

**ERW JOINT COMMITTEE  
DATE 8<sup>TH</sup> JULY 2021**

**DRAFT DEED OF VARIATION TO THE JOINT COMMITTEE  
AGREEMENT DATED 16<sup>TH</sup> JULY 2014**

**Purpose:** to seek the views of the Joint Committee on the terms of the draft Deed of Variation attached at Annex A.

**RECOMMENDATIONS / KEY DECISIONS REQUIRED:**

**That the Joint Committee:-**

1. Recommend to each of the constituent Councils that
  - i) a decision is made to sign the Deed of Variation and serve notice to withdraw from the Consortium in accordance with each Council's constitution and that the notice is duly served on the Chair of the Joint Committee.
  - ii) Any decision by the Councils is coordinated and appropriately timed to reflect the need to finalise outstanding ERW business.
  
2. Subject to recommendation 1, authorise the S.151 officer for the Consortium to undertake further work to clarify the liabilities of the current and former parties to the Consortium and to liaise with Neath Port Talbot and Ceredigion Councils confirming the detail of any liability arising as a result of their withdrawal from the regional arrangements.

**REASONS:** to agree the terms of the draft Deed of Variation to allow the current parties to the Consortium to exit the regional arrangements and to terminate the Joint Committee Agreement dated 16<sup>th</sup> July 2014

<p><b>Report Author:</b> Debbie Smith</p>	<p><b>Designation:</b> Deputy Chief Legal Officer – Swansea Council</p>	<p><b>Tel No. 01792 637585</b></p> <p><b>E. Mail:</b> Debbie.smith@swansea.gov.uk</p>
---	---	---



**EXECUTIVE SUMMARY**  
**ERW JOINT COMMITTEE**  
**DATE 8<sup>TH</sup> JULY 2021**

**DRAFT DEED OF VARIATION TO THE JOINT COMMITTEE**  
**AGREEMENT DATED 16<sup>TH</sup> JULY 2014**

**BRIEF SUMMARY OF PURPOSE OF REPORT**

1. The Education through Regional Working (ERW) is governed by a Joint Committee Agreement dated 16<sup>th</sup> July 2014 (“the Agreement”) attached at Annex A.
2. Both Neath Port Talbot and Ceredigion Councils, in accordance with clause 15.1 of the Agreement, have withdrawn from the Agreement. The notice served by Neath Port Talbot took effect on 31 March 2020 and the notice served by Ceredigion took effect on 31 March 2021.
3. The Joint Committee at a meeting on 13 November 2020 agreed to the proposed changes to the Agreement to enable Neath Port Talbot schools to access services and variations to the notice provisions to facilitate termination of the Agreement. Services have been delivered to Neath Port Talbot outside of the contractual arrangements contained within the Agreement from 1 April 2020 and ongoing.
4. On 30 March 2021 the Joint Committee resolved to provide services to Ceredigion outside of the contractual arrangements covered by the Agreement from the date immediately following their withdrawal on 31 March 2021 until 31 August 2021. It was also agreed that services would continue to be provided to Neath Port Talbot until 31 March 2022 or until the dissolution of the Consortium if this occurs earlier.
5. Carmarthenshire and Swansea Councils who had previously issued notices to withdraw from the Agreement, subsequently decided to withdraw those notices and to continue with the current arrangements, working together with Powys and Pembrokeshire Councils until 31<sup>st</sup> August 2021 to allow the Councils further time to consider options and models for future delivery.
6. The main provisions of the Deed of Variation include:-
  - To facilitate the provision of services to Neath Port Talbot and Ceredigion Councils from the dates of their respective withdrawals until such time as the Joint Committee determine.
  - To allow the current members to withdraw on 1 months’ notice.



- To include a new termination clause at clause 15.6. This provides for termination of the Agreement in the event that all councils leave at the same time. The clause provides for all costs associated with the termination of the Agreement and the dissolution of ERW to be divided equally between the current parties, having first deducted any liabilities of Neath Port Talbot and Ceredigion Councils.
7. The potential liability of Neath Port Talbot and Ceredigion Councils is contained within clause 15 of the Agreement. When a Council withdraws it is financially responsible for the costs of any redundancy directly attributable to the withdrawal of that Council. The Agreement contains a sliding scale of liability for those costs depending on how many years following their withdrawal the redundancy results as follows:

A redundancy in respect of which notice has been given within:	% of cost
1 st year after withdrawal	100
2nd year after withdrawal	100
3rd year after withdrawal	80
4 <sup>th</sup> year after withdrawal	60
5 <sup>th</sup> year after withdrawal	40
Thereafter	0

The withdrawing Council is also liable for any loss that the other Councils suffer arising directly out of the consequences of its withdrawal from the Agreement.

8. Although there is no agreement currently between the Councils on how the actual or potential liabilities are to be managed, the Deed of Variation contains the principles upon which the indemnities will operate and provides the current member Councils with the ability to calculate and negotiate any amounts due from those Councils who have already withdrawn. The Joint Committee is invited to review and agree the content of the draft Deed of Variation and endorse each of the constituent Councils in taking the necessary action to agree and sign the draft Deed of Variation and to serve notice to withdraw from the current regional arrangements.

<b>DETAILED REPORT ATTACHED?</b>	the Draft Deed of Variation is attached as Annex A
----------------------------------	--



# IMPLICATIONS

Policy, Crime & Disorder and Equalities	Legal	Finance	Risk Management Issues	Staffing Implications
<b>NONE</b> (Delete as applicable)	<b>YES</b> (Delete as applicable)	<b>YES</b> (Delete as applicable)	<b>YES</b> (Delete as applicable)	<b>YES</b> (Delete as applicable)

## 1. Legal

A Deed of Variation to the Joint Committee Agreement dated 16<sup>th</sup> July 2014 is required to vary the period of service for any withdrawal notice and also to terminate the Agreement.

The Deed of Variation also provides a mechanism for managing any losses associated with the termination of the Agreement and recognises that the Consortium may seek to recover an element of those losses from the Councils which have already withdrawn

## 2. Finance

There will be losses associated with the termination of the Joint Committee Agreement and the parties withdrawal from the current consortium arrangements. It is possible that some of the losses may be recoverable from former parties under the terms of the indemnities in the Agreement.

## 3. Risk Management

There is the potential for a dispute to arise between the current and former parties to the Agreement in relation to the operation of the indemnities within the Agreement.

## 4. Staffing Implications

There are likely to be staffing implications arising as a result of the Councils withdrawing from the current regional arrangements.



# CONSULTATIONS

Details of any consultations undertaken are to be included here.  
No consultations have taken place as this is an urgent report.

## 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
Annex A Draft Deed of Variation		County Hall, Carmarthen

