

Report of the Cabinet Member for Education Improvement, Learning and Skills

Cabinet – 17 December 2020

Variation of Legal Agreement to School Improvement through Regional Working (ERW)

Purpose:	For Cabinet to consider the Variation of the Legal Agreement to enable interim services to be provided to Neath Port Talbot (NPT) Council to provide that the remaining Authorities withdraw and for the dissolution of ERW.
Policy Framework:	Inter-Authority Agreement 2014
Consultation:	Finance, Legal, Partner Local Authorities
Recommendation(s):	It is recommended that Cabinet: <ol style="list-style-type: none"> 1) Agree the proposed changes to the ERW Legal Agreement to facilitate provision of agreed services to Neath Port Talbot schools during 2020/21 (as set out in the draft Deed of Variation - Appendix 1) 2) Agree the proposed changes to the ERW Legal Agreement to: <ol style="list-style-type: none"> (i) Facilitate dissolution/termination of the ERW Consortium, (ii) Address any subsequent liabilities/indemnities of all present (and former) Authorities. (iii) Facilitate a reduced notice of withdrawal period to 3 months (as set out in the draft Deed of Variation - Appendix 1) 3) Delegates authority to the Chief Legal Officer and interim Director of Education to make any necessary changes to the Legal Agreement (in consultation with the other ERW partners) and enter into any documentation necessary to implement any of the recommendations in this report and to protect the council's interests.
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1. Background

- 1.1 ERW is an alliance of six local authorities created to deliver school improvement services across Mid and South West Wales. ERW is governed by a Joint Committee bound by an Inter-Authority Legal Agreement, which was adopted by Cabinet on 8 April 2014.
- 1.2 On 19 March 2020 Cabinet resolved to withdraw from the current ERW consortium arrangement and served notice of intention to withdraw on 20 March 2020. Swansea will withdraw from ERW with effect from 31 March 2021.
- 1.3 NPT left ERW on 31 March 2020. Carmarthenshire and Ceredigion Councils have also given notice to withdraw with effect from 31 March 2021. Powys and Pembrokeshire Councils have not given notice to withdraw.

2. Present Position

- 2.1 On 13 November 2020 the ERW Joint Committee considered two reports on proposed changes to the ERW Legal Agreement.
- 2.2 The first report considered proposed changes to the Legal Agreement to enable ERW to provide NPT schools with access to agreed services (subject to the assurance of no costs falling on ERW) and to the preparation of a separate legal agreement between NPT and ERW. This was to enable support to NPT schools and facilitate the allocation of Welsh Government funding to ERW and to ensure that adequate governance arrangements were in place.
- 2.3 The Joint Committee agreed the proposed changes subject to approval by each constituent authority. A draft Deed of Variation between the remaining ERW authorities setting out the services to be provided to NPT considered by the Joint Committee is shown at **Appendix 1**.
- 2.4 The second report considered the dissolution of ERW, withdrawal and liabilities. In light of paragraph 1.3 above, and as the current Legal Agreement is drafted, as at 1 April 2021 ERW will have only 2 members ie Pembrokeshire and Powys as neither Authority have issued a notice to withdraw. The Legal Agreement provides that even if both Pembrokeshire and Powys Councils gave notice to withdraw now the earliest possible date for both to withdraw is 31 March 2022.
- 2.5 In addition, the Legal Agreement does not contain an appropriate exit (dissolution/termination) clause. In order to implement the ERW Joint Committee decisions, and in particular, to facilitate dissolution/termination of ERW it is necessary for the ERW Legal Agreement to be varied.
- 2.6 The issue of liabilities/indemnities also needs to be clarified in relation to both NPT and the future liabilities on the withdrawing Authorities (Carmarthenshire, Ceredigion and Swansea and also the liabilities/indemnities of Powys/Pembrokeshire should they serve notice of withdrawal.
- 2.7 The further draft variation proposals in relation to Notice, Withdrawal and Indemnity are shown at **Appendix 1**. This includes an amendment to clause 15.1 to reduce the withdrawal notice period from 12 months to 3 months. It also proposes a new clause 15.6 to facilitate withdrawal, address liabilities, indemnities and costs. The

Joint Committee approved all the above changes at their meeting on 13 November 2020.

- 2.8 If agreed, upon receipt of a notice to withdraw from all (remaining) authorities the changes will enable the Legal Agreement “to determine” (i.e. for ERW to be dissolved). The current proposal is that this should take place at the end of the 2020/21 financial year (i.e. 31/3/21). This timeline may change depending on the agreements reached by respective Leaders. In order that Powys and Pembrokeshire County Councils may give notice to withdraw (should they wish to do so), and for this to be effective from 31/3/21 (rather than 31/3/22), that notice must be issued by 31/12/20.

3. Legal Implications

- 3.1 Clause 25 of the Legal Agreement states that ERW Joint Committee can recommend changes to the Legal agreement by giving notice to each authority. Each authority shall, on receipt of a notice, use all reasonable endeavours to consider within 6 weeks of such receipt, whether to accept the recommendation. If all the authorities agree to the recommended changes, a memorandum of variation shall be prepared on behalf of each authority and appended to the Agreement.
- 3.2 At the meeting of 13 November 2020 the Joint Committee recommended that changes were made to the Legal Agreement, to:
- i) facilitate dissolution/termination of the ERW Consortium,
 - ii) address any subsequent liabilities/indemnities of all present (and former) Authorities.
 - iii) facilitate a reduced notice of withdrawal period to 3 months.
- 3.3 The Legal Agreement does not contain an appropriate exit (dissolution/termination) clause. In order to implement the ERW Joint Committee decisions, and in particular, to facilitate dissolution/termination of ERW it is necessary for the ERW Legal Agreement to be varied.
- 3.4 The Cabinets of each Authority will need to consider the proposed variations to the Legal Agreement and advise ERW if they are supportive of the proposals whereupon legal officers can make the necessary arrangements to vary the Legal Agreement.

4. Equality and Engagement Implications

- 4.1 There are no equality or engagement implications associated with this report.

5. Financial Implications

- 5.1 The continuation of the Joint Committee as a vehicle is important given the substantial grant sums received and disbursed through it.
- 5.2 The changes proposed in the deed of variation increase flexibility for partners to withdraw at materially shorter notice.
- 5.3 No substantive changes are made to the underlying principles of subsidiarity and equal liability for running costs whilst in operation and shortfalls and losses created on cessation including wind up and redundancy and pension liability costs.

- 5.4 Nevertheless the foreshortening of the notice period does increase the risk of short term instability to operating budgets and rapidity of crystallisation of winding up costs in the event of such a trigger and this does increase financial risk. ERW operating costs are insignificant when viewed in the context of constituent authorities education budgets and it is thus felt that increased risk of instability and shorter notice, in exchange for the continued operation of the vehicle to receive significant grant sums to disburse to constituent authorities and their schools, is a price worth paying.

Background Papers: ERW Joint Committee Reports of 13 November 2020. Legal Agreement (2014)

Appendices:

Appendix 1 - Draft Variation to Legal Agreement.