Localism Act – Right to Challenge

1.0 PURPOSE OF REPORT

1.1 This report is presented to consider and determine the Council’s approach to the new Right to Challenge.

2.0 RECOMMENDATIONS

It is recommended that Cabinet :-

(1) Note the requirements of the Right to Challenge summarised in the report;

(2) Appoint the Director of Policy and Resources as the proper officer for the receipt, validation and acceptance or rejection of expressions of interest under the Right to Challenge;

(3) Authorise the Director of Policy and Resources, as proper officer, after consultation with the appropriate Assistant Director(s) and appropriate Cabinet Portfolio Holder, to determine whether grounds exist to accept or reject an expression of interest on behalf of the Council, with the ability to refer sensitive expressions of interest to Cabinet for consideration where required;

(4) Require the proper officer to report at least annually to Cabinet, and to the appropriate Overview and Scrutiny Committee, on any expressions of interest received;

(5) Appoint the Assistant Director Resources as deputy for the proper officer to act in a situation where the proper officer is absent or may otherwise be unable to act; and
Agree the timeframes to be used in the Right to Challenge process as follows:

i. that from 2013/14 expressions of interest may be submitted between 1 April and 30 June annually which gives time for full consideration of the submissions, decisions to be taken and any resultant implications to be taken into account during the budget process for the following financial year,

ii. the maximum length of time that it will take to make decisions on expressions of interests received be set at 3 months;

Note that once an expression of interest is accepted a procurement exercise will be undertaken within existing contract procedure rules.

3.0 BACKGROUND

3.1 The Community Right to Challenge, one of the new initiatives introduced in the Localism Act 2011, came into force from 27 June 2012.

3.2 The Community Right to Challenge gives a right for community organisations to submit an expression of interest in running services of the Council. If a community group, charity, parish council or group of staff of the Council identify a service they would like to run, they will need to submit an expression of interest to the Council. If the Council accepts the expression of interest, a procurement exercise must be set up for the service. The interested group will need to compete with others who may wish to run the service.

3.3 Where the service is delivered as part of a statutory duty the Council retains the statutory duty, even if delivery of services is commissioned to meet statutory duties externally. This is the same as when services are commissioned out now – for example homelessness services could be contracted out, but the legal duty towards homeless people remains with the Council.

3.4 Community Right to Challenge seeks to give communities more opportunities to shape and run local public services where they believe they can do so differently and better, make them more responsive to local needs, offer additional social value, or deliver better value for money. The services may be at any scale of activity from very local and small to Council wide.

4.0 RESEARCH AND CONSULTATION

4.1 The Right to Challenge provisions were contained in the Localism Act 2011. The detailed Guidance was published in July 2012.

5.0 PROPOSAL

5.1 There are four broad categories of groups or “relevant bodies” that can use the Community Right to Challenge to submit an expression of interest in running a service:

- Voluntary and community bodies;
- Bodies of persons or a trust established for charitable purposes only;
- Parish / Town councils;
- Two or more employees of the relevant authority.

The body, or bodies if in a partnership, need to evidence that its activities are for the benefit of the community.

5.2 All following relevant authorities must consider expressions of interest:

- County councils;
- District councils;
- London borough councils;
- Any other person or body carrying out a function of a public nature specified by the Secretary of State
- Certain Fire and Rescue authorities not already part of a local authority

5.3 The Community Right to Challenge applies to all ‘relevant services’. The default position is that unless expressly excluded, all services provided by, or on behalf of, a relevant authority are defined as ‘relevant services’ and so can be open to a Community Right to Challenge. The Right does not provide for delegation of functions (eg determining planning applications) but applies to the delivery of services (eg processing planning applications). In cases of shared services the authorities involved would need to agree the relevant timescales for expressions of interest and a procurement exercise.

Exceptions to this are services which are excluded by legislation but which do not apply to this Council (eg packages of services for health and social care for named individuals with complex needs).

It is the Council’s responsibility to advise if a service is subject to the Community Right to Challenge.

5.4 The Council may choose to specify periods during which expressions of interest may be submitted. These dates must be published and made available on the website.

If the Council choose to specify a window of opportunity, it must have regard to
- the time needed for relevant bodies to prepare submissions of interest,
- the scale, nature and complexity of the service in question, and
- timescales for making decisions or setting budgets.

If the Council does not choose to specify a period for submitting expressions of interest then they can be submitted at any time.

5.5 Expressions of interest have to be in writing and must include:

- Financial resources of the submitting body;
- Evidence that the body will be capable of providing the service;
- Detail on the services and the geographical area that interest relates to;
• The outcomes to be achieved by the body providing the service, how the service will promote or improve the social, economic or environmental well-being of the area and how it meets the needs of service users;
• Where the interest is for a consortium, or will use a sub contractor to deliver any part of the services information is needed on their financial resources, and demonstrate they will be capable of providing the service;
• Where the body is made up of employees of the Council the interest needs to include details of how it will engage other employees affected.

5.6 The Council must publish the maximum length of time that it will take to make decisions on expressions of interests. These may vary depending on the service. The Council must also specifically tell a group who has submitted an expression of interest how long it will take them to inform them of their decision. This notification must be within 30 days after the end of the period for submitting expressions of interest.

In deciding how long is needed to make a decision, the Council must consider what is a ‘reasonable’ period using the criteria outlined in paragraph 5.4.

5.7 The Council can reject an interest but must give reasons for its decision, and publish these. Reasons that can lead to rejection are:

• It does not include all the required information;
• The information is considered to be inadequate or inaccurate;
• The relevant body is not suitable to provide the service;
• The expression of interest relates to a service provided by or on behalf of an authority to people also receiving a service provided or arranged by an NHS body which is integrated with this service, and continued integration of the service is considered to be critical to the wellbeing of service users;
• The Council has taken a decision to stop providing the service;
• The service is already the subject to a procurement exercise;
• The Council and a third party are negotiating to provide the service;
• The Council has published its intention to consider the provision of the service by a body that 2 or more of its employees propose to establish;
• The Council considers the interest to be frivolous or vexatious;
• The Council considers that acceptance is likely to lead to a contravention of the law or a breach of statutory duty.

5.8 When the Council accepts one or more expressions of interest for a service in line with the Localism Act a procurement exercise must be initiated for the service. How long it will be before an expression of interest is accepted and a procurement exercise starts must be stated. The groups submitting expressions of interest must be given time to compete in the procurement exercise again taking into account the criteria at 5.4.
5.9 The process is summarised by CLG as follows:

- Expressions of Interest acceptable either at certain points or anytime
- The time between submission and notification of decision
- Minimum and maximum times between acceptance and initiation of a procurement process

6.0 ALTERNATIVE OPTIONS

6.1 The Council is obliged by virtue of it being a “relevant authority” to respond to submissions under The Right to Challenge. Whilst there is some discretion in determining the timelines for the process there is no alternative to dealing with expressions of interest received.

7.0 NEXT STEPS

7.1 The Council will need to provide public information about the opportunity provided by the Right to Challenge. This will include making it clear that whilst the Council cannot pass on the responsibility for functions all services whether related to the support or delivery of a function are subject to the Community Right to Challenge.

7.2 Responsibility for the Right to Challenge process needs to be determined. It is proposed that the Director of Policy and Resources be appointed as the proper officer for determining the process of receipt, validation and acceptance or rejection of expressions of interest under the Right to Challenge. The proper officer, after consultation with the appropriate Assistant Director(s) and appropriate Cabinet Portfolio Holder(s), will determine whether grounds exist to accept or reject an expression of interest on behalf of the Council. In certain cases the Proper Officer may refer matters to Cabinet where he/she feels that a request is particularly sensitive. The proper officer will report at least annually to Cabinet, and to the appropriate Overview and Scrutiny Committee, on any expressions of interest received. It is also proposed that the Assistant Director Resources be designated as deputy for the proper officer to act in a situation
where the proper officer is absent or is otherwise unable to act on the expression of interest.

7.3 The public information will need to give detail on the timeframes to be used in the process set out in paragraph 5.9 above. The Cabinet is asked to consider
   a. Specifying a period during the year during which expressions of interest may be submitted for any relevant service. Alternatively the opportunity could be left open for any time during the year. It is recommended that expressions of interest may be submitted between 1 April and 30 June annually from 2013/14. This would give time for full consideration of the submissions, decisions to be taken and any implications to be taken into account during the budget process for the following financial year.
   b. Determining the maximum length of time that it will take to make decisions on expressions of interests received at 3 months

7.4 Once an expression of interest is accepted a procurement exercise will be undertaken in accordance with existing procedural rules.

8.0 IMPLICATIONS

8.1 Financial and Resources
8.1.1 The report does not have any direct financial implications. The Right to Challenge may provide submissions of Expressions of Interest in delivering council services which would have financial implications. The co-ordination of the process of consideration of any Expressions of Interest will have implications for staff and in particular Resources.

8.2 Human Resources
8.2.1 The Right to Challenge will have implications for staff if a service is transferred to another provider.

8.3 Legal
8.3.1 There may be legal implications for the Right to Challenge in respect of the services subject to any Expressions of Interest

8.4 Social, Economic and Environmental Impact
8.4.1 A sustainability impact assessment has not been carried out at this stage but will be considered when evaluating a particular Expression of Interest?

9.0 RISK ASSESSMENT

<table>
<thead>
<tr>
<th>Risk</th>
<th>Consequence</th>
<th>Controls required</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Right to Challenge may provide an unsustainable option for</td>
<td>A service may not deliver local needs or may fail</td>
<td>The evaluation process will need to ensure that an Expression of Interest is</td>
</tr>
<tr>
<td>delivering a local service</td>
<td></td>
<td>robust before agreeing that a service should be subject to an open procurement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>exercise</td>
</tr>
</tbody>
</table>
10.0 EQUALITY AND DIVERSITY

10.1 An equality and diversity impact assessment has not been carried out at this stage but will be an important part of the evaluation of an Expression of Interest.

11.0 LINKS TO THE CORPORATE PLAN AND PERFORMANCE INDICATORS

11.1 The Right to Challenge is an important element of the Localism Act and reflects the Council’s objective to “involve our communities in decision making that affects their communities”

12.0 CONCLUSION AND EXPECTED OUTCOMES

12.1 Community Right to Challenge seeks to give communities more opportunities to shape and run local public services where they believe they can do so differently and better. The Council needs to ensure there is an open and robust process in place for providing opportunities to express an interest in delivering services by a relevant body and for full evaluation of that interest.

CONTACT OFFICERS

John Dyer, Communities and Partnerships Manager, Tel: 01539 733333 Ext 7104, e-mail: j.dyer@southlakeland.gov.uk

BACKGROUND DOCUMENTS AVAILABLE

None.

TRACKING

<table>
<thead>
<tr>
<th>Assistant Director</th>
<th>Portfolio Holder</th>
<th>Solicitor to the Council</th>
<th>CMT</th>
<th>Scrutiny Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.07.12</td>
<td>13.07.12</td>
<td>13.07.12</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Executive (Cabinet)</td>
<td>Committee</td>
<td>Council</td>
<td>Section 151 Officer</td>
<td>Monitoring Officer</td>
</tr>
<tr>
<td>29.8.12</td>
<td>N</td>
<td>N</td>
<td>13.07.12</td>
<td>13.07.12</td>
</tr>
<tr>
<td>Human Resource Services Manager</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.07.12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>