

Report of: Director of Resources

Report to: Executive Board

Date: 7th March 2012

Subject: Community Right to Challenge

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Localism Bill gained Royal Assent on 15th November 2011 and is now an Act of Parliament. The Act includes rights under the 'Community Right to Challenge' provisions.
2. The Community Right to Challenge enables:
 - voluntary and community bodies,
 - charities,
 - a group of two or more employees of the authority,
 - parish councils, and
 - anyone else the Secretary of State may additionally specify in regulations
 the opportunity to express an interest in running a local authority service. The authority must consider all expressions of interest and, where these are accepted, undertake a procurement exercise for the service.
3. The Community Right to Challenge provisions are expected to come into effect in April 2012. The secondary legislation that sits behind the Act is expected in February 2012 and at the time of writing has yet to be published.

4. The Localism Act has also legislated for 'Assets of Community Value'. The Director of City Development has put forward proposals for managing applications under this aspect of the legislation and these proposals are available as a separate report to this meeting.

Recommendations

5. That the contents of this report are noted and the proposals agreed, in particular the proposals noted in 3.2.3.
6. To endorse the proposal that the Director of Resources be authorised to exercise functions in relation to the Community Right to Challenge, including the drawing up and review of time periods and mechanisms for detailing these; drafting proforma; administration of receipt and notification requirements of expressions of interest; and making decisions on particular expressions of interest.
7. To note that the scheme of delegations will need to be amended to reflect the above proposal, and that the Director of Resources proposes to review the Contracts Procedure Rules to reflect the processes implemented in relation to the Community Right to Challenge.
8. To instruct the Director of Resources to seek the views of Scrutiny Board (Resources and Council Services) on the proposed processes once regulations are available.

1 Purpose of this report

- 1.1 To provide a summary of the decision requirements of the 'Community Right to Challenge' provisions of the Localism Act 2011 and provide an opportunity to debate and determine the way that the council implements the legislation.

2 Background information

- 2.1 The Localism Act 2011 has completed its passage through Parliament, and has been the subject of considerable debate at a national and local level.
- 2.2 The Localism Act 2011 includes legislation which deals with the Community Right to Challenge. Further detail will emerge when the regulations are made in due course, however, the basic outline, as detailed in the legislation, is set out below. The process is also explained diagrammatically at Appendix A and Appendix B.

3 Main issues

3.1 Overview

- 3.1.1 The Localism Act enables voluntary or community bodies, charities, parish councils, a group of two or more employees of an authority – and anyone else the Secretary of State may specify in regulations – to express an interest in providing, or assisting in providing, a service provided by, or on behalf of, that authority in the exercise of its functions.

The Act applies only to ‘services’ and not to ‘functions’ of the Authority; this means that where the Authority has a duty or power which requires decision-making, then this will not be included, as this is a ‘function’. An example provided by the Department of Communities and Local Government (DCLG) of a ‘service’ is that of an initiative for young offenders to prevent further offending. The service could include addressing specific difficulties such as drug and alcohol problems or homelessness. However, decisions concerning which services may be provided and where they are located are ‘functions’ of an authority and the Community Right to Challenge will not apply here.

It is anticipated that ‘people facing’ services will be the most likely ones for which expressions of interest will be submitted.

- 3.1.2 An expression of interest may be rejected, accepted or accepted with modification. The regulations will provide the detail of the basis on which an expression may be rejected. However, a key consideration of an expression will be in relation to whether such an expression represents ‘best value’. In addition, local authorities will be required to consider the relevant and proportionate social, economic and environmental value of both expressions of interest, and bids in any subsequent procurement exercise (subject to compliance with the EU procurement regime).
- 3.1.3 If accepted by the authority, an expression of interest triggers a procurement exercise in which the body that submitted the expression of interest can bid. It does not mean that the body (or bodies) which submitted the expression of interest will necessarily end up running the service.

3.2 Key Issues and Proposals

- 3.2.1 The flow chart attached at Appendix A outlines the key decision and action points in this process. In addition, the decisions to be made regarding the setting of time periods are attached diagrammatically at Appendix B.
- 3.2.2 A robust assessment procedure must be in place to assess expressions of interest under the Act. The date that this legislation comes into force is not yet known but it is expected to be April 2012. As previously noted, the regulations that sit behind the legislation are not yet available.

3.2.3 The following proposals deal with key decision-making and procedural issues:

3.2.3.1 **Setting of time periods**

Councils *must* set certain time periods in relation to the Right to Challenge and *may* set other time periods. The setting of time periods will be key to the effectiveness of the process. The time periods in question are outlined below:

- A challenge may be made at any time for all or part of any service. However, the council may choose to specify for all services, or particular services, set periods during which expressions of interest may be submitted. Setting a time period may provide a degree of control over the timetable and enable the authority to manage the process proactively.
- Councils must specify a maximum time period for notifying a relevant body of a decision on an expression of interest that has been submitted and there may be different periods for different cases.
- Councils must specify a minimum and maximum timescale within which a procurement exercise will begin, where a procurement has been triggered by the expression of interest.

It is proposed that the Director of Resources, in consultation with other directors, undertakes to draw up and review an outline of time periods and mechanisms for detailing these.

3.2.3.2 **Developing proforma and receipt and notification requirements**

The development of a proforma for the application for an expression of interest, and decision-making on expressions of interest are provided in 'best guess' format at Appendices C and D. These proforma are based upon the information currently circulated from central government. Once regulations are issued, draft proforma will be produced and circulated for agreement.

It is proposed that responsibility for drafting the proforma will rest with the Director of Resources.

It is proposed that responsibilities for the administration of receipt and notification requirements of expressions of interest are held by the Director of Resources.

3.2.3.3 **Decision-making on a particular expression of interest**

Decision-making on expressions of interest, and notification and publication requirements on decisions made are detailed at Appendix A. Some of the expected aspects of the decisions required will align closely with current Procurement Unit duties in relation to procurement processes and some will require directorate-specific assessment. The details of grounds for rejection of an expression of interest will become available when regulations are published. Possible grounds for rejection may include the following:

- an applicant is not suitable to provide the service;

- a service has been decommissioned;
- an expression is frivolous or vexatious or contains inadequate or incorrect information;
- acceptance would lead to a contravention of any law, including the general Duty of Best Value.

Where a decision is made against an application, then the applicant will have a right to apply for judicial review.

Some of the issues which need to be addressed in setting up the decision-making processes include: consideration of whether minimum standards of economic and financial standing and/or professional and technical ability should be set for those bodies making an expression of interest; what award criteria will be appropriate; what implications there are for transfer of employees or property; the drafting of specifications and contracts to define and regulate the services; and clarification of whether the authority will be able to refuse to contract out if no bids are acceptable.

It is proposed that responsibility for making decisions on particular expressions of interest will lie with the Director of Resources in consultation with the other directors.

3.2.3.4 Management of any resulting procurement process

It is proposed that the management of any resulting procurement processes and the management of resulting contracts will align with current procurement and contract management responsibilities.

3.2.3.5 Maintenance of good relations with potential applicants

It is acknowledged that active engagement with potential applicants (including third sector organisations) is an important part of a local approach to the Right to Challenge. It is anticipated that this will build upon the good practice that has already been developed by directorates and in locality working.

It is proposed that continued development of good relations with such bodies will require recognised responsibilities across the authority.

It is proposed that the responsibilities for guidance and information will include development of guidance through the corporate 'Category Management' approach and directorate-specific initiatives including guidance and information in any directorate 'commissioning prospectus'.

3.2.3.6 Engagement with members

It is proposed that the role of the Executive Board; the appropriate Executive Member; Ward Members and Area Committees are considered in relation to the Community Right to Challenge through discussion following this report and through continued consideration at Area Committee and relevant working groups. This consultation will be undertaken once the regulations are issued.

It is proposed that consultation with members in the decision-making process will be in line with the council's Contracts Procedure Rules and Member Code of Conduct.

It is proposed that the views of Scrutiny Board (Resources and Council Services) will be sought as part of the engagement with members.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Each part of the Act has been subject to extensive national consultation and debate and a response was submitted by Leeds City Council.
- 4.1.2 Consultation has taken place with area leaders and Area Committees to inform them of the outline of the Act and its implications for local communities and the council as a whole. More detailed engagement with members has been requested and this will commence when regulations become available. Part of this engagement will be to seek the views of the Scrutiny Board (Resources and Council Services).

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The Community Right to Challenge forms part of the Localism Act and is being implemented by central government. An equalities impact screening has taken place at central government level for the Community Right to Challenge. No significant impact has so far been identified for any of the protected groups identified in the Equality Act 2010 and the equalities impact of the policy will be kept under review by central government.
- 4.2.2 A Leeds Equality, Diversity, Cohesion and Integration (EDCI) impact assessment screening of the proposed decision making and governance framework will be undertaken by council officers once the regulations are available.
- 4.2.3 It can be anticipated that some communities and organisations will have capacity to respond successfully to these changes, and that others may need to be assisted in capacity-building in order to enable them to engage with the Act.

4.3 Council Policies and City Priorities

- 4.3.1 Successful implementation of the Localism Act will support the council to deliver a number of its strategic objectives, particularly through the Locality Working agenda. In addition, implementation of the legislation will contribute to the Vision for Leeds, the City Priority Plan and the Council Business Plan. The implementation will support the aims that Leeds will be fair, open and welcoming; Leeds' economy will be prosperous and sustainable; and that all Leeds' communities will be successful.

4.4 Resources and value for money

- 4.4.1 There will be resource implications for Leeds City Council in administering the scheme. The extent of this will be largely dependent on the popularity of the scheme, which is very difficult to predict.

- 4.4.2 In an impact assessment published earlier this year, DCLG has estimated the possible costs of the implementation of the Community Right to Challenge. It is anticipated that these estimates will be updated in due course and as they are early national estimates the figures must be treated with caution.
- 4.4.3 DCLG's early estimates identify that the main costs to local authorities are expected to be internal staffing resources. These national estimates are based on a series of assumptions about the likely number of expressions of interest, the percentage which lead to a procurement, the time required to consider and process these, and the cost per day of staff involved. These estimates equate to an additional annual cost of £45,000 for an authority with a population the size of Leeds during the first three years of implementation, dropping to £11,500 per year thereafter.
- 4.4.4 There may additional resource implications as a result of any capacity building activities that are developed to address the outcome of the Leeds ECDI impact assessment.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 On conclusion of where responsibilities for the Community Right to Challenge functions lie, the scheme of delegations and Contracts Procedure Rules may require amendment.
- 4.5.2 This decision is subject to call-in.

4.6 Risk Management

- 4.6.1 There are a number of risks linked to this agenda and these include challengers 'cherry picking' the most attractive services leading to a possible fragmentation of Leeds City Council services. A robust process will contribute to the management of these risks.
- 4.6.2 There are risks associated with what the details of regulations will be. Ensuring that regulations are reviewed once they are available will help to ensure that such risks are managed effectively.
- 4.6.3 There are risks associated with the, as yet undefined, resource implications of the Community Right to Challenge. Further reports to Executive Board will keep members up-to-date with possible cost implications.

5 Conclusions

- 5.1 The regulations that will sit behind the Community Right to Challenge are not yet available. As a consequence, the processes required cannot be finalised at this stage.
- 5.2 The budgetary and resource implications of the Community Right to Challenge are not yet clear. Once these implications become clearer, further details will be submitted to Executive Board.
- 5.3 Corporate responsibility and accountability for setting processes and decision-making need to be agreed, and this report proposes a way forward.

5.4 The outline proposals indicated in this report may be subject to change once regulations become available.

6 Recommendations

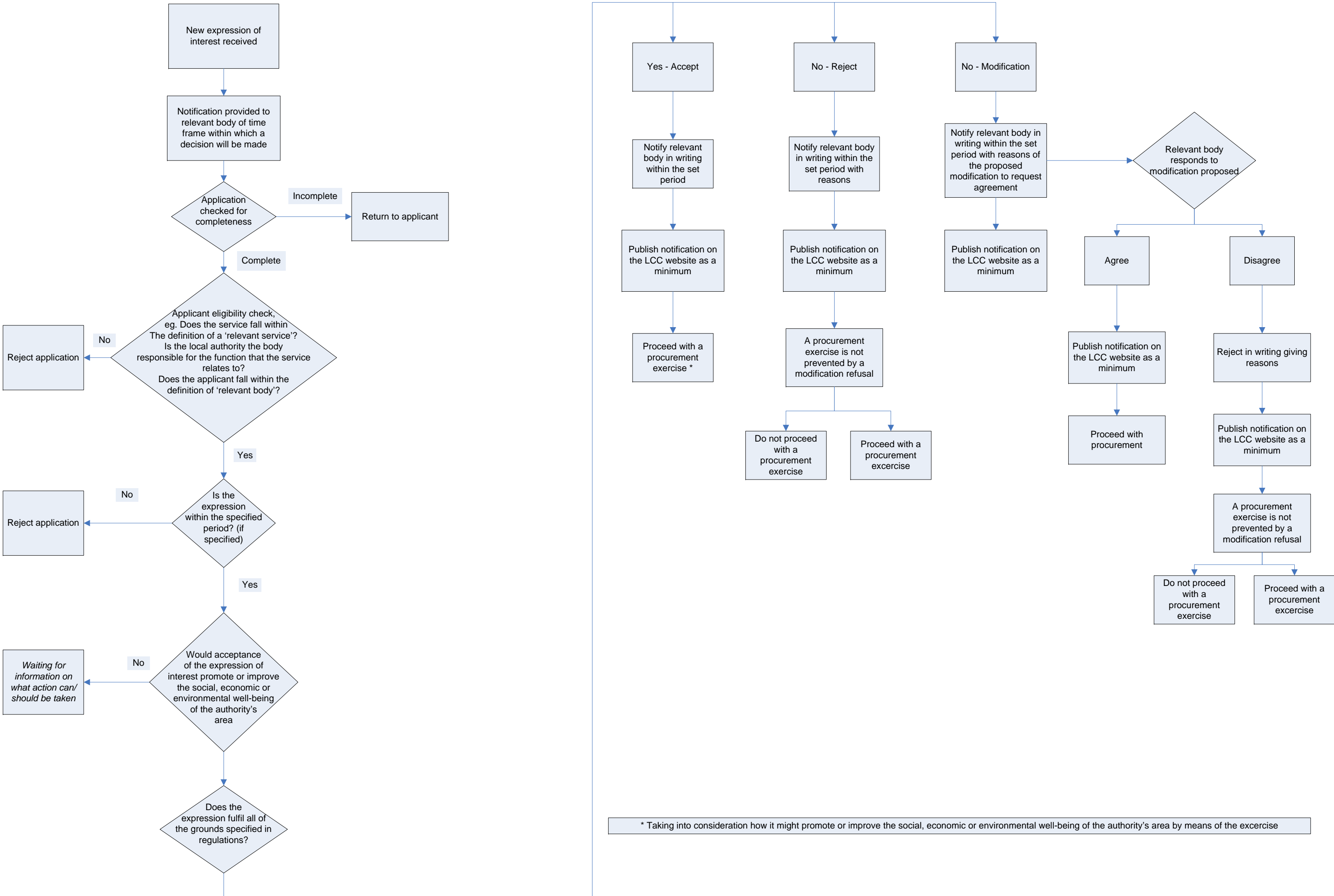
- 6.1 That the contents of this report are noted and the proposals agreed, in particular the proposals noted in 3.2.3.
- 6.2 To endorse the proposal that the Director of Resources be authorised to exercise functions in relation to the Community Right to Challenge, including the drawing up and review of time periods and mechanisms for detailing these; drafting proforma; administration of receipt and notification requirements of expressions of interest; and making decisions on particular expressions of interest.
- 6.3 To note that the scheme of delegations will need to be amended to reflect the above proposal, and that the Director of Resources proposes to review the Contracts Procedure Rules to reflect the processes implemented in relation to the Community Right to Challenge.
- 6.4 To instruct the Director of Resources to seek the views of Scrutiny Board (Resources and Council Services) on the proposed processes once regulations are available.

7 Background documents ⁱ

None

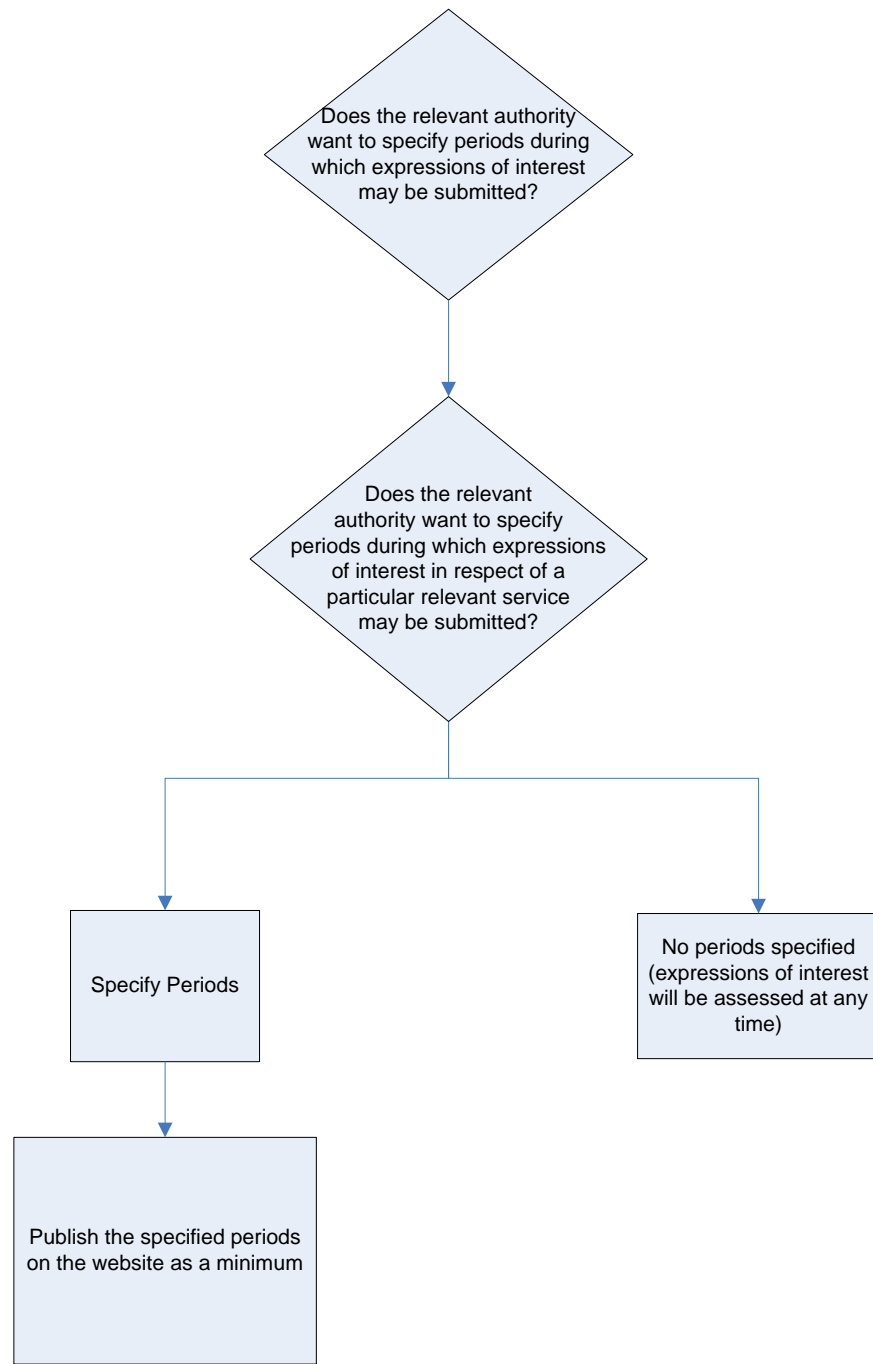
ⁱ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Appendix A Community Right to Challenge - proposed process flow chart including decisions to be made by council

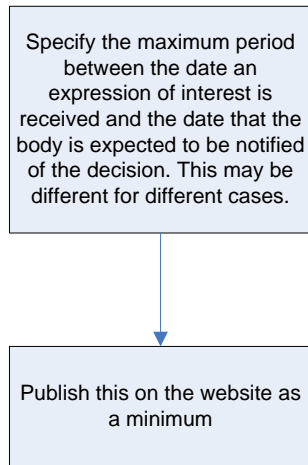


Appendix B Community Right to Challenge - proposed flowcharts - setting of time periods

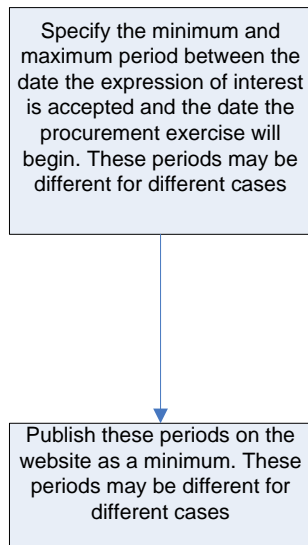
Periods for submission



Periods for notification



Periods for the start of a procurement exercise



Appendix C

The following table outlines a draft expression of interest (v0.1) for the Community Right to Challenge.

The details of the actual proforma will be determined once regulations have been issued.

Details of the relevant body.
Details of the relevant body's financial situation.
Details of the relevant service to which the expression of interest relates.
The relevant body's case that it will be able to participate in any procurement exercise.
The relevant body's case that it is capable of providing the service.
Details of the outcomes to be achieved, including how it meets service user needs and the social value of the proposal.

Appendix D

The following table outlines a draft decision proforma (v0.1) for the Community Right to Challenge rejection.

The details of the actual proforma will be determined once Regulations have been issued.

The relevant body is not suitable to provide the relevant service.	
The service is exempt from the right.	
The service has been stopped or decommissioned or a decision taken to do this.	
The expression of interest is submitted outside a period specified by the authority during which they can be submitted.	
The relevant service is already the subject of a procurement exercise or negotiations for a service agreement.	
The expression of interest is frivolous or vexatious.	
The relevant body provides unsatisfactory, inadequate or incorrect information in the expression of interest	

Appendix D

The authority believes that acceptance of the expression of interest would lead to contravention of an enactment or a rule of law.	
Where the relevant authority has not specified a period during which expressions of interest can be submitted for a relevant service and there is an existing contract or other service agreement in place – except when the authority is considering the future provision of the service.	
The Government is also considering providing an additional ground that allows for assessment of whether an expression of interest will improve the quality of the service and better meet service users' needs.	