

**REPORT FOR: OVERVIEW AND
SCRUTINY COMMITTEE**

Date of Meeting:	20 September 2012
Subject:	Community Right to Challenge
Responsible Officer:	Hugh Peart, Director of Legal and Governance Services
Scrutiny Lead Member area:	Corporate Resources
Exempt:	No
Enclosures:	Appendix - Detailed analysis of legislation Flow chart of admin process for dealing with Expressions of Interest

Section 1 – Summary and Recommendations

This report sets out the provisions and some of the implications of the Community Right to Challenge which was established by the Localism Act.

Recommendations:
That the Committee notes the report.

Section 2 – Report

Introductory paragraph

The Community Right to Challenge came into effect on 27 June 2012, and opens the way for voluntary and community organisations, not-for-profit organisations, charities, and social enterprises to trigger a procurement process by expressing an interest in providing or assisting in the provision of council services. Statutory guidance explaining the legislative framework for the community right to challenge was published in July 2012. This guidance states that two or more local authority employees can put forward an expression of interest. Whilst they are not expected to have finalised all of their arrangements before submitting an expression of interest the guidance says that they will probably need to form a separate legal entity in order to bid in the procurement exercise. When a procurement process begins in-house bids (the council) are permissible.

The Right to Challenge extends to all services except for a defined set, which are mostly based on those delivered in partnership with the NHS (although this is time limited to April 2014) and services commissioned or provided for a named person with complex health or social care needs (not time limited). All other services, including waste, housing management, education, and back office and support services are subject to the Right. However, services need to be distinguished from undertaking functions – such as determining planning applications, which are not within the scope of the right. An expression of interest should also be for a workable package of services, not an uneconomic part or too great a collection of services that would not be economic or workable.

On receipt of an application, the Council considers whether to accept or reject the proposal (with possible modifications). An application may only be rejected on specific grounds as set out in the guidance. In the first instance all expressions of interest must provide:

- § A description of the organisation's make up and formation
- § Information about financial resources
- § Evidence of how their proposal will work
- § Identification of the service and geographical area(s) to which it relates
- § Explanation of the outcomes to be achieved
- § How it will improve the social, economic and environmental well-being of the area, or how it will meet the needs of service users
- § Any other relevant information
- § In the case of employees of the council, their proposals for staff engagement across the council

If an expression of interest is found to be inadequate or inaccurate against any of these requirements it can be rejected. If it provides all the required information above, it can still be rejected if it relates to: a service that is no longer provided by the council; a service for which a procurement exercise has already been started; a service for which the council is already in negotiations with a third party for service provision, or is actively pursuing a staff-led mutual; if it would lead to a breach of a statutory duty, is part of a

critical integrated service with the NHS, or is frivolous or vexatious. Otherwise the application is accepted and a normal procurement exercise proportionate to the value and costs of the service in question is triggered.

The Council is responsible for setting the timetable and publishing details of the local framework and certain stages in the process on its website. For example, for services already contracted out, a timetable for accepting expressions of interest could be drawn up based on the current contracts register setting out defined periods before the expiration of the existing contract. For services not currently the subject of a contract, the Council could set specific windows for the receipt of expressions of interest (e.g quarterly).

The guidance provides a list of relevant bodies that can use the right. This list could be extended at any time, especially if take up is not high enough. Acceptance of an expression of interest leads to a procurement exercise, through which any organisation will be able to be considered to run the service. It is not a given that whoever submits the expression of interest automatically wins the procurement exercise because the council must still run a competitive procurement competition in compliance with public procurement rules. However, the Council's sustainable procurement policy, which would set the context for any procurement exercise, does set out how the Council intends to use its procurement spend to support local businesses and voluntary and community sector groups where this is allowed under public procurement rules.

Work is underway to establish a process for dealing with Expressions of Interest that might be received. The current thinking around the admin processes is attached as a flowchart. The decision-making processes are still under consideration as are the policy opportunities that the legislation presents.

A detailed analysis of the legal provisions including comments from the Statutory Guidance is attached as an Appendix.

Financial Implications

There are no financial implications arising from this information report.

Performance Issues

Performance issues will arise from the receipt of Expression of Interest and will be dealt with in the consideration of the response.

Environmental Impact

There are no environmental impacts arising directly from this report.

Risk Management Implications

There are no risk management implication arising directly from this report

Equalities implications

An Equality Impact Assessment will be prepared on the final process for responding to Expressions of Interest.

Corporate Priorities

The Community Right to Challenge could have implications for all of the Council's Corporate Priorities depending on the services to which it is applied. More generally, the Right could support United and Involved Communities and Supporting our town centre, local centres and businesses.

Section 3 - Contact Details and Background Papers

Contact: Hugh Peart, Director of Legal and Governance Services,
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Background Papers: Statutory guidance