

Transition of Functions from the Marches Local Enterprise Partnership

Meeting: Cabinet

Meeting date: Thursday 26 October 2023

Cabinet member: Graham Biggs, Cabinet member economy and growth

Report by: Corporate Director, Economy and Environment,

Report author: Service Director Economy and Growth, Economy and Environment

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

All Wards

Purpose

To establish required arrangements to transition functions from the Marches Local Enterprise Partnership (LEP) to commence from April 2024, following government's announcement in August 2023 that they will no longer provide funding to LEPs with functions to be alternatively led by Local Authorities.

Recommendation(s)

- a) **That a Joint Committee is established with Shropshire Council and Telford & Wrekin Council to (i) oversee, manage and distribute the assets, functions and responsibilities of the Marches Enterprise Partnership during the transition period and (ii) exercise executive functions as required to enable the transition of LEP functions.**
- b) **Delegate to the Corporate Director for Economy and Environment, in consultation with the Leader of the Council, authority to agree the final Terms of Reference with partner councils.**

Alternative options

1. As per the letter from government (Appendix 1), the councils could ask the LEP to continue to deliver the identified sub-regional functions. However, as per the letter from the three Leaders of the respective councils (Appendix 2) to the LEP Board this is not considered to be the most efficient and effective route to engaging and supporting businesses locally. This option is not recommended.

Key considerations

2. Since the publication of the Levelling Up White Paper, government has made progress on extending devolution across England and has stated that it remains committed to empowering local leaders by integrating Local Enterprise Partnership (LEP) functions into local democratic institutions. The Spring Budget 2023 set out that government was minded to withdraw government support (core funding) for LEPs from April 2024 and to transfer LEP functions to local authorities, where appropriate and where not already delivered by combined authorities.
3. Following an information gathering exercise led by the Department for Levelling Up, Housing and Communities, and the Department for Business and Trade, the government announced on the 4th August 2023 that it has confirmed its decision to no longer fund LEPs.
4. Government's sponsorship and core funding of LEPs will cease from the end of March 2024. It recognises that as LEP's are legally private enterprises and that they may choose to continue operating in some form, but Government is clear that it will support local authorities to take on LEPs' functions and responsibilities.
5. A joint letter from the Leaders of the three councils dated 1 September 2023 (Appendix 2) confirms that the Councils wish to follow Government guidance and for the LEP to cease and to transfer its assets and responsibilities by the end of March 2024. At the time of report drafting various private sector LEP board members are expressing a desire for some form of an alternative commercial offer to the business community.
6. The Government decision also specifies activities to be transferred to upper tier authorities. These are set out in the government guidance of March 2022 LEP integration guidance and are those previously supported by annual core funding – namely, business representation, strategic economic planning, and responsibility for the delivery of government programmes where directed. Government has been clear that it expects these functions to be exercised by upper tier local authorities (working in collaboration with other upper tier local authorities as appropriate), where they are not already delivered by a combined authority, or in areas where a devolution deal is not yet agreed.
7. Government has stated that it will provide some revenue funding to local and combined authorities in 2024/25 to support them to deliver the functions currently delivered by LEPs.

Details of this support will be confirmed in due course. Funding beyond 2024/25 will be subject to future Spending Review decisions.

8. In terms of grant funding monitoring, the council understand that the Marches LEP has distributed circa £200m of grants and other funding for project and business support since it was established. A significant number of those awards carry provisions for clawback or repayment dependent upon delivery of stated benefits within individually specified time periods. Although the vast majority of Local Growth Fund and Get Building Fund projects are now nearing an end. The LEP has invested in certain projects that can be deemed as contingent assets.
9. All government funding awarded to the Marches LEP has been made via Shropshire Council as the accountable body. Shropshire Council have committed to carry on its role as accountable body for the foreseeable future, as per their own respective cabinet decision taken on the 18th October 2023 (<https://shropshire.gov.uk/committee-services/mglIssueHistoryHome.aspx?IId=27270&PlanId=213&RPID=521582338>). Those funding awards have been received as grants under the provisions of Section 31, Local Government Finance Act 2003. In this context the Marches LEP has been acting in a stewardship role and does not itself possess private ownership of those resources. Throughout the existence of the Marches LEP Shropshire Council's Section 151 Officer has also acted as the Section 151 Officer for Marches LEP and has ensured appropriate financial governance and systems have been in place for the distribution and management of those resources.
10. Herefordshire Council, Telford and Wrekin Council and Shropshire Council have been working as local authority partners within the Marches LEP since 2012 and are keen to demonstrate to government a spirit of continuity and stability of decision making in relation to LEP related matters.
11. The key functions of the Joint Committee, established to manage the effective transition of functions from the Marches LEP, which will form the basis for its 'Terms of Reference' are:
 - a) Set, monitor and review the programme for transfer of LEP responsibilities and existing programmes of activity across the Marches LEP area.
 - b) Agree the allocation of LEP revenue and capital spend previously under the control of the LEP Board and relating to the delivery of the LEP Economic Plan and individual councils economic plans/strategies.
 - c) Ongoing oversight, monitoring and review of ongoing grants, assets, programmes, or initiatives until such time as they cease or are transferred.
 - d) Keep under review, influence, and align government and public investment in order to boost economic growth across the geography of the three councils.
 - e) Provide an annual report on the activities of the Joint Committee to the respective three partner councils.
 - f) Agree lead or accountable body status for any particular issue as necessary.
 - g) Review and only where all three Leaders are present at the meeting amend the Terms of Reference of the Joint Committee.
12. In taking forward the Terms of Reference under recommendation b), the Council will ensure that decisions of the Joint Committee are made only by unanimous votes with each council in forming the Joint Committee having a single vote. There will not be any casting vote by Chairperson and every decision will need the support of all councils. Therefore the Joint

Committee cannot make decisions that bind Herefordshire Council unless our representative votes for it, and any resulting responsibilities are fully known and considered. The transfer of any future asset or liabilities would be subject to a separate cabinet decision.

13. In summary establishing Joint Committee during autumn 2023 offers the opportunity to create a smooth and well managed transfer of assets and responsibilities in accordance with government guidance. It provides the basis for joint working and collaboration within a formal governance structure without impacting individual local authority working arrangements.

Community impact

14. In accordance with the Levelling Up White paper, Government have taken the decision to focus business engagement and support services at a local level, responding to the needs of local communities. Through these changes Herefordshire Council can ensure that business representation, engagement, functions, and any available funding (such as UK Shared Prosperity Funding) are aligned in meeting local needs.
15. The Herefordshire Economic Plan recognises the need for better aligned business support, skills, educational and wider place services in order to achieve lasting growth.
16. Engaging and supporting businesses to enable growth and the creation of higher value jobs, through working in partnership with existing local partnerships such as the Herefordshire Business Board, is a priority for the council's administration.

Environmental Impact

17. The Marches LEP has made investments in a range of renewable energy and low carbon projects, and it is important that these are overseen and enabled through to successful delivery. The Joint Committee provides the vehicle for the partner local authorities to continue to support each another on climate and net zero plans and local delivery as required.
18. Each council has clear strategies for managing climate change and carbon reduction. The Joint Committee will take decisions on projects and programmes appropriate for its own local context balanced against the collective view.

Equality duty

19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The transfer of functions from the Marches LEP to the council will provide an opportunity to better respond to local needs, and ensure that services are available and accessible to all who

would like to use them. Equality Impact Assessments will be undertaken on all successor services prior to transition/ launch.

Resource implications

21. It is estimated that since the creation of the Marches LEP in 2012 it has distributed circa £200m of Government grants for growth and development projects across the three local authority areas. There will be a large number of those project awards that include provisions for clawback or repayment if certain agreed delivery criteria are not met. The Joint Committee will take decisions on the management of such decisions and allocate any residual resources as it sees appropriate.
22. Managing the ongoing programme of contracts and funding awards will require resources and capacities above what the three council partners already possess. It is proposed that an element of existing LEP resources be used to fund the capacities necessary for a smooth transfer and ongoing discharge of responsibilities. The councils are also awaiting government guidance and details of the resources that will be allocated to Local Authorities to undertake these additional roles.
23. Whilst the Councils will be no longer required to financially support the management arrangements of the LEP, the Joint Committee may determine as appropriate to jointly fund or augment ongoing work or any future initiatives.
24. At this stage there are no immediate cost implications for the council in creating the Joint Committee, providing the governance arrangements required to enable a manage transition of functions and assets.

Legal implications

25. Part VI of the Local Government Act 1972 and Part 1, Chapter 2 of the Local Government Act 2000 (as amended) makes provision for local authorities to establish joint committees. Provided that the functions to be exercised are executive functions, it is a matter for the respective Cabinets to determine the establishment of an executive joint committee and to agree the executive functions to be delegated to that joint committee. Every member of the joint committee must be a member of their nominating council's Cabinet. In the absence of an established joint scrutiny committee, decisions of the joint committee will remain subject to the individual council's scrutiny arrangements.
26. The decisions of the Joint Committee will be considered to be the decisions of the Council. The Terms of Reference need to be precise as to exactly what actions and decisions can be made by the joint committee as its decisions will bind Herefordshire Council.

Risk management

27. Given the Government's decision to devolve LEP responsibilities to local authorities before the end of March 2024 it is important that the three councils within the Marches LEP now establish an appropriate governance framework to oversee and manage the ongoing contracts, grant funding and contingent assets and liabilities of the LEP. Establishing a Joint Committee between the three Councils will provide a route to managing these obligations and ensure shared democratic accountability and collective decision making.
28. The Joint Committee will work with the LEP Board to establish a work programme and ensure appropriate capacities and resources exist to manage the transfer of responsibilities, records, data and resources.

29. The Joint Committee will take decisions on the treatment of any residual resources, contingent assets and liabilities of the LEP. This includes taking decisions on projects subject to ongoing monitoring and amendment to any previously agreed delivery criteria or benefits.

Risk

Mitigation

Legacy of LEP Grants not being spent in accordance with contracts.

Shropshire Council remain the accountable body for the management and reporting of contracts to government and this will not change unless the government legislates to change this. No financial liabilities will be transferred to Herefordshire Council, as a result of this decision. Should any future transfers be proposed by the Joint Committee, a separate cabinet decision will be brought forward to seek any required approvals.

Almost all funding has been drawn down projects contracted to the LEP already. Therefore, contract liabilities relate to monitoring outputs, and any potential clawback of none delivery.

Contracted LEP projects overspend or spend on items not subject to the contract.

Shropshire Council as the accountable body are responsible for managing existing contracts. However, the vast majority of any government funding will have been claimed by projects prior to the end of March 2024.

There are significant costs to winding up the LEP

At this stage the LEP Board have not made a decision regarding its future. As a Company Limited by Guarantee it can continue should it choose to. Government have made a decision to transfer the public functions to Local Authorities.

The LEP have significant reserves, currently held by Shropshire Council as accountable body, to cover any winding up costs (should the Board choose to wind the business up). Herefordshire Council will not be called upon to cover any winding up costs.

There are possibly redundancy and related pension liabilities of current LEP staffing.

All LEP staff are directly employed by Shropshire Council as the Accountable Body

Consultees

30. A Political Group Consultation meeting was held on Monday 16th October. Concerns were raised as to the government definition of a 'functional economic geography' requiring a population of 500,000 and/ or 20,000 businesses in order to access future funds. It was felt this is prejudicial to rural areas which by nature have low population density and large geographic areas. There was support for ensuring future services are locally focussed on local needs within the county, and that the proposed Joint Committee needs to ensure a co-ordinated transition that does not impact on service delivery to businesses.

Appendices

Appendix A – Government letter regarding outcome of the LEP review.

Appendix B – Joint letter of council Leaders to the LEP

Background papers

None

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published

Governance	John Coleman	Date 10/10/2023
Finance	Wendy Pickering/ Karen Morris	Date 10/10/2023
Legal	Sean O'Connor	Date 06/10/2023
Communications	Rory O' Rafferty	Date 09/10/2023
Equality Duty	Harriet Yellin	Date 06/10/2023
Procurement	Lee Robertson	Date 06/10/2023
Risk	Kevin Lloyd	Date 11/10/2023

Approved by **Ross Cook** **Date 18/10/2023**

[Note: Please remember to overtype or delete the guidance highlighted in grey]

Please include a glossary of terms, abbreviations and acronyms used in this report.