

Executive Board

November 30th, 2020

Subject- Variation of the Regional Consortia's Legal Agreement (ERW)

Purpose: For the Executive Board to consider the Variation of the Legal Agreement to enable interim services to be provided to Neath Port Talbot schools, remaining Authorities withdraw and for dissolution of ERW.

Recommendations / key decisions required: To agree to the variation of ERW's Legal Agreement in relation to-

1. To agree 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. To agree 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 3 months.*
 (as set out in the draft amended clause 15 - Appendix 2)
3. Delegates authority to the Chief Legal Officer and Director of Education to make any necessary changes to the Legal Agreement (in consultation with the other ERW partners) and to enter into any documentation necessary to implement any of the recommendations in this report and to protect the Council's interests.

Reasons:

1. To enable remaining authorities to give notice to withdraw,
2. To vary the Legal agreement
3. To provide services to NPT.
4. The Legal Agreement does not offer clarity in how the consortium can be dissolved.
5. Facilitate dissolution/termination of the ERW Consortium.
6. Provide clarity in relation to any subsequent liabilities/indemnities of all present (and former) Authorities.

Relevant scrutiny committee to be consulted NA

Exec. Board Decision Required YES

Council Decision Required NA

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER: Cllr Emlyn Dole

Directorate: Education and Children's Services

Name of Director / Head of Service: Gareth Morgans

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Designations:

Director of Education and Children's Services

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EXECUTIVE SUMMARY

EXECUTIVE BOARD November 30th, 2020

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

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 a Legal Agreement.

The Executive Board on the 16th of March agreed the following-

- a) That the Swansea Bay City Deal footprint be considered as the preferred option for Carmarthenshire.
- b) That Carmarthenshire County Council issues Notice to Withdraw from ERW
- c) That subject to the provisions of the Legal Agreement a one year transition period to 2020/21 be agreed
- d) That the Director of Education and Children's Services, the Executive Board Member for Education and Children's Services, in liaison with the Leader and Chief Executive Officer develop the preferred model and ascertain the impact of any changes (including legal, HR and financial), subject to the provisions of the Legal Agreement.

Decisions a) and d) remain outstanding and will need to be implemented before 31/3/21, to facilitate Carmarthenshire leaving ERW at the end of the financial year. We will need to ensure a suitable alternative provision to the current Consortium to provide support for Carmarthenshire's schools.

Recent developments within the ERW Consortium and Joint Committee decisions also need to be taken into account, including:

- Neath Port Talbot left ERW on 31/3/20.
- Ceredigion and Swansea County Councils have also given notice to leave ERW.
- Powys and Pembrokeshire County Councils have not given notice.

On the 13th of November ERW's Joint Committee considered two reports on proposed changes to the ERW Legal agreement subject to approval being obtained from each of ERW's local authorities.

Report 1- To facilitate provision of agreed services to Neath Port Talbot schools during 2020/21.

The Joint Committee agreed:

1. the proposed changes to the Legal Agreement to enable ERW to provide Neath Port Talbot schools with access to agreed services as detailed within the variation report, subject to the assurance of no costs falling on ERW (save for legal costs incurred in amending the Legal Agreement).
2. to the preparation of a separate legal agreement between ERW and NPT

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.

Report 2- To make changes to the Joint Legal Agreement in accordance with Clause 25 Variation.

Clause 25 states that ERW can recommend changes to the Legal Agreement by giving notice to each partner 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.

The Joint Committee recommended:

1. 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 3 months.*
2. That notice in writing is given to each Authority of Recommendation 1 (above)

The Joint Committee also considered a Consortium Update report and recommended that Leaders should meet to discuss issues surrounding ERW, including dissolution/termination date.

Current position

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.

The Executive Boards/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.

The draft variation proposals are in relation to clause 15 Withdrawal and Indemnity for Consequences of Withdrawal of the Legal Agreement are shown at Appendix 2.

This includes an amendment to clause 15.1 in order 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 draft variation proposals have not (yet) been agreed by respective Heads of Legal. It was necessary to wait until the ERW joint committee had made its recommendations on 13/11/20.

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 as the 31st of August has been suggested as an alternative implementation date.

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.

The final version of the Local Government & Elections (Wales) Bill has still not been published. The Bill includes reference to Corporate Joint Committees (CJC) to oversee several regional functions, including School Improvement.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: 

Director of Education and Children's Services

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	YES	YES	NONE	YES	YES	YES

Legal

In order to implement the decisions of ERW's Joint Committee the current Legal Agreement needs to be revised specifically in providing specific services to NPT schools; changing the notice period and clarifying dissolution and termination issues.

Finance

The Legal Agreement specifies clearly the financial responsibility on each partner should they leave ERW. The revised Legal Agreement will clarify matters even further. There could be additional costs in relation to current liabilities and staff redundancies which will have to be borne by all partners authorities.

Risk Management

The current consortium provides our schools with support and services currently not provided by the local authority. Should ERW cease to exist we will have to ensure our schools are still able to access support for *Professional Learning and Research, Leadership, Curriculum, Digital Skills, Equity and Well-being and Welsh*.

Staffing Implications

Although we're not the direct employer, as a partner in ERW we have a responsibility to the staff currently employed by the entity and their wellbeing. Should we move to an alternative model we will have to follow the HR advice and guidance in line with Pembrokeshire County Council's policies (As lead Authority) to ensure that staff are dealt with fairly.

Physical Assets

ERW's current base is Y Llwyfan and it has an agreement with the University of Wales Trinity St David's. In addition the consortium has numerous contracts and owns furniture and technology.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed:



Director of Education and Children's Services

1. ERW Scrutiny Committee- will be consulted with on the 3rd of December, 2020

4.Relevant Partners- All partner County Councils will be part of this discussion.

5.Staff Side Representatives and other Organisations- there will be appropriate consultation with staff and their trade unions.

**EXECUTIVE BOARD PORTFOLIO
HOLDER(S) AWARE/CONSULTED**
YES

The portfolio Member is aware of the developments and is supportive of a new partnership to deliver school improvement.

Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:

THESE ARE DETAILED BELOW

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Appendix 1	Attached	Available as part of this pack.
ERW's Legal Agreement	ERW LAg	Available from our Legal Department