

## **APPENDIX B**

### **COMMUNITY RIGHT TO CHALLENGE**

The Right to Challenge Council provided services has been introduced throughout the country as part of the government's Localism Act. It is one of a number of new "community rights" which makes it simpler for community and voluntary groups or council employees to operate council services.

Many of the provisions within the Localism Act were intended to begin in April 2012. However, regulations and guidance associated with the Right to Challenge have now been published which came into force on 27 June 2012.

Groups with good ideas about how those services could be run more effectively will in future have the opportunity to get their ideas heard and obtain the time and resources to take part in bidding opportunities in open competition to win the right to provide the service.

The basic structure is as follows:

- A local authority will be under a duty to consider an "expression of interest" that has been submitted to it by a "relevant body".
- Where a local authority has publicly specified a period during which expressions of interest may be submitted in relation to a particular service, it may refuse to consider an expression of interest submitted outside that time period.
- An "expression of interest" is an expression of interest in providing or assisting in providing a service on behalf of the local authority (some services are currently excluded, generally those commissioned by or in partnership with an NHS body).
- A "relevant body" is defined as; a voluntary or community body, a charitable body, a parish council or two or more employees of the local authority at issue. A voluntary body is one whose activities are not carried out for profit; a community body is a body carrying out activities primarily for the good of the community.
- There is no requirement that a "relevant body" have local connections. Thus in theory, a national charity may make an expression of interest in providing a particular local service even though it has no presence in the area.
- Upon consideration of an expression of interest, one of three things can happen: it can be accepted, rejected or modified. An expression of interest can only be modified in circumstances where the authority believes that the expression of interest would not otherwise be capable of acceptance and the relevant body agrees to the modification.

- In deciding whether to accept an expression of interest, the local authority must consider “whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority’s area” Other than that, the Act provides that an expression of interest may be rejected on one or more grounds specified in the regulations.
- If a local authority accepts an expression of interest it must then carry out a procurement exercise. The exercise “must be as is appropriate having regard to the value and nature of the contract that may be awarded as a result of the exercise”

The grounds on which a local authority can reject an expression of interest are as follows:

- The expression of interest does not comply with the requirements specified in the Act or the regulations;
- The relevant body, or where applicable, member of the consortium of which it is part, or any sub-contractor referred to in the expression of interest is not suitable to provide the service;
- The service has been stopped or de-commissioned or a decision taken to do this;
- The relevant service is already the subject of a procurement exercise or negotiations for a service agreement, or has already published its intention to consider provision of the service by a body that two or more specified employees propose to establish;
- The expression of interest is frivolous or vexatious;
- The relevant body provides unsatisfactory, inadequate or incorrect information in the expression of interest;
- The authority believes that acceptance of the expression of interest would lead to contravention of an enactment or a rule of law (for example the best value duty and the duties under the Equalities Act 2010).