

24th September 2021

WLGA CONSTITUTION – PROPOSED REVIEW

Purpose

- 1 To seek the approval of members to review the WLGA Constitution ahead of the new Association forming in May 2022, including legal advice to explore options for different legal models that would strengthen the governance arrangements to enable the WLGA to undertake its future business effectively.

Background

- 2 The WLGA is an unincorporated association. The WLGA's constitutional position has served the organisation and its member authorities well since it was established in 1996.
- 3 As an unincorporated association the WLGA is very flexible, but the lack of a corporate identity occasionally causes practical difficulty. The WLGA Constitution provides the Association with a number of powers, including the power to employ staff and enter contracts (paragraphs 22 and 23), whereby member authorities may enter contracts (and are indemnified for such) on behalf of the WLGA, for example, relating to the WLGA's pension liabilities and the lease for the new WLGA office at One Canal Parade.
- 4 The WLGA is recognised by the Welsh Government as a body that can receive grant funding as a 'specified body', is formally recognised as the sole representative body of local government in Wales through the Statutory Partnership Scheme under the Government of Wales Act. The WLGA is also accredited as the Local Government Employers' Organisation in Wales.
- 5 Over the years, the WLGA has developed various "work arounds" to accommodate its flexible corporate structure as a membership organisation. Data Cymru was established by local government as a company limited by guarantee and the WLGA previously established a company limited by guarantee, called WLGA Improvement Services, to enable the WLGA to receive European funding. Following the end of this funding, the Company was wound down and dissolved in 2019.
- 6 The LGA was similarly constituted when it was formed and for many years faced similar challenges, albeit on a much larger scale and in different circumstances. The situation was resolved eventually by the creation of a new incorporated Local Government Association, set up as an unlimited company, to replace the unincorporated Association in 2017. The new arrangements were established

primarily due to the LGA's ownership of property, the more commercialised approach of the LGA and the various tax implications of the LGA's commercial approach and property ownership.

Proposed Review of the Constitution and Legal Status Options

- 7 The Constitution has not been amended since 2019 and previous amendments have been relatively minor.
- 8 The Constitution therefore requires updating to ensure that the WLGA, where possible, operates in the spirit of legislative requirements as they apply to local authorities, for example, to reflect some of the democratic and governance reforms introduced by the recent Local Government and Elections (Wales) Act 2021.
- 9 This review may also consider wider matters relating to the member and decision-making arrangements of the WLGA ahead of the new term. It is proposed that group leaders consider the scope of such a review and that the review reports to members in the coming months.
- 10 WLGA Group Leaders have also agreed that legal advice should be sought to consider what delivery model and governance options are available for future WLGA services, in particular, the proposed Joint Inspection Team to support local authorities and other stakeholders in addressing building (and fire) safety.
- 11 The WLGA Management Committee previously agreed to ongoing engagement with Welsh Government to discuss the possibility of the WLGA hosting a Joint Inspection Team (JIT) to support local authorities and other stakeholders in addressing building (and fire) safety.
- 12 Improving building safety in multi occupied residential buildings is a shared objective and Welsh Government's commitment to this key priority is highlighted in Programme for Government for the coming term. The aim is that the Joint Inspection Team will stimulate full collaboration between FRS and local authority inspection work and increase the overall capacity in the systems.
- 13 During discussions, Welsh Government officials have raised questions about corporate status of the WLGA having received internal legal advice that the WLGA, being an unincorporated body, may restrict its ability to employ staff and enter into contracts. The Welsh Government is therefore seeking assurance regarding the WLGA's capacity to host a Joint Inspection Team and the delivery role it will be required to undertake (the UK Government indemnifies the work of the English Joint Inspection Team).
- 14 The issue has been raised recently by different Welsh Government officials in relation to discussions about the WLGA (on behalf of the Safer Communities Network) hosting a Coordination Hub for the Single Unified Safeguarding Review (SUSR) programme.

Options for a Joint Inspection Team

- 15 Initial engagement with lawyers has indicated that there are different options the Association could consider in addressing the limitations of being an unincorporated body, particularly for the purposes of establishing a Joint Inspection Team in the near future, which is a core priority for the Welsh Government. Options include:
- Incorporating the Association
 - Establishing a company limited by guarantee, owned by the WLGA to host this and future grant funded teams.
- 16 As noted earlier, the LGA created a new incorporated Local Government Association, set up as an unlimited company, to replace the unincorporated Association in 2017. This was a complex and lengthy legal process and the new LGA came into full operation on 1 April 2019.
- 17 Data Cymru has the legal status of being a company limited by guarantee. The Articles for their company state that Data Cymru can, "exchange information and opinion with other organisations and to act as a liaison body, to advise, co-operate, work with, or to act as agents, or to provide services for, the Welsh Local Government Association ...having objects similar, in whole or in part, to those of the company and to contribute to the work of any such body and to make available the results of the work of any such bodies". Initial discussions with Data Cymru have reflected their willingness to be a partner in the JIT project, enabling WLGA to use their company to contract with Welsh Government for the provision of a Joint Inspection Team.
- 18 The WLGA has also previously established a, now dissolved, company for specific purposes, the 'Improvement Company', which enabled the WLGA to receive European funding to support collaborative projects. A WLGA-owned company, separate to Data Cymru, may therefore provide greater flexibility and a longer-term solution to deliver the JIT, the SUSR project and possible future programmes or services.
- 19 It is therefore proposed that it would be an appropriate time to seek legal advice to review the benefits and limitations of the current constitutional model and to consider options to provide flexibility allowing the WLGA to fulfil its role, deliver services to members and adapt to future requirements.
- 20 Group Leaders have considered this issue and are supportive of undertaking such a review, with the outcome being reported back to a future WLGA meeting.

Recommendations

21 Members are asked to:

- 21.1. Comment on the issues for the Association raised in the report;**
- 21.2. Agree the commencement of a review of the constitution; and**

- 21.3. Agree the commissioning of legal advice, to report back to members in due course, setting out options for the delivery and governance of specific services, including the proposed Joint Inspection Team.**
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