



## Cabinet 25 July 2012

### Community Right to Challenge: Protocols (Aug12/10)

#### 1. Summary and Reasons for Recommendations

- 1.1 On 27 June 2012, a new duty was placed on local authorities to consider and either accept or reject expressions of interest from community groups who wish to operate a council service. If the expressions of interest meet certain criteria laid down in the Localism Act 2011 and subsequent regulations, the local authority must run a procurement exercise. As such, community groups will have a new 'Community Right to Challenge'.
- 1.2 The Council needs to be ready to receive and assess expressions of interest. This paper seeks Cabinet's agreement to the proposed approach to dealing with the new right, both in terms of embedding it in its wider community engagement activities and in terms of ensuring the technical and legal requirements are met. A similar paper is being considered in parallel by Forest Heath District Council's Cabinet following joint working by officers.

#### 2. Recommendations

2.1 It is **RECOMMENDED** that:-

- (1) the proposed overall approach to dealing with the new Community Right to Challenge, as detailed in paragraphs 4.5 and 4.6 of Report D79, be approved;
- (2) the proposed approach to setting timescales during which expressions of interest can be made for services already contracted out, as detailed in Appendix B to Report D79; and
- (3) subject to the approval of full Council, the handling of expressions of interest under the Community Right to Challenge be subject to a Scheme of Delegations, as set out in Appendix C to Report D79.

#### 3. Corporate Objectives

3.1 The recommendations meet the following, as contained within the Corporate Plan:-

- (a) *'Working together for strong, healthy and diverse communities'*; and
- (b) *'Working together for an efficient council'*.

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#### **4. Key Issues**

##### **How the Community Right to Challenge works (see Appendix A)**

- 4.1 Community groups, including voluntary and community bodies; charitable bodies; parish councils; and council employees can submit a written expression of interest to the Council to run all or part of a Council service. The Council must contact the group and let them know within 30 days when a final decision will be made.
- 4.2 The Council must consider the expression of interest and if it is accepted, should begin a procurement exercise. If it is rejected, the Council must let the community group know why and publish the notification on the website. If the Council believes that the expression of interest could be accepted with some modifications, the group will be contacted to discuss whether those modifications are acceptable.
- 4.3 If a service is already operated under contract by a third party, expressions of interest can be made in specific windows of time prior to a scheduled procurement process starting. If a council decides not to open such windows or if the service is run by council staff, expressions of interest can be made at any time.
- 4.4 Guidance is provided in the regulations with respect to the validity or the expression of interest and potential grounds for rejection. Certain functions are excluded such as the determination of planning applications although the processing of such applications could be included in the Community Right to Challenge. There is currently no provision for appeals against a council's decision to reject an expression of interest.

##### **Overall approach to the Community Right to Challenge**

- 4.5 Through the Community Right to Challenge and associated financial support (£11.5 million funding for community groups over three years), the Government is seeking to empower communities and citizens, while also seeking to encourage greater diversity of service provision and improved innovation and responsiveness.
- 4.6 The Community Right to Challenge is, therefore, in line with the Council's wider strategy and should be approached as part of the ongoing dialogue between Members, officers and communities. However, it should not be seen as the only, or even the main way communities can influence the Council. Through discussion and dialogue it should be possible for a community group to express their views and ideas for innovation in service provision and for the Council to take action to change its procurement processes or the way services are provided without the need for recourse to a formal Right to Challenge.

##### **Timescales for receiving expressions of interest**

- 4.7 The Localism Act allows Councils to set timeframes within which it will receive expressions of interest from community groups. It is proposed that where council services are currently run directly by the Council and there is no specific intention to change this, no window should be set and any expressions of interest dealt with as they arise.
- 4.8 For services where a contract with a third party organisation is already in place, it is proposed that expressions of interest should only be made in specified periods. This is to avoid diverting officers from their service delivery roles outside of the scheduled procurement cycle. It is proposed to set timeframes that would allow time for the points raised by the community groups to be taken account of by the Council when developing the specification for the next round of procurement. The appropriate timeframe will differ depending on the size of the contract and it is therefore proposed that a different timeframe is set for each contract area, as shown in Appendix B.

## **Protocols for handling expressions of interest – delegated powers**

- 4.9 The Localism Act 2011 places new duties on councils to consider expressions of interest. It is proposed that these functions are delegated to officers in the majority of cases, but that Members are kept informed and involved where potentially sensitive decisions are taken. A proposed protocol with a Scheme of Delegations is shown at Appendix C. It provides for:-
- 4.9.1 officers to receive expressions of interest (a single point of contact will be given);
- 4.9.2 the Portfolio Holder(s) responsible for the service in question and the Ward Member(s) in which the community group is located to be informed of relevant expressions of interest that are (i) received; and (ii) accepted;
- 4.9.3 the Head of Service responsible for the service in question to assess the expression of interest according to the flow chart attached at Appendix A; to accept it if it meets the relevant criteria; or to reject it if it does not meet the criteria on objective grounds (shown in italics in the flow chart);
- 4.9.4 Cabinet to consider proposed rejections of expressions of interest on subjective grounds (shown in standard type on the flow chart).
- 4.10 The Cabinet is asked to recommend the Scheme of Delegations to full Council on 27 September 2012, in order that the Constitution can be amended accordingly.

## **5. Other Options considered**

- 5.1 The new Right came into effect for all local authorities on 27 June 2012. The Council, therefore, has no option but to implement it. Officers considered different approaches to the issues outlined in Section 4 above, such as being more or less proactive in promoting the use of the Right; delegating more or less responsibility to officers; and allowing different time periods in which expressions of interest could be submitted. The proposals outlined are considered to offer the best way forward when balancing the interests of promoting community engagement; improving service delivery; ensuring propriety; and carrying out Council decision-making functions in an efficient and effective way.

## **6. Community impact** *(including Section 17 of the Crime and Disorder Act 1998 and diversity issues)*

### **6.1 General/Diversity and Equality Impact**

- 6.1.1 The Department for Communities and Local Government assessed the impact of the Community Right to Challenge in January 2011 and found that there were no impacts on diversity and equality or sustainability. The Impact Assessment is available here; <http://www.communities.gov.uk/documents/localgovernment/pdf/1829777.pdf>

## **7. Sustainability Impact** *(including environmental or social impact on the local area or beyond the Borough)*

- 7.1 See 6.1.1 above.

## **8. Consultation**

- 8.1 The Government consulted on the proposed Community Right to Challenge from 4 February to 3 May 2011. The respondents included a wide range of voluntary and community groups as well as local authorities. The Council also outlined the new Community Rights at the Parish Council Conference on 23 April 2012. Given the lack of flexibility in the way in which councils can implement the Right, it is not proposed that the Council runs a further consultation exercise. Instead, it is proposed that feedback on the way in which the Council undertakes the arrangements is sought through continuous review and dialogue with those taking advantage of the Right.

**9. Resource implications** *(including asset management implications)*  
 9.1 It is anticipated that the receipt and assessment of expressions of interest will be managed within existing staff resources. If more expressions of interest are received, there may be a need for increased staff resource in the future. If an expression of interest triggers a procurement exercise, there will be costs to the Council of running the procurement exercise although these may be offset to some extent by savings in the running of the service. At this stage it is difficult to make cost estimates without knowing the extent to which the right is likely to be used in the Borough.

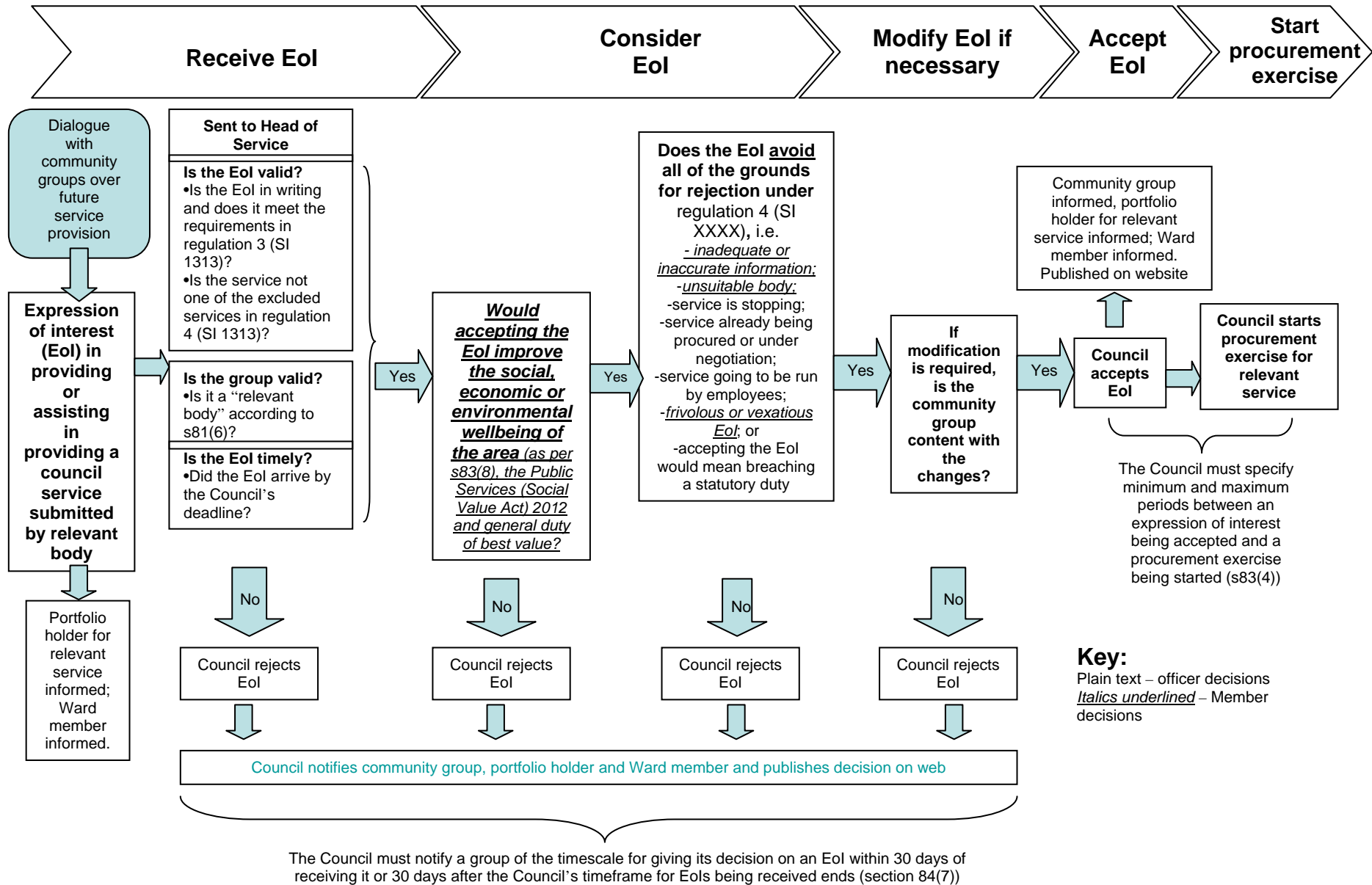
**10. Risk Assessment** *(potential hazards or opportunities affecting corporate, service or project objectives)*  
 10.1

Risk area	Inherent level of Risk (before controls)	Controls	Residual Risk (after controls)
	High/Medium/Low		High/Medium/Low
Private sector companies seeking to trigger partnership exercise	Medium	Develop a dialogue with the community Recognise that a community group would have to cover the whole borough in order to trigger a procurement for a whole service	Medium
Uncertainty over Appeals – there is no process for this but government is keeping it under review	Medium	Keep up to date with any introduction of an appeals process. Operate the protocols in an open and transparent way	Low

**11. Legal or policy implications**  
 11.1 The Council has a duty to consider expressions of interest under the Localism Act 2011.

<b>Wards affected</b>	All	<b>Portfolio Holder</b>	Tourism and Community Services
<b>Background Papers</b> DCLG statutory guidance on the Community Right to Challenge		<b>Subject Area</b>	Support Services
<a href="http://www.communities.gov.uk/documents/localgovernment/pdf/2148165.pdf">http://www.communities.gov.uk/documents/localgovernment/pdf/2148165.pdf</a>			

# Appendix A: Community right to challenge (ss81-86)



## **APPENDIX B: TIMESCALES FOR SUBMISSION OF EXPRESSIONS OF INTEREST**

Contract area	Contract / lease expiry date		Expected date of start of formal procurement process		Timeframe for receipt of expressions of interest		Lead officer	
	FHDC	SEBC	FHDC	SEBC	FHDC	SEBC	FHDC	SEBC
<b>Leisure centres (SEBC) / leisure services (FHDC)</b>	30 June 2013	31 March 2020	Jan 2013	October 2019	1 Aug 2012 – 30 Sept 2012	1 April – 31 May 2019	Simon Phelan	Neil Anthony
<b>Dog collection and kennelling (FHDC &amp; SEBC)</b>	30 Sept 2016	30 Sept 2016	July 2016	July 2016	1 Jan 2016 – 29 Feb 2016	1 Jan 2016 – 29 Feb 2016	Andy Newman	Richard Whitehead
<b>Horticulture and Arboriculture (FHDC)</b>	31 Oct 2017		Nov 2016		1 May 2016 – 30 June 2016		Simon Phelan	
<b>Tree Maintenance Contract (SEBC)</b>		31 March 2014		July 2013		01 January – 29 Feb 2013		Mark Davison
<b>Public building cleaning (inc window cleaning) (SEBC only)</b>		31 May 2016		February 2016		1 August – 30 Sept 2016		Ivan Sams

## **APPENDIX C:**

**Proposed scheme of delegations for handling expressions of interest made under the provisions in chapter 2, part 5 of the Localism Act 2011 and described in The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (SI 2012 No. XXXX); and The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (SI 2012 No. 1313).**

It is proposed that all powers in the above statutes relating to “the relevant authority” should be delegated to:

- a) Heads of Service, where it is proposed to accept an expression of interest (s83(1)a), or reject it on the following grounds;**

Regulation 3, schedule 1, SI 1313	Expression of interest not in writing or does not meet the requirements of the regulation in terms of its form (must include financial information, evidence of capability, information about the service and geographical area, information about outcomes and information about employees)
s81(6)	The community group does not meet the definition set out in regulations
s82(2)	The expression of interest was not made during the prescribed time period for the corresponding service
Regulation 4 (4) (SI XXXX)	The relevant service is stopping
Regulation 4 (5) (SI XXXX)	The relevant service is provided jointly with the NHS and joint provision is critical to the wellbeing of the service users
Regulation 4 (6) (SI XXXX)	The relevant service is already being procured
Regulation 4 (7) (SI XXXX)	The relevant service is currently under negotiation
Regulation 4 (8) (SI XXXX)	The authority has published its intention to consider the provision of the service by 2 or more employees
Regulation 4 (10) (SI XXXX)	Accepting the expression of interest is likely to lead to a breach of a statutory duty

- b) the Cabinet, where it is proposed to reject an expression of interest (s83(1)b) on grounds of:**

s83(8)	Acceptance of the expression of interest does not promote or improve the social, economic or environmental well-being of the authority's area
Regulation 4 (2) (SI XXXX)	Inadequate or inaccurate information was provided
Regulation 4 (3) (SI XXXX)	The relevant body or its subcontractor is not suitable to provide or assist in providing the relevant service
Regulation 4 (9) (SI XXXX)	The expression of interest is frivolous or vexatious
	The relevant body is not content to accept proposed modifications to the expression of interest

For a), it is proposed that Members are informed of expressions of interest relating to their ward or portfolio area i) as soon as they are received and ii) before they are accepted