

COUNCIL:

20 JULY 2017

CABINET PROPOSAL

SHARED REGULATORY SERVICES – REVIEW OF JOINT WORKING AGREEMENT

Reason for this Report

1. To recommend changes to the Joint Working Agreement between the partner councils for the provision of Regulatory Services

Background

2. In April 2015, Bridgend County Borough Council, the City Council of Cardiff, and the Vale of Glamorgan County Borough Council signed a joint working agreement for the provision of regulatory services across the three Council areas. The document created the Shared Regulatory Service (SRS) and the Shared Regulatory Services Joint Committee.
3. At the time of creating the Joint Working Agreement, some of its provisions were conceptual in nature and over the last 18 months, it is evident that some aspects of the agreement require amending to allow the more effective operation and management of the service.
4. Any changes to the Joint Working Agreement are subject to Clause 26 of the Agreement which states:

"This Agreement cannot be varied without the approval and prior written consent of all Participants. Where the Participants agree to make changes to this Agreement, a Deed of Variation shall be entered into between the Participants and appended to this Agreement"

Issues

5. The first eighteen months of the SRS has been dominated by the move toward, and development of, the new Operating Model agreed by the three Councils in Autumn 2014 and formally initiated in April 2015. Creating a shared service has involved significant change. Many of the changes are provided for within the Joint Working Agreement, and those changes have been implemented successfully. In December 2015, an audit of the shared service concluded that that the effectiveness of the internal control environment was sound and substantial assurance can be placed upon the management of risks.

6. However, there are aspects of the Joint Working Agreement that require updating and amending. Some of the changes proposed in this report are administrative in nature, while others advocate a change in the current operating practices. These changes have been considered by the officer Management Board for the Shared Service, all three Section 151 officers, and agreed as appropriate by the Joint Committee. The proposed changes are set out below in paragraphs 7 -11
7. Clause 11.9.2 of the Joint working Agreement states:

in the case of expenditure which is less than 5% in excess of the Approved Budget (as indicated in accordance with clause 7.8.1.1) without the prior written consent of each s.151 Officer for each of the Participants liable to contribute towards such expenditure. For such purposes the S151 Officers shall respond to written requests to consent to such additional expenditure within 10 working days of receiving the same and shall state whether they consent to the incurring of such additional expenditure or not.

Consequently, written consent needs to be provided by all participants for spend in excess of the budget. Obtaining written permission in the event of a spend of up to 5% within 10 working days from the s151 officers of the participating authorities is reasonable and prudent. However, it is proposed that this clause is further qualified with the following clause

The Head of the Shared Regulatory Service, in consultation with Lead S151 Officer, may in the case of an unexpected event incur expenditure of up to £100,000 in excess of Agreed Budget, without the provision of prior consent. Details of the expenditure will be reported back to the participant's S151 Officers within 5 working days of the commitment being known and reported to the next Board and Committee meetings.

Schedule 5, Clause 3 of the Joint Working Agreement relates to budget approval and monitoring by the Joint Committee. It is proposed to insert two new clause as follows:

Clause 3.1A Notification of any proposed saving requirement to be made by the Service must be provided to the Head of Service and the Lead S151 Officer at least 12 months in advance of the year to which they relate. Indications of the following 3 year savings requirement should be provided to the Head of Service prior to the start of each financial year.

Clause 3.1B In the event of financial changes that are outside of the control of the Shared Regulatory Service such as, but not restricted to changes in legislation, inflation or pension fund contributions, that the Shared Regulatory Service shall commence consultation with the Participants on funding these changes as soon as possible.

8. There are a number of references to legislation within the JWA. For example, Schedule 1, Regulatory Services functions, sets out a lengthy list of statutes and statutory instruments authorising and governing the functions that comprise the core services of the collaborative service.

Unfortunately, some of the said statutory references are incorrect, or have been superseded; these issues have been highlighted in some external audits of the service. It is proposed that Schedule 1 is updated and the proposed deed of variation includes wording designed to avoid having to refer to the Councils each time amendments of this nature are needed. The amended Schedule 1 also includes new areas of legislation that the SRS administers on behalf of the partner Councils, such as the provisions of the Housing Act (Wales) to deal with unlicensed landlords, currently funded through Welsh Government grant.

9. If any future legislation is enacted in the realms of Public Protection, outside the existing scope of Schedule 1, such as the forthcoming Public Health Bill, the Councils will need to determine whether this is assigned to the SRS and any financial implications.
10. There is currently no specified conduit for each executive to be apprised of the work of, and the decisions taken by, the Joint Committee. It is proposed to insert a new Clause 5.6 into the agreement , which provides for each authority to take an annual report to their Cabinets, for information purposes, apprising Cabinets of the functions carried out by the Joint committee over the proceeding financial year, its performance and financial position
11. Schedule 4 of the JWA outlines the functions delivered by the Shared Service. It is proposed to make some minor administrative amendments to provide greater clarity on the range and scope of the services provided. These include, an update on the range of Authority specific services indicating the SRS role in acting as a "Responsible Authority" for the purposes of the Licensing Act 2003; The rapid response regime originally operated previously only in Cardiff is now extended to operate across the region and a fuller acknowledgement of the "Primary Authority " function in providing support to local businesses. There are no additional financial implications arising from these amendments.

Local Member consultation

12. There are no implications for Ward Members resulting from this report. (Scrutiny is undertaken at each partner council)

Reason for Recommendations

13. Amendments to the Joint Working Agreement will improve the functioning and governance of the Shared Regulatory service. Such changes require ratification by each Council.
14. To allow minor administrative changes to the Joint working Agreement without seeking ratification by Cabinet and full Council.

Financial Implications

15. Paragraph 7 sets out the changes of the Joint Working Agreement in respect to preparation of annual budget and changes to an approved

budget.

16. As per the proposed changes of the Joint Working agreement, notification in respect of the 2018/19 budget, intentions should have been presented by the respective Local Authority to the Head of Service prior to the 1 April 2017. In the absence of any definitive decisions, a range of budget scenarios have been presented to the Head of Service in order for planning considerations to be given enough time to be implemented if decided upon. Consideration will also be given to savings proposals for the two years beyond 2018/19 so that there is clarity in respect of the direction of the service
17. There are two aspects of Council contributions to the SRS, which are core and LA specific. Core contributions reflect the service provided across the region of Cardiff, Vale of Glamorgan and Bridgend. A reduction in this service will reduce each LA contribution proportionately on a population basis. It should be noted that the population basis will change on a year to year basis so contributions will differ as a result of that whether or not the overall budget is changed.
18. LA specific services relate primarily to services which need to be self-funding such as Houses in Multiple Occupation and Licensing. However, the Night time noise service is one which has a specific LA contribution.
19. Any changes but not restricted to legislation, pensions or inflation contributions will all form part of the overall budget planning process for Cardiff Council. The result of which could amend the budget planning assumptions for SRS as well as other services funded by Cardiff Council
20. Any changes in the approved budget will require a mitigation / recovery plan which will determine how the additional expenditure will be recovered and the identification of that funding source will be a primary consideration of the Lead S151 Officer (currently Vale of Glamorgan) and the S151 officers of the other contributing authorities

Legal Implications

21. The Joint Working Agreement allows for variations (see clause 26 to the Joint Working Agreement), subject to the approval and prior consent of all Participants. Where the Participants agree to make changes to the Joint Working Agreement, a Deed of variation shall be entered into between the Participants and appended to the Joint Working Agreement.
22. It is a matter for each partnering Council to seek the necessary approvals of the proposed amendments to the Joint Working Agreement, in accordance with its own Council's governance.
23. In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected

characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (I) Religion or belief – including lack of belief.

It is understood that an Equality Impact Assessment (“EIA”) has been carried out when the Shared Regulatory Services was originally created and has been updated as the project has progressed. The purpose of the Equality Impact Assessment is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regard to the Equality Impact Assessment in making its decision and the assessment should continue to be regularly updated as the project progresses.

24. The Council has a duty to improve under the Local Government (Wales) Measure 2009. The report outlines achievements in 2015/16.

HR Implications

25. There are no HR implications for this report.

CABINET PROPOSAL

The Council is recommended

1. to approve the proposed changes to the Joint Working Agreement between the partner councils for the provision of Regulatory Services.
2. to agree that the Senior Responsible Officer for the Shared Regulatory Service be authorised to approve administrative changes to the Joint Working Agreement as long as there are no extension of delegations to the Shared Service or additional financial implications.

THE CABINET

6 July 2017

The following background papers have been taken into account

- The Shared Regulatory Services Business Plans 2015/16 and 2016/17
- The Joint Working Agreement executed on 10th April 2015
- Equality Impact Assessment (EIA) 16th November 2015
- Deed of Variation