

See the [statutory guidance](#) for further details and definitions.

2. Decision

All valid expressions of interests referring to a current or continuing Council service will be considered by the Council's Policy Committee.

The organisation which has submitted the expression of interest will be informed of the decision. Decisions will also be posted on the public website.

Reasons will be given if an expression of interest has been rejected or a modification has been requested.

The County Council may only reject an expression of interest on one or more grounds specified in the regulations (see below).

Accept

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:

- the expression of interest does not comply with any of the requirements specified in the Act or in regulations
- the relevant body provides information in the expression of interest which the relevant authority considers to be inadequate or inaccurate.
- the relevant authority considers, based on the information in the expression of interest, that the relevant body or, where applicable a) any member of the consortium of which it is a part, or b)

any sub-contractor referred to in the expression of interest is not suitable to provide or assist in providing the relevant service

- 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
- the expression of interest relates to a relevant service a) 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 b) the continued integration of such services is, in the opinion of the relevant authority, critical to the wellbeing of those persons
- the relevant service is already the subject of a procurement exercise
- 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
- 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
- the relevant authority considers that the expression of interest is frivolous or vexatious
- 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.

See the [statutoryguidance](#) for further details.

3. Procurement

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 delay the start of the procurement exercise for a reasonable time to allow the successful organisation time to prepare for procurement.

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 [procurementand 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.

Other points to consider

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 put in 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 one area?
- 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?