

# ERW JOINT COMMITTEE

## 13<sup>TH</sup> NOVEMBER 2020

### ERW JOINT AGREEMENT

**PURPOSE:** To make changes to the Joint Legal Agreement in accordance with Clause 25

#### RECOMMENDATIONS / KEY DECISIONS REQUIRED:

1. The Joint Committee (having consulted with the Executive Board), recommends to each Authority, in accordance with Variation clause (Clause 25) of the ERW Joint Legal Agreement (2014) ("Legal Agreement"), that changes are 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 4 months.
2. That notice in writing is given to each Authority of Recommendation 1 (above).

#### REASONS:

1. Enable Authorities who have not yet given notice to withdraw to do so, so as to be effective from 31/3/21.
2. The Legal Agreement does not offer clarity in how the consortium can be dissolved.
3. Facilitate dissolution/termination of the ERW Consortium.
4. Provide clarity in relation to any subsequent liabilities/indemnities of all present (and former) Authorities.

<p><b>Report Author:</b> Phil Roberts  Gareth Morgans  on behalf of the Directors of Education/Chief Education Officers</p>	<p><b>Designation:</b> ERW Lead Chief Executive  ERW Lead Director</p>	<p>phil.roberts@swansea.gov.uk  EDGMorgans@carmarthenshire.gov.uk</p>
---	--	---



# EXECUTIVE SUMMARY ERW JOINT COMMITTEE 13<sup>TH</sup> NOVEMBER 2020

## ERW JOINT AGREEMENT

In the Joint Committee meeting held on the 21<sup>st</sup> of July a document in regard to the future of ERW was tabled. The decision of the Joint Committee (*from Draft Minutes*) was as follows-

### **Minutes:**

*The Joint Committee received the above report outlining a range of options and proposals in pursuit of an agreed future footprint for ERW. It was reported that given the depth and detail of this issue the work would be progressed via a series of specific 'footprint meetings' within a schedule of 'milestones' to ensure successful completion... The Committee was advised that the Chair had requested the Lead Chief Executive and Lead Director to develop a project timeline for the work and that the Directors would be meeting over the summer to progress the work.*

Work has progressed. However there are issues in relation to the dissolution of ERW and liabilities which need to be addressed. As it stands, there is no reference in the Legal Agreement in how the consortium can be dissolved/terminated, save for:

### **2. TERM**

*2.1 This Agreement shall come into effect on the Commencement Date and shall continue in force until terminated by the Authorities in accordance with this Agreement."*

Neath Port Talbot withdrew from the Consortium on 31/3/20. Carmarthenshire, Ceredigion and Swansea have all issued withdrawal notices of intention to withdraw, effective from 31<sup>st</sup> March 2021. Powys and Pembrokeshire CC's have not given notice to withdraw.

As the current Legal Agreement stands, this could result in ERW only having two members i.e. Pembrokeshire and Powys as from April 1<sup>st</sup>, 2021.

The Joint Legal Agreement states-

### **15 WITHDRAWAL AND INDEMNITY FOR CONSEQUENCES OF WITHDRAWAL**

*15.1 Any Authority may withdraw from this Agreement by giving notice in writing to each of the other Authorities to expire 12 months from the end of the Financial Year in which the notice is given*

*15.2 Each Authority agrees that, in the event that it gives notice of withdrawal to the other Authorities, and that proposed withdrawal is voluntary and not arising out of an action of or decision by Welsh Government, it will indemnify the other Authorities against any Loss to the other Authorities arising directly out of the consequences of its withdrawal from this Agreement*



15.3 Where any Authority withdraws from this Agreement the Executive Board shall continue to subsist provided at least two Authorities remain as members and, if only one Authority remains, the Agreement shall continue in force in respect of:

15.3.1 any financial liability which has arisen, or which may arise out of the performance of the Agreement

15.3.2 the cost of any redundancies consequent upon withdrawal

15.3.3 any liability of each Authority to indemnify the other Authorities under this Clause: and

15.3.4 any matter referable to the Dispute Resolution procedure under Clause 14 above arising out of the performance of or withdrawal by any Authority under this Agreement

15.4 If this Agreement continues, notwithstanding the withdrawal of one or more Authorities from the Consortium, the Authorities so withdrawing shall remain liable for their Contribution calculated to the date upon which its notice expires provided that the withdrawing Authority or Authorities shall also remain liable for the costs of any redundancy directly attributable to the withdrawal of that Authority as follows:

<b>A redundancy in respect of which notice has been given within:</b>	<b>% of cost</b>
1st year after withdrawal	100
2nd year after withdrawal	100
3rd year after withdrawal	80
4th year after withdrawal	60
5th year after withdrawal	40
Thereafter	nil

15.5 Subject to the liability of a withdrawing Authority under Clause 15.4, the remaining Authorities shall be liable for the costs of any redundancy according to the Contribution of each after deducting the Contribution of the withdrawing Authority.”

As neither Pembrokeshire nor Powys have issued notice to withdraw, under the current Legal Agreement they will remain members of ERW and the Consortium will continue to exist until either or both issue withdrawal notices.

If only one Authority remains the Legal Agreement will continue in force in respect of any financial liability, cost of any redundancies etc. as set out in clause 15.3.

The earliest possible date for Pembrokeshire and Powys to withdraw from ERW is March 31<sup>st</sup>, 2022. In the event that Powys and Pembrokeshire CC’s now wish to give notice of withdrawal, effective from 31/3/21, a change can be made to the withdrawal clause in order to shorten the notice period required.

In addition, the issue of liabilities/indemnities needs to be clarified, in relation to the authority which has withdrawn (NPT) and the future liability/indemnities of the withdrawing Authorities (Carmarthenshire, Ceredigion and Swansea) and also the liabilities/ indemnities of Powys and Pembrokeshire should they serve notices of withdrawal.

**"Loss"** means any loss or liability arising out of this Agreement in contract, tort or otherwise directly suffered by an Authority together with any damage, expense, liability or costs reasonably incurred in contesting or quantifying such loss or liability.”



10.2 If the Lead Authority for Finance is in receipt of Funding on behalf of all the Authorities, and subsequently disburses some or all of it to the other Authorities, the other Authorities shall each, in the event that the Funding subsequently becomes repayable because of breach of the conditions of the Funding, **or because the Agreement is terminated**, or for any other reason, forthwith repay to the Lead Authority for Finance the Funding advanced to them and now repayable; and each agrees to indemnify and keep indemnified the Lead Authority for Finance against all Loss in respect of the same.

**“Clause 25: Variation**

*Executive Board in consultation with the Joint Committee may, at any time recommend changes to this Agreement by giving notice in writing 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 by the Executive Board for execution on behalf of each authority and appended to the legal agreement.*

The Executive Board in consultation with the Joint Committee recommends, in accordance with clause 25, that changes are made to the Legal Agreement as set out above, and that written notice is given to each Authority accordingly.

It is noted that:

- 1. Legal opinion from respective Heads of Legal of respective Authorities will need to be sought following receipt of written notices recommending variation of the Legal Agreement.
- 2. Ceredigion CC legal costs in executing the above changes will be charged to ERW.
- 3. Legal advice will be required in establishing any new Consortium to which withdrawing authorities may wish to be affiliated.

DETAILED REPORT ATTACHED?	NO
---------------------------	----



## IMPLICATIONS

Policy, Crime & Disorder and Equalities  <b>NONE</b>	Legal  <b>YES</b>	Finance  <b>YES</b>	Risk Management Issues  <b>YES</b>	Staffing Implications  <b>YES</b>
<p><b>Legal</b> There are legal issues to be resolved in how the current Consortium can be dissolved, and also to allow (some remaining and former) partners to develop alternative working arrangements to address school improvement challenges and deliver educational improvements in our schools. The current Legal Agreement needs to be reviewed to incorporate how this can be achieved by March 31<sup>st</sup>, 2021.</p>				
<p><b>Finance</b> Funding has been secured to provide an additional resource to manage the change process and associated HR processes and any additional legal advice required.</p>				
<p><b>Risk</b> The lack of clarity in regard to the dissolution of ERW and the liabilities poses a risk.</p>				
<p><b>Staff</b> There are risks to the current staffing complement which need to be considered.</p>				

## CONSULTATIONS

<p>Relevant stakeholders will be consulted on the preferred partnership approaches/solutions on the dissolution of ERW. These will include-</p> <ul style="list-style-type: none"> <li>• Staff Side Representatives and other Organisations</li> <li>• ERW Scrutiny Committee</li> <li>• Headteacher Board</li> <li>• Each LAs Headteachers</li> <li>• Welsh Government</li> </ul>
--

<b>Section 100D Local Government Act, 1972 – Access to Information</b>		
<b>List of Background Papers used in the preparation of this report:</b>		
Title of Document	File Ref No.	Locations that the papers are available for public inspection
<b>Legal Agreement signed 16<sup>th</sup> July 2014</b>	<b>1</b>	<b>Available in each LA</b>

