



Policy and Resources Committee – 14 January 2013

Community Right to Challenge Policy

Purpose of report: To provide Members with an understanding of the new Community Right to Challenge, and seeks member approval of the Council's Community Right to Challenge Policy

Attachment(s)

Appendix 1 – Community Right to Challenge Policy

1.0 Background

- 1.1 The Community Right to Challenge (CRtC) was introduced as part of the Localism Act 2011 (the Act) and came into force on 27 June 2012.
- 1.2 The CRtC gives people the right to challenge to take over local services that they think they can run differently and better. 'Relevant bodies' (as listed below in paragraph 2.3) have the opportunity to express an interest to run a service currently delivered by or on behalf of East Northamptonshire Council.

2.0 Community Right to Challenge

- 2.1 The policy appended to this paper sets out the way in which the Council will deal with any expressions of interest it receives in respect of running Council services.
- 2.2 The majority of the process is governed by legislation contained within the Act and leaves little scope for discretion. The statutory guidance provided by the Department for Communities and Local Government (DCLG) sets out who may make an expression of interest, the services that are covered by the Act, the information required in the expressions of interest and the grounds whereby an expression of interest may be rejected.
- 2.3 'Relevant bodies' that may exercise the Right 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 (East Northamptonshire Council)
 - Any other person or body specified by the Secretary of State by regulations
- 2.4 Services that fall within the remit of the Right are those which are provided by or on behalf of East Northamptonshire Council in the exercise of its functions.
- 2.5 Officers have taken the view, along with many other councils, that the process will be more manageable if a timeframe for receiving expressions of interest regarding services that are currently run by the Council is identified. This means that these decisions can be taken at the appropriate time in the service planning and budget process. Services that are currently run by a third party on the Council's behalf will be subject to their own timetable to coincide with the end dates for existing contracts.
- 2.6 If a group that meets the definition of a relevant body submits an expression of interest that includes the information required in the statutory guidance, it may only be rejected

on one or more of the grounds specified in the Regulations, and listed in the policy.

2.7 If accepted, the expression of interest triggers a full procurement exercise which is open to all and must comply with relevant procurement law.

3.0 Equality and Diversity implications

3.1 There are no equality and diversity implications arising from this policy as it is largely governed by legislation. Decisions on whether to accept an expression of interest will need to be taken using the criteria set out in the legislation.

4.0 Legal implications

4.1 The Localism Act (“the Act”) was enacted on 15 November 2011. The relevant provisions were brought into force on 27 June 2012. The legislation places requirements on local authorities in England, including district councils.

5.0 Risk management

5.1 There is a risk that the Council will receive numerous bids to run services and will be required to administer these and potentially run procurement exercises which will need to be resourced.

5.2 Subject to any expression of interest being approved, the resultant procurement exercise will seek to establish to maintain or increase service delivery standards, at an acceptable risk to the Council.

6.0 Financial implications

6.1 Other than Officers’ time, there are no additional costs involved in the implementation of the Community Right to Challenge regulations. Subject to any expression of interest being approved, the resultant procurement exercise will seek to establish to maintain or increase service delivery standards, at the same or lesser cost to the Council.

7.0 Corporate outcomes

7.1 The following corporate outcomes are applicable:

- Council services which provide good value for money
- High quality service delivery
- Effective partnership working
- Effective management

8.0 Recommendations

8.1 The committee is recommended to:

1. Approve the Community Right to Challenge Policy (as per Appendix A)
2. Resolve to recommend to Council delegation to the Chief Finance Officer, in consultation with the Chairman of the Finance Sub-Committee, authority to accept or reject Expressions of Interest in accordance with statutory regulations and the council’s policy.
(reason: to ensure compliance with the Localism Act)

Legal	Power:
	Other considerations:
Background Papers: None	
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Date: 18 December 2012					
CFO		MO		CX	

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Community Right to Challenge Policy

Contract



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January 2013

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Links to other documents

Document	Link
Community Right to Challenge: Statutory Guidance	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5990/2168126.pdf

Additional Comments to note

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1.0 Introduction

- 1.1 This policy sets out the procedure the Council will follow when dealing with the Community Right to Challenge (CRtC) which was introduced by the Localism Act 2011 (the Act).

2.0 Scope

- 2.1 The policy covers relevant services, defined by the *Community Right to Challenge: Statutory Guidance* as a service provided by or on behalf of a relevant authority (which in this case is East Northamptonshire Council) in the exercise of its functions (i.e. the things that relevant authorities are required to do or may do).
- 2.2 The Right only applies to the provision of services (i.e. what it is necessary to provide in order for the Council to carry out its functions). It does not provide for delegation of the functions of East Northamptonshire Council, and the responsibility for the function remains with this Council. Certain exclusions apply; these are set out in the statutory guidance.
- 2.3 The Council will consider expressions of interest from relevant bodies. The Act lists the following as relevant bodies:
- 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 (which in this case is East Northamptonshire Council)
 - Any other person or body specified by the Secretary of State by regulations.
- 2.4 Further information about the scope of the CRtC and other Community Rights established under the Localism Act is available from <http://communityrights.communities.gov.uk/> and <http://mycommunityrights.org.uk/>

3.0 Policy outcomes

- 3.1 The outcomes to be delivered by this policy are:

Community Right to Challenge Policy outcomes	Links to corporate outcomes
<ul style="list-style-type: none"> • The Council meets its duties under the Localism Act 2011 • Community groups are aware of the process to follow when they would like to challenge to run local services • The Council's processes are 	<ul style="list-style-type: none"> • Council services which provide good value for money • High quality service delivery • Effective partnership working • Effective management

transparent	
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4.0 Community Right to Challenge Policy

- 4.1 The Community Right to Challenge (CRtC) gives people the right to challenge to take over local services that they think they can run differently and better.
- 4.2 Relevant bodies (as listed in paragraph 2.3) may submit an expression of interest (EOI) to run a particular service. The Council must consider each expression of interest received, and where this meets criteria in the statutory guidance and is accepted, the Council must then carry out a procurement exercise for the service.
- 4.3 For services currently delivered by East Northamptonshire Council, the scheme is open for expressions of interest during the month of April each year, starting in April 2013.
- 4.4 For council services that are currently delivered by another organisation through a contract with the Council, the scheme is open for expressions of interest during the period of three months starting 15 months and ending 12 months before the contract expiry date. For example, if a contract expires on 31 December 2014, expressions of interest would be received between 1 October and 31 December 2013.
- 4.5 It is likely that any expressions of interest made outside the relevant timeframe will not be considered.

4.6 Submitting an expression of interest

- 4.7 Any expression of interest should include the following information:
- Information about the financial resources of the relevant body submitting the expression of interest
 - 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
 - Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest 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:
 - How the provision or assistance will promote or improve the social, economic or environmental well-being of East Northamptonshire; and
 - How it will meet the needs of the users of the relevant service
 - Where the relevant body consists of employees of East Northamptonshire Council, details of how that relevant body proposes to engage other employees affected by the expression of interest

Where the relevant body proposes to deliver the service as part of a consortium or to use a subcontractor to deliver part of the service, the above information should also be provided in respect of each consortium member and subcontractor.

- 4.8 It would help if an expression of interest also contained the following information, although this is not mandatory:
- Details of any consultation that has taken place with potential users of the proposed service and any other groups or communities with a legitimate stake in the service, and the outcomes of that consultation
 - An explanation of how the service in question will be improved in quality by its transfer to an alternative provider. This could include comparison with either the current service standards or with proposed new service standards if the service in question is being reduced or reconfigured as part of the Council's budget process
 - Details of how the proposed alternative provision will operate within the current budget of the existing service or within any reduced level of budget that is being considered
- 4.9 When an expression of interest is received, we will inform in writing the relevant body that submitted the expression of interest of the timetable for deciding whether it has been accepted or rejected within 30 days of receiving it. As a guide, the timescale for determining an expression of interest will be between six and 26 weeks depending on the size and complexity of the service it refers to.
- 4.10 The Council may ask the relevant body to modify an expression of interest if otherwise the EOI would be rejected, for example if it does not provide sufficient information.
- 4.11 Considering an expression of interest**
- 4.12 Expressions of interest will be considered, with regard to the statutory guidance, by the Chief Finance Officer, in consultation with the Chairman of the Finance Sub-Committee. If the expression of interest meets the criteria, this will trigger an open procurement exercise which must comply with procurement law.
- 4.13 The Council must, in considering an expression of interest, consider whether acceptance of the EOI would promote or improve the social, economic or environmental wellbeing of East Northamptonshire.
- 4.14 A relevant body may withdraw an expression of interest after submitting it (whether before or after the EOI has been considered). The withdrawal of an expression of interest, or the refusal of a relevant body to agree to a modification of an EOI, does not prevent the Council from proceeding with a procurement exercise if we think it is appropriate to do so.
- 4.15 Reasons to reject an expression of interest**
- 4.16 The Council may only reject an expression of interest on one or more of the following grounds:
- The expression of interest does not comply with any of the requirements specified in the Act or in the regulations
 - The relevant body provides information in the expression of interest which in our opinion is inadequate and/or inaccurate

- 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 EOI is not suitable to provide or assist in providing the relevant service
- 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
- The expression of interest relates to a relevant service:
 - Provided, in whole or in part, by or on behalf of East Northamptonshire 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 our opinion, critical to the wellbeing of those persons
- The relevant service is already the subject of a procurement exercise
- The Council and a third party have already 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 two or more specified employees of East Northamptonshire Council propose to establish
- The Council considers that the expression of interest is frivolous or vexatious
- 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

4.17 The procurement exercise

- 4.18 If the Council accepts an expression of interest for a relevant service, it will trigger an open procurement exercise. This means that the relevant body that triggers the procurement exercise may not eventually be the provider of that 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, and must comply with procurement law.
- 4.19 Where the service is of a value or nature to which the Public Contracts Regulations 2006 apply and/or is not listed as an exempt service in Part B of those regulations, the procurement exercise must follow the procedures for advertising, specifying and awarding contracts set out in those regulations.
- 4.20 Where the Public Contracts Regulations do not apply – i.e. where the service is worth less than the threshold value, or is listed in Part B of the 2006 regulations, the Council may decide how to procure the service. This applies in the same way to procurement exercises triggered by the Community Right to Challenge as those which are not. Generally, Part B services are those that the EU has considered would largely be of interest only to bidders located in the Member State where the contract is to be performed.
- 4.21 The Council must consider how expressions of interest and procurement exercises triggered by one or more expressions of interest being accepted would promote or improve the economic, social or environmental well-being of East Northamptonshire. This must be consistent with the law applying to the awarding of contracts.

4.22 Monitoring of this policy

4.23 This policy will be reviewed in three years, or sooner if there are legislative changes.

5.0 Glossary of terms

Term	Definition
Relevant authority	Public body listed in the Act and the Regulations whose services can be challenged under the Community Right to Challenge. The Act lists district, county and London borough councils as relevant authorities. Certain fire and rescue authorities are added as relevant authorities in the Regulations.
Relevant body	A body listed in the Act which can express an interest in providing a relevant service. The Act lists voluntary and community bodies, bodies of persons or trusts established for charitable purposes only, parish councils and two or more employees of the relevant authority as relevant bodies. Other persons or bodies can be specified as relevant bodies by regulations.
Relevant service	A service provided in the exercise of any relevant authority's functions, either by the relevant authority using its own workforce, or provided on its behalf under a service contract or some other arrangement, unless such a service is excluded from the Community Right to Challenge in the regulations.

Appendix A – Expression of interest form – to be included in adopted policy

