

Community Right to Challenge (CRTC) Policy & Guidance

December 2012

Final Draft for Consultation

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Context

The Localism Act 2011 introduces a new Community Right to Challenge (CRTC). This allows various groups to express an interest in providing or assisting with the provision of a service on behalf of the Council. Relevant Bodies can use this right by submitting an Expression of Interest (EoI).

This power came into effect on the 27th June 2012.

The Council must consider any expressions of interest and if acceptable under the legislation must run a full procurement process for the future running of that service.

This policy sets out the details of the Council's approach and process to dealing with the Community Right to Challenge.

The policy and associated procedures are consistent with and will have due regard to the Department of Communities and Local Government's Community Right to Challenge: Statutory Guidance.

Links to other key relevant policies and strategies

The Community Right to Challenge policy and process will be carried out in line with the Council's other relevant policies and procedures as appropriate. Specifically pertinent are:

- The Medium Term Financial Strategy
- The Council's Corporate Plan
- The Procurement Strategy
- Equality Policy
- Core Strategy and associated supplementary planning documents
- Community Asset Transfer Policy and Guidance
- Community Right to Bid Policy and Guidance (under development)

What is Community Right to Challenge?

The Community Right to Challenge is a community right introduced by the Localism Act 2011. The Right to Challenge enables eligible groups to express an interest in running a local authority service:

- It gives them the extra time they need to be able to compete fairly in an open procurement exercise.
- It provides a way of opening up public service delivery to groups and organisations other than those in the public and private sector.

Who has the Right to Challenge?

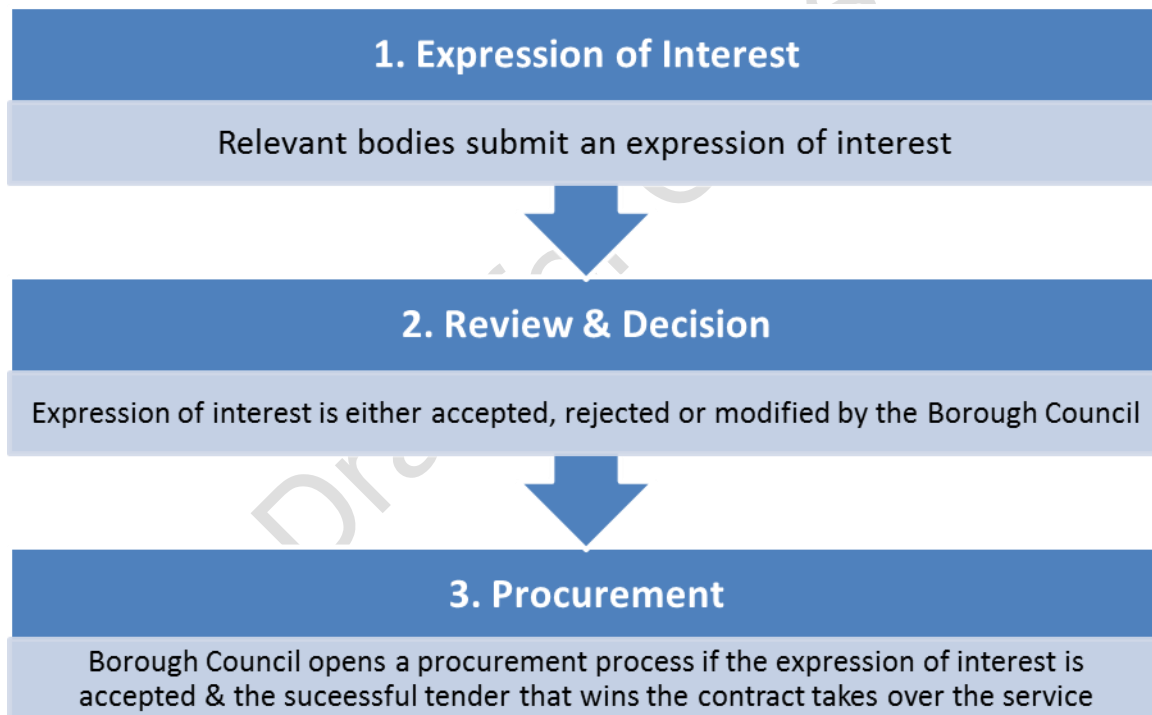
These following bodies (referred to as 'relevant bodies') are able to invoke the Right to Challenge:

- A voluntary or community body
- A charitable trust or body
- A town or parish council or
- Two or more employees of the council.

Further detail on relevant bodies can be found in the [Statutory Guidance](#).

How does the Community Right to Challenge process work?

Overview:



Expression of Interest - how and when to challenge

Under the Community Right to Challenge an Expression of Interest (EoI) to take on provision of a Council service can be submitted. A successful challenge will result in an open competitive procurement exercise in which the challenger would be able to take part along with other interested organisations. The Act does not give an automatic right to the organisation expressing an interest to deliver the service, nor is it guaranteed the organisation will be successful in any procurement exercise.

Submitting an expression of interest is the first formal step in using the Right to Challenge. The Council's Right to Challenge Expression of Interest form is available to download from our website.

Rossendale Borough Council accepts Expressions of Interest under the Right to Challenge at any time during the year. However, any related procurement exercise will be synchronised with the current commissioning cycle and current contractual agreements for service delivery. This will be dealt with on a case by case basis.

The Community Right to Challenge applies to almost all of the Council's services including those which are contracted out to other providers. A small number of services are excluded under the Right (until 1st April 2014), these are mainly health and social care needs commissioned in conjunction with the NHS. For full details see the government's [Statutory Guidance - Section 2 Relevant Services](#).

The right 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. In this instance statutory functions refer to the services for which the Council has responsibility for including making decisions about those functions governance and the commissioning of service provision. Full details and examples are set out in the government's [Statutory Guidance - Section 2 Relevant Services](#).

What information is needed in an Expression of Interest (Eoi)

The statutory guidance from central government sets out information required in an Eoi so that they can be fully and fairly assessed (see Eoi Form for full details of requirements).

This includes:

1. 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 points 2 and 3 below must be given in respect of each member of the consortium and each sub-contractor as appropriate.
2. Information about the financial resources of the relevant body submitting the expression of interest (see Eoi Form for full details of requirements).
3. 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.
4. Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates.
5. 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:

- (a) How the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant authority's area; and
 - (b) How it will meet the needs of the users of the relevant service.
6. 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 expression of interest.

How will you deal with my Eoi?

We will acknowledge receipt of your Expression of Interest, and when we will consider it, within 30 working days of receipt.

We will specify the maximum period that it will take to notify you of our decision on your expression of interest this could take up to 6 months. Different periods may be set for different cases depending on their complexity.

The Expressions of Interest will be considered by Rossendale Borough Council and notification of the outcome will be given to the relevant body.

When an Expression of Interest is accepted we will put in place an open procurement exercise in line with current procurement regulations. The timescale for this will vary according to the nature and circumstances of the service that the Expression of Interest relates to. For example if you are submitting an Expression of Interest for a service that is already subject to a contract we will need to take into account the period of time that the contract still has to run.

Eoi Decision

The decision will be one of three options, 'accept', 'accept with modification' or 'reject'.

Accept

The group who has submitted the expression of interest will have presented a strong case that they could provide the relevant service. We will then run a procurement exercise to find the best provider.

Accept with modifications

We may seek to agree to an expression of interest being modified if we believe would otherwise reject it. If an agreement cannot be reached, we may reject the expression of interest. See [Statutory Guidance Section 7](#).

Reject

Government has set out a series of reasons why an expression of interest may be rejected:

1. The expression of interest does not comply with any of the requirements specified in the Act or in regulations.

2. The relevant body provides information in the expression of interest which in the opinion of the relevant authority, is in a material particular inadequate or inaccurate.
3. 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.
4. The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service.
5. 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 persons 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 well-being of those persons.
6. The relevant service is already the subject of a procurement exercise.
7. The relevant authority and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.
8. The relevant authority 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.
9. The relevant authority considers that the expression of interest is frivolous or vexatious.
10. 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.

We will notify the relevant bodies who have submitted an expression of interest of the decision and we will make public our decision.

If we decide to reject an expression of interest, we will publish the decision and the reasons for that decision online. See [Statutory Guidance Section 6](#).

The Procurement Exercise

This will depend on the nature and value of the service contract being considered. As is already the case, authorities will need to comply with procurement law.

If the Council (the 'relevant authority') accepts an expression of interest (even with modification) for a 'relevant service', or part of a service, this triggers a procurement exercise to select the most appropriate service provider. 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. Once an expression of interest is accepted, a specification for the service will be produced and the interested group will then take part in the procurement exercise, alongside other interested parties. The Community Right of Challenge does not allow for a service to be run for a trial period. For guidance on Rossendale Borough Council's contracting thresholds the authority's contract procedure rules can be accessed via our website, [Part 4 – Rules of Procedure](#).

The Council has a duty of best value under the Local Government Act 1999 and The Public Services (Social Value) Act 2012¹ to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area, whilst also complying with public procurement law. Any procurement process undertaken will comply with the Public Contract Regulations and European Union (EU) procurement rules. This process is open to competition and involves all potential providers, including the private sector to submit an invitation to tender.

¹ To be implemented January 2013.

APPENDICES

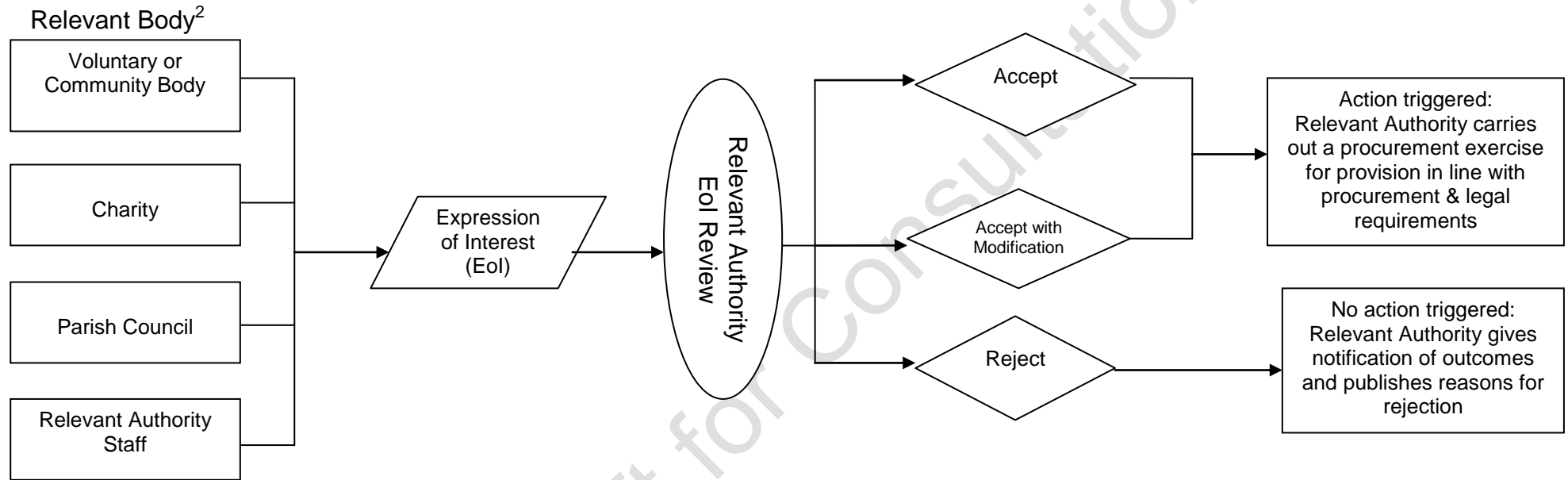
Appendix 1: Expression of Interest Form

This can be downloaded from our website here: [EoI Form hyperlink](#)

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Appendix 2 Process overview diagram



In order to ensure an holistic approach, a community right to challenge may also have linkages to other key policies and strategies that will be taken into account according during the process e.g. core strategy and planning requirements, community right to bid and community asset transfer etc. This will be dealt with on a case by case basis with the relevant bodies concerned, dependent on the nature of the case.

² Relevant Body as determined by the Localism Act 2011 and Statutory Guidance as at December 2012.

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Appendix 3 - What to consider if you wish to use the Community Right to Challenge

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?

Appendix 4: Further Information

Useful websites / documents

Communities and Local Government Community Right to Challenge Statutory Guidance:

<http://www.communities.gov.uk/publications/communities/righttochallengestatguide>

Community Right to Challenge [grounds for refusal](#) - Section 6, page 19 of the pdf

Understanding the Community Right to Challenge

http://mycommunityrights.org.uk/wp-content/uploads/2012/04/LOCALITY-CHALLENGE_UNDERSTANDING2.pdf

HM Government Community Rights:

<http://communityrights.communities.gov.uk/>

Social Enterprise UK Council

<http://www.socialenterprise.org.uk/about/about-us/board-and-council/social-enterprise-council>

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