LOCALISM ACT 2011
COMMUNITY RIGHT TO CHALLENGE

1. Purpose

The purpose of the report is to inform Cabinet of the potential implications of the introduction of the Community Right to Challenge provisions of the Localism Act 2011 which came into force on 27 June 2012, and to seek views on the specification of time periods during which expressions of interest may be submitted.

2. The Legislation

2.1 The Community Right to Challenge is one of the key elements of the Government’s localism agenda. It is intended to enable communities to shape and run local services in the expectation that this will make services responsive to local needs, improve the quality of services and deliver better value for money.

2.2 Under the legislation, a relevant authority, which includes county councils, district councils, London boroughs and fire authorities, is obliged to consider an expression of interest in providing a service on the authority’s behalf if the expression of interest is made in writing to the authority by a “relevant body” and complies with requirements set out in regulations. For the purposes of the legislation, a relevant body is:

(a) a voluntary or community body;
(b) a body of persons or a trust which is established for charitable purposes only;
(c) a parish council;
(d) two or more employees of the authority;
(e) such other person or body as may be specified in regulations.

2.3 The requirements which must be complied with in making an expression of interest, are provision of the following information:

(a) Information about the financial resources of the relevant body;
(b) Evidence which demonstrates that the body, by the time of any procurement exercise, will be capable of providing, or assisting in providing, the service;
(c) Sufficient information to identify the service and the geographical area to which the expression of interest relates;
(d) Information about the outcomes to be achieved, in particular how it will promote or improve the social, economic and environmental well-being of the area and how it will meet the needs of service users;
(e) Where it is two or more employees who have expressed the interest, how it proposes to engage other employees of the authority who are affected by the expression of interest.

If it is proposed to deliver the service as part of a consortium or to use a subcontractor to deliver any part of the service, then the information in (a) and (b) above must be included for each member of the consortium or each subcontractor.

2.4 In relation to the relevant service, certain services are excluded from the right to express an interest. These are:

(a) a service commissioned in conjunction with one or more health services by the authority and an NHS body either under a partnership arrangement or acting jointly;

(b) a service commissioned by an NHS body on behalf of the authority;

(c) a service commissioned or provided by the authority in respect of a named individual with complex individual health or social care needs.

In relation to (a) and (b) above, such services are excluded only until 1 April 2014.

2.5 The grounds upon which an expression of interest can be rejected are:

(a) it does not comply with one or more of the requirements set out above;

(b) the information provided is, in the opinion of the authority, inadequate or inaccurate in a material particular;

(c) based on the information provided, the authority considers the body or, where applicable, any member of its consortium or any subcontractor is not suitable to provide or assist in providing the service;

(d) the expression of interest relates to a service which the authority has taken a decision (which can be evidenced in writing) to stop providing;

(e) the expression of interest relates to a service provided by the authority to persons who are also in receipt of a service from an NHS body which is integrated and the continued integration of the services in, in the authority’s opinion, critical to the well-being of the people concerned;

(f) the service is already the subject of a procurement exercise;

(g) the authority and a third party have entered into negotiation at least partly conducted in writing, for the provision of the service;

(h) the authority has published its intention to consider provision of the service by a body two or more of its employees propose to establish;

(i) the authority considers the expression of interest is frivolous or vexatious;
the authority considers the acceptance of the expression of interest is likely to lead to contravention of legislation or breach of statutory duty.

2.6 The authority is obliged to accept or reject an expression of interest, but may only reject it on one of the grounds set out above. If it decides to accept the expression of interest, it must carry out a procurement exercise within a period which it must set out. The authority must notify the body of when it expects to be able to notify the body of its decision.

2.7 It is a matter for the authority to determine whether periods should be specified during which expressions of interest may be submitted and if no periods are specified, expressions of interest may be submitted at any time. If periods are specified, then specifications in relation to those services must be publicised.

3. Guidance

3.1 The Department for Communities and Local Government (DCLG) has published statutory guidance to accompany the legislation and this is attached hereto at Appendix A. The final version of the guidance was published the day before the legislation came into force. In the previous draft, a paragraph was included which suggested that it would be unlikely for an in-house team to be able to submit a bid in a procurement exercise. This paragraph was removed from the final version of the statutory guidance, but the wording is set out at Appendix B for information and perhaps an indication of how this topic is viewed by Government.

4. Provision of Advice and Assistance

4.1 The Secretary of State has significant powers under the legislation to provide advice and assistance to relevant bodies. Assistance can include financial assistance not only to the relevant body, but to another body or person in connection with the operation of the Community Right to Challenge.

4.2 The DCLG has recently announced the provision of over £30 million to go towards specialist support for community groups wishing to take control of local assets or run local services. Of this £30 million, £11.5 million will be specifically allocated to assist “relevant bodies” in accessing advice and support to develop their skills in order to bid for and run local services. The majority of this funding will be given to groups in the form of grants; the remainder will be used to fund a website and telephone helpline.

5. Implications

5.1 It is clear that the range of services which can be subject to an expression of interest is very wide. In theory, a large number of expressions of interest might be received. An expression of interest will need careful planning and development if it is to meet the thresholds set out.

5.2 It is possible that smaller and specific services may be more likely to be subject to expressions of interest being made rather than the larger borough-wide services. This cannot be assumed, however, and one of the concerns expressed by a number of commentators is that the “relevant body” could be used as a vehicle by larger, more sophisticated bodies to gain access to the
provision of services. Similarly, even if a relevant body expresses an interest which is accepted, there is no guarantee that the relevant body would be the successful bidder in the procurement exercise. There is no legitimate way in which the procurement exercise could be limited to bodies which come within the definition of a “relevant body”. This would appear to compromise the specific aim of the legislation.

5.3 It is possible for the Council to specify periods during which it will consider expressions of interest for particular services. If periods are not specified then an expression of interest can be submitted at any time. If a period is specified during which expressions of interest generally or expressions of interest for particular services can be submitted, details of each specification for the service must be published.

5.4 Members’ views are requested on the question of specifying periods during which expressions of interest can be made.

6. Recommendation

Members are asked to note the report and indicate if time periods for expressions of interest should be developed.

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