



Community Right to Challenge Policy

Introduction

1. The Community Right to Challenge, which commenced on 27 June 2012, is one of the main features of the *Localism Act 2011*. At its heart, it states that a 'relevant body' may express an interest in providing a service that is currently provided by, or on behalf of, the Council.
2. It does not provide for the **delegation of the functions** of a relevant authority, as the responsibility for the function itself remains with the Council. For example, a 'relevant body' could submit to run the processing of planning applications but it could not submit to *determine* planning applications.
3. As a 'relevant authority', the Council is required to produce a policy that outlines how it will respond to any Expressions of Interest (EOIs) from 'relevant bodies' to run services currently provided by the authority.
4. The Council will accept or reject the EOI based upon criteria set out in the regulations. If a challenge is accepted then this triggers a procurement exercise in the open market in accordance with the procurement regulations. The 'relevant body' that submitted the EOI may bid alongside others in the procurement exercise, which will be undertaken in compliance with the Council's and, if applicable, EU procurement policies and directives.

Which Services can be 'Challenged'?

5. The Community Right to Challenge applies to **all Council services** (in whole or in part), that are currently provided by the Council either directly or on its behalf (e.g. commissioned services or partnerships with third parties), with a small number of exceptions.
6. The only services **excluded** from the Right are:
 - Until 1 April 2014, a service commissioned, in conjunction with one or more health services, by the Council or an NHS body under a partnership arrangement or acting jointly;
 - Until 1 April 2014, a service commissioned by an NHS body on behalf of the Council; or,
 - A service commissioned or provided by the Council in respect of a named person with complex individual health or social care needs.



Who can submit an Expression of Interest (EOI)?

7. As defined by the *Localism Act*, the following are classed as 'relevant bodies' and, therefore, may submit an EOI to run Council services:

- A voluntary or community body;

The definition of a 'voluntary or community body' is intended to be broad, and, therefore, reflects the required characteristics of such bodies, rather than specific types of organisational structure.

- A body of persons or a trust, which is established for charitable purposes only;

Bodies of persons or trusts established for charitable purposes only may be a voluntary or community body, but are eligible to use the right

- A parish council;

Parish councils are not listed as 'relevant authorities' and, therefore, do not have to accept EOIs themselves but are relevant bodies so can submit EOIs to provide services

- Two or more employees of the relevant authority, or;

*Employees of the local authority are eligible to submit expressions to take on the running of services but it is not expected that they will have finalised their arrangements in relation to forming separate legal entities **before** they submit their expression of interest. The period between the expression being accepted and the procurement exercise being carried out will allow for this.*

- Any other person or body specified by the Secretary of State by regulation

Process

8. Under the legislation, local authorities have the discretion to specify time periods within which they will allow EOIs to be submitted.

9. From 2013, South Tyneside Council will allow EOIs to be submitted between 1 April and 30 September, as this period is after the agreed Council budget has been set, and prior to consultation of the next budget. It will then enable the Council to take account of any potential EOIs within the annual budget cycle.

10. For **2012 only**, EOIs may be submitted and considered by the Council between 1 November and 31 December.

11. All EOIs should be made by submission of an EOI Form to the Head of Corporate and Commercial Services.



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12. Upon receipt of an EOI Form, the Head of Corporate and Commercial Services will consult with the Head of Finance, Head of Legal Services and the relevant Head of Service or Corporate Lead before recommending to Cabinet whether or not the Expression of Interest should be accepted or rejected. Due to the potentially significant change to service operation and delivery proposed by an EOI, all decisions to accept an EOI must be ratified by Cabinet.
13. The Council will notify the relevant body of the timescales within which it will inform the body of its decision **within 30 days** of receiving the EOI Form.
14. The Council may accept or reject the EOI based upon criteria set out in the regulations. If a challenge is accepted then this triggers a procurement exercise in the open market, in accordance with the procurement regulations.

EOI Requirements

15. An EOI must be in writing, on the appended Form, and must comply with certain prescribed requirements. These are:
 - Information demonstrating that the applicants meet the definition of a 'relevant body';
 - Information about the financial resources of the relevant body submitting the EOI;
 - Evidence that demonstrates that, by the time of any procurement exercise, the relevant body submitting the EOI will be capable of providing or assisting in providing the relevant service;
 - Information about the relevant service sufficient to identify it and the geographical area to which the EOI relates;
 - 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:
 - i. How the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant authority's area; and,
 - ii. How it will meet the needs of the users of the relevant service.
 - Where the relevant body consists of employees of the relevant authority, details of how that relevant body proposes to engage other employees of the relevant authority who are affected by the EOI.

When can an EOI be rejected?

16. The Council may reject an EOI on one or more of the grounds specified below:
 - The EOI does not comply with any of the requirements specified in the Act or in regulations;
 - The information provided in the EOI is inadequate or inaccurate;



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- The Council considers, based on the information received, that the relevant body, or where applicable any of its partners or sub-contractor referred to in the EOI, are not suitable to provide or assist in providing the relevant service;
- The EOI relates to a relevant service where a decision, evidenced in writing, has been taken by the Council to stop providing that service;
- The EOI relates to a relevant service:
 - i. 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,
 - ii. The continued integration of such services is, in the opinion of the Council, critical to the well-being of those persons.
- The relevant service is already the subject of a procurement exercise;
- 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;
- The Council has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of that authority propose to establish;
- The Council considers that the EOI is frivolous or vexatious; or,
- The Council considers that acceptance of the EOI is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.

17. The Council may work with bodies to assist them to modify their EOI, rather than reject it immediately, if they believe the EOI could be successful with minor adjustments. This can include seeking information that was required but missing from the initial EOI.

18. If the Council decides to reject any EOI, the Council will publish the justification for this on their website.

The Procurement Exercise

19. If the Council accepts an EOI then it will commence a procurement exercise in respect of the relevant service.

20. The scoping of the procurement process will commence within 1 month of the acceptance, where the service is not already under contract. Where the service is already under contract, the procurement process commence in line with the standard procedure for contracts nearing expiration.

21. The procurement process will be in accordance with Council and EU procurement policies and directives and will be proportionate to the value and nature of the propose contract.