



## Community Right to Challenge

### Guidance Document

June 2012

## **Introduction**

The Localism Act 2011 was enacted on 15 November 2011. The provisions relating to the Community Right to Challenge, Part 5 Chapter 2 were brought into force on 27 June 2012.

The Community Right to Challenge (hereafter called “the Right”) enables voluntary and community bodies, employees of the authority that wish to form a mutual organisation to deliver services, and parish councils, to express an interest in running a local authority service. The authority must consider expressions of interest and, where they accept them, run a procurement exercise for the service. The Right will hand the initiative to groups with good ideas about how services can be run differently or better, ensure their ideas get a fair hearing, and that they get the time they need to prepare effective bids for services.

### **Definitions – who is involved?**

A relevant authority, (Tamworth Borough Council) must consider expressions of interest from ‘relevant bodies’. These bodies include:

- voluntary and community bodies (defined as non-public and not for profit);
- a body of persons or a trust which is established for charitable purposes only;
- parish councils but not limited to services or facilities within its area; and
- local authority employees. Under the power, two or more employees are eligible to create an employee-led structure to take over running services but are not expected to have these arrangements finalised before submitting expressions of interest.

There is the potential for partnerships between relevant bodies using the Right, and collaborating with non-relevant bodies, which may strengthen the case for running the service. This is permitted when the relevant body provides information in the expression of interest for both parties.

Incorporated joint ventures may make an expression, provided they meet the definitions of a relevant body. However, in a contractual joint venture only one of the parties is required to meet the definition.

No group expressing an interest in running a service – whether they are a defined relevant body or are acting in partnership with one – has to be local to the area. A relevant body can be small or it can be a national or an international organisation.

## **Included and excluded services**

### **Relevant services**

Any service provided by Tamworth Borough Council is eligible for an expression of interest unless it is specifically excluded.

The Right to Challenge relates to **services** provided by the authority and not to **functions** of the authority. The guidance uses an example of the distinction between an authority's **function** of determining planning applications and the **service** of processing applications to illustrate this.

### **Excluded services**

Time limited exclusions:

Until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by Tamworth Borough Council or by a Primary Care Trust, NHS trust, or NHS foundation trust under a partnership arrangement or by Tamworth Borough Council and an NHS body or a Strategic Health Authority, acting jointly.

Until 1 April 2014 a relevant service commissioned by an NHS body on behalf of Tamworth Borough Council.

Permanently excluded:

Services commissioned by individuals using Direct Payments, and services provided to named individuals with complex needs, are not within the scope of the Right.

## **Submitting an Expression of Interest (EOI)**

Local authorities may choose to specify windows of time for accepting expressions of interest and can refuse to consider an application outside the specified period.

**Tamworth Borough Council will only accept Expressions of Interest during the period of 1 June to 30 June 2013 and then at the same time each year thereafter. This applies to those services not currently delivered by a third party.**

**Tamworth Borough Council will maintain a contract register of third party service agreements on its website. All agreements will have their window**

**of opportunity for an Expression of Interest identified and this shall, where possible, correspond with the procurement cycle.**

Information required in an EOI:

1. An expression of interest must include the following information and, 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 and evidence referred to in paragraphs 2 and 3 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.
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 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 or 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 two or more employees who deliver the relevant service, details of how the relevant body proposes to engage other employees of Tamworth Borough Council who are affected by the expression of interest.

In addition, Tamworth Borough Council requests the EOI to also include how the relevant body submitting the EOI meets the definition of a 'relevant body'.

**The EOI should be submitted by completing the electronic EOI form on the Tamworth Borough Council website. Any supporting information may be attached. Your submission will be formally acknowledged. If you require this form in an alternative format please contact Tamworth Borough Council's Customer Services on 01827 709709.**

If additional information is provided by the relevant body, information outside of the scope of the requirements in the Regulations will not be used as a ground on which to reject an EOI.

## **Notifying decisions on Expressions of Interest (EOI)**

Tamworth Borough Council will notify the relevant body that has submitted an expression of interest of the timescale within which the authority will notify the body of its decision. This notification will be in writing and done within 30 days after the close of the period (30 June) specified by the authority for submitting expressions of interest.

In specifying the period for notifying relevant bodies of a decision we will have regard to the following factors:

- The need to notify relevant bodies of a decision within a reasonable period;
- The nature, scale and complexity of the service to which expressions of interest relate;
- The complexity of the EOIs received;
- The likely need to agree modifications to EOIs in order to accept them; and
- The timescales for any existing commissioning cycles relevant to the service which an EOI relates to or any other relevant authority processes (i.e. Council, Cabinet decision making or budget setting processes)

**The maximum period that Tamworth Borough Council will take to make a decision is 26 weeks from the close of the period (30 June) specified for submitting expressions of interest.**

## **Grounds whereby an expression of interest may be rejected**

Tamworth Borough Council may only reject an EOI on one or more of the grounds specified in the Regulations. They are listed below:

- The EOI does not comply with any requirements specified in the Localism Act or in regulations.
- The relevant body provides information in the EOI which in the opinion of Tamworth Borough Council is in a material particular inadequate or inaccurate.

- Tamworth Borough Council considers, based on the information in the EOI, 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 services.
- The EOI relates to a relevant service where a decision, evidenced in writing, has been taken by Tamworth Borough Council to stop providing that service.
- The EOI relates to a relevant service-
  - 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
  - the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons.
- The relevant service is already the subject of a procurement exercise.
- Tamworth Borough Council and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.
- Tamworth Borough 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.
- Tamworth Borough Council considers that the EOI is frivolous or vexatious.
- Tamworth Borough 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.

## **Modifying an expression of interest**

Tamworth Borough Council may seek to modify an EOI in agreement with the relevant body if it would otherwise reject it. The guidance gives suggestions of potential modifications including rectifying omissions from expressions or clarifying details of services. This can bring further clarity to an expression and allow proper consideration by the authority. If an agreement cannot be reached, Tamworth Borough Council may reject the EOI.

## **Period between an EOI being accepted and a procurement exercise starting**

Tamworth Borough Council must specify periods between an expression of interest being accepted and a procurement exercise starting.

In specifying the period set out below Tamworth Borough Council has had due regard to:

- The need to provide Tamworth Borough Council employees and other relevant bodies with a fair and reasonable and realisable opportunity to bid the procurement exercise for the service;
- The nature, scale and complexity of the service being procured.
- The timescales for any existing commissioning cycle relevant to the service being procured, and Council Cabinet decision making or budget setting processes.

**The minimum period between the date of our decision to accept an expression of interest and the date on which the procurement exercise will begin is 12 weeks. The maximum period is 26 weeks. However depending on the complexity of the EOI on the service involved this period may be waived and the relevant body will be notified accordingly.**

## **The Procurement Exercise**

When an expression of interest is accepted, Tamworth Borough Council must carry out a procurement exercise for the 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.

The Public Contracts Regulations 2006 shall apply to the procurement of all services that exceed the current EU threshold of £173,934. For the procurement of services below the EU threshold, general principles of equality of treatment, non-discrimination and transparency are required to ensure that the selection process used is consistent with EU principles. All procurements shall be conducted in accordance with the Procurement and Contracts Section of Tamworth Borough Council's Financial Guidance which may be accessed on both its intranet and websites.

Consideration of social value in the procurement exercise:

Tamworth Borough Council will consider how both the expressions of interest and procurement exercises triggered would promote or improve the economic,

social and environmental well-being of Tamworth. This will be consistent with the law applying to the awarding of contracts.

## **Further Advice and Guidance**

A range of specialist support is being put in place by the Department of Communities and Local Government to help community groups bid to take over running local services. The Social Investment Business will deliver a three year support programme to help groups to use the new Right.

More information is available from:

Community Right to Challenge Statutory Guidance at:

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

My Community Rights Website

[www.mycommunityrights.org.uk](http://www.mycommunityrights.org.uk)