

Draft Regulations laid before Parliament under section 235(6) of the Localism Act 2011 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. XXXX

LOCAL GOVERNMENT, ENGLAND

**The Community Right to Challenge (Fire and
Rescue Authorities and Rejection of Expressions
of Interest) (England) Regulations 2012**

Made - - - - 2012

Coming into force in accordance with regulation 1

A draft of these Regulations was laid before and approved by a resolution of each House of Parliament in accordance with section 235(6) of the Localism Act 2011⁽¹⁾.

The Secretary of State for Communities and Local Government makes these Regulations in exercise of the powers conferred by sections 81(2)(d), 83(11) and 235(2)(a) of the Localism Act 2011.

Citation and commencement

1. These Regulations may be cited as the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 and shall come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations “NHS body” has the meaning defined for the purposes of the National Health Service Act 2006⁽²⁾, apart from in Schedule 15⁽³⁾ to that Act.

(2) Any reference in these Regulations to a section is a reference to a section of the Localism Act 2011 unless otherwise stated.

Relevant authorities

3. Each of the following bodies in England is specified as a relevant authority for the purposes of section 81(2)(d)—

(1) 2011 c.20.

(2) 2006 c.41.

(3) There are amendments to Schedule 15 that are not relevant to these Regulations.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 No. 1647*

- (a) a metropolitan county fire and rescue authority established under section 26 of the Local Government Act 1985(4),
- (b) the London Fire and Emergency Planning Authority,
- (c) a fire and rescue authority that is constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(5), or
- (d) a fire and rescue authority that is constituted by a scheme to which section 4 of that Act applies.

Grounds for rejection of expression of interest

4. The grounds listed in the Schedule are specified for the purposes of section 83(11) (grounds for rejection of expression of interest).

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local
Government

(4) 1985 c. 51; section 26 was amended by the Civil Contingencies Act 2004 (c. 36), section 32(1) and Schedule 2, Part 1, paragraph 10(1).

(5) 2004 c. 21; sections 2 and 4 were amended by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 22 and Schedule 1, Part 2, paragraph 22(1), (2) and (3) and by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), section 146(1) and Schedule 7, Part 4.

SCHEDULE

Regulation 4

Grounds for rejection of expression of interest

1. The expression of interest does not comply with one or more of the requirements specified in section 81(1) or in regulations made by the Secretary of State under section 81(1)(b) (duty to consider expression of interest).
2. The relevant body provides information in the expression of interest which, in the opinion of the relevant authority, is in a material particular inadequate or inaccurate.
3. The relevant authority considers, based on the information in the expression of interest, that the relevant body or, where applicable, —
 - (a) any member of the consortium of which it is a part, or
 - (b) any sub-contractor referred to in the expression of interest,is not suitable to provide or assist in providing the relevant service.
4. The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service.
5. The expression of interest relates to a relevant service—
 - (a) 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
 - (b) the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons.
6. The relevant service is already the subject of a procurement exercise.
7. The relevant authority and a third party have entered into negotiations for provision of the relevant service, which negotiations are at least in part conducted in writing.
8. The relevant authority 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.
9. The relevant authority considers that the expression of interest is frivolous or vexatious.
10. The relevant authority 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers contained in Chapter 2 of Part 5 of the Localism Act 2011, which sets out a right whereby certain bodies may submit an expression of interest in providing services on behalf of specified authorities (“relevant authorities”) in the exercise of any of those relevant authorities’ functions in relation to England.

Regulation 2 sets out definitions used in the Regulations.

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Regulation 3 adds to the list of relevant authorities certain fire and rescue authorities in England that are not already included by reason of being a county or district council.

Regulation 4 and the Schedule specify the grounds on which an expression of interest may be rejected by a relevant authority.

An impact assessment of the effect that this instrument may have as placing new burdens on relevant authorities is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk. Copies have been placed in the Libraries of both Houses of Parliament and may also be obtained from the Department for Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU (Telephone 0303 44 41349).