

Wiltshire Council

Cabinet

19 April 2011

Subject: South West UK Brussels Office – TUPE transfer of Wiltshire Council employees

**Cabinet Member: Councillor John Brady
Economic Development, Planning and Housing**

Key Decision: No

Executive Summary

The Council has been a member of the South West UK Brussels Office (SWUKBO) Partnership since its inception in 2001 and took on the Secretariat function from Somerset County Council in April 2010 which involves employing the SWUKBO staff on behalf of the South West UK Partnership. The Partnership has recently agreed to set up the office as a social enterprise (company limited by guarantee). An agreement in principle has been reached with partners to transfer to that company when formed the service that is now performed by the Partnership and, consequently by operation of TUPE, the staff engaged in the delivery of that service and who are currently employed by Wiltshire Council.

The new company is in the process of being established and registered. Whilst further due diligence and consultation with staff and trade union representatives is required before the service can be transferred, progress has been made in identifying the level of funding and other support that can be made available to the new company. Care has been taken to ensure that such funding helps the SWUKBO to meet the objectives in its business plan.

Subject to final agreement the service transfer would result in the transfer of up to four employees of Wiltshire Council to the new company under TUPE Regulations – Transfer of Undertakings (Protection of Employment) Regulations 2006.

Proposals

That Cabinet:

- (i) Agrees further consultation with staff and trade union representatives and due diligence leading to the TUPE transfer of staff from Wiltshire Council to the new South West UK European Partnership Company.

- (ii) Delegates authority to the Service Director Economy and Enterprise to progress and conclude the transfer of the Council's employees as required.

Reasons for Proposals

- (i) The South West UK Brussels Office has been viable in its current form owing to 50% funding being made available by the South West Regional Development Agency (SWRDA) which was withdrawn from 31 March 2011. A new model has therefore been developed to enable the service to continue in the absence of such funding.
- (ii) Further due diligence and consultation with staff and trade unions in respect of the TUPE transfer of staff to the new company will help to reassure Wiltshire Council that any risks to either the Council or its staff have been minimised and to help identify those staff that are willing to be transferred. Wiltshire Council's Constitution requires Cabinet to approve the transfer of Wiltshire Council employees to other Councils or organisations.

Mark Boden
Corporate Director, Neighbourhood and Planning

Wiltshire Council

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Purpose of Report

1. The purpose of this report is to seek approval to undertake further consultation with staff and trade union representatives leading to the TUPE transfer of staff from Wiltshire Council to the new company established to take on the work of the South West UK Brussels Office.

Background

2. Wiltshire Council has been a member of the South West UK Brussels Office (SWUKBO) Partnership since its inception in 2001. The purposes of the SWUKBO are:
 - to ensure the South West has a clear voice in Europe, that its interests are heard and its potential explored;
 - to relay information about developments on the European level of relevance and benefit to the region;
 - to develop transnational links and opportunities for co-operation with other European regions.
3. The work of the SWUKBO is important to Wiltshire Council. In the last three years the authority has secured in excess of £10 million of European funding to support various corporate and partnership projects and the Council's membership of the SWUKBO Partnership has been a contributory factor in this success.
4. Partners entered into a new Partnership Agreement in 2005 which delegates the responsibility of managing the functions of the SWUKBO to specific partners. In return, the partners pay varying contributions to the annual budget of SWUKBO. In Wiltshire Council's case this is circa £15,000 per annum.

5. Somerset County Council (SCC) is the current Leasing Authority and takes on all liability of SWUKBO's office premises on behalf of the Partnership. All costs incurred by SCC to rent the premises are chargeable to the budget of the Management Board of SWUKBO and handled by SCC.
6. Since April 2010, Wiltshire Council has been the Secretariat and responsible for the staffing arrangements of the office, including appointing staff and setting terms and conditions of employment or making any necessary variations. All costs incurred by the Secretariat in making and implementing such arrangements are chargeable to the budget of the Management Board of SWUKBO. The office currently employs four permanent members of staff who are on TUPE terms and conditions from SCC. Two agency workers are also currently employed by SWUKBO on weekly agency contracts.

Main Considerations for the Council

7. In October 2010 the Management Board of SWUKBO commissioned an Options Appraisal to examine the possible future of the organisation. This was initiated to respond to three scenarios:
 - **Practical alternatives:** if the SWUKBO closed, each member would have to source alternative providers of services to connect them with EU opportunities. Local Authorities may already have officers with European responsibilities although additional capacity would be required (particularly in relation to a Brussels presence).
 - **Financial – national:** public sector cuts mean 'thinking differently' in resourcing organisations and services. For previously grant-funded organisations there is a simple choice:
 1. Close or reduce capacity to fit the availability of any continued grant funding; or
 2. Restructure to maximise any continued grant funding and earn income from service delivery.
 - **Financial – SWUKBO:** with the imminent closure of the South West Regional Development Agency (SWRDA) and pressures on local authorities, the grant income will decrease significantly in this financial year. There are, however, reserves to enable the organisation to restructure (if it wishes) during 2011.
8. A Business Plan has been prepared by consultants on behalf of the Partnership and agreed at the Management Board meetings of 18 February and 31 March. This clearly plots the transitional arrangements to the new company and sets out a new enterprise, contract fee-based model. Workplan delivery will be agreed with all clients and will be either annual work plans or project based work plans, tailored to the client.

9. As a consequence of the transfer of the service from the Partnership as part of the transition to a social enterprise, the staff currently employed by Wiltshire Council on behalf of the partnership would transfer under TUPE Regulations to the new company. It is envisaged that the transfer would be completed by summer 2011, subject to consultation with trade unions and affected staff, the transferee being established and due diligence being carried out.
10. The social enterprise will be a company limited by guarantee with nominal share value of £1 per member. Any organisation purchasing services from the company, and wishing to have an involvement in the Partnership beyond the client-contractor relationship, can be a member.

Environmental and Climate Change Considerations

11. There are no environmental or climate change impacts from this proposal.

Equalities Impact of the Proposal

12. There are no negative impacts from this proposal as terms and conditions will be preserved as part of the TUPE process.

Risk Assessment

13. Officers will undertake due diligence to understand the potential HR, legal and financial risks associated with this project if this proposal is approved. Early discussions with staff has demonstrated support from staff for the proposed TUPE transfer.

If the proposed decision is not taken:

- SWUKBO would need to be closed down by December 2011, when the reserves would have been largely spent and there is a break point on the office lease. It is not viable financially under current arrangements.

If the proposed decision is taken:

- Wiltshire Council would no longer be responsible for the Secretariat function but would continue to be an active member of the Partnership and benefit from the services of the new company.

Financial Implications

Management fee

14. The Council currently receives an annual management fee in the region of £15,000 for providing the Secretariat function. This will no longer be received following TUPE. However, there would be no requirement to deliver the secretariat function so this does not represent a net loss of income to the Council.

TUPE Transfer cost

15. The Partnership has agreed to pay the full management fee in the region of £15,000 to Wiltshire Council for carrying out the Secretariat responsibilities for the first part of 2011/12 which will cover the TUPE costs should this proposal be approved. An administration fee of £2,500 will be payable for the recalculation of pension contributions.
16. As a consequence of the transfer of the four current Wiltshire Council staff under TUPE, the Council, as a Best Value Authority, is required under statute to protect the current pension provision of these staff. The Council plans to set up the new company as an Admitted Body in the Wiltshire Pension Fund in order to achieve the protection required and to allow the staff to have access to continued LGPS pension provision. The financial implications relating to pensions will require further work prior to TUPE.

Legal Implications

17. Legal and HR Officers will conduct due diligence into the proposed transfer. The current issues have already been identified:

HR / Employee Implications

- (i) The employees remain on their SCC terms and conditions and we do not anticipate any harmonisation of their terms and conditions prior to transfer. A comprehensive TUPE consultation process is planned in order to both inform and consult with the trade unions recognised by Wiltshire Council followed by collective and individual consultations with those affected employees. We will work closely with both the HR and Legal representative of the new European Partnership once appointed in complying with our legal obligations under the TUPE Regulations.
- (ii) We are currently in discussions with our tax advisers to address the ongoing issue with the HMRC in relation to the fixed exchange rate we inherited from SCC. Additionally, we are seeking to address the matter of E forms and the correct process to follow in securing health cover for employees when their E certificates expire.

Commercial Implications

- (i) The service transfer document will contain the usual TUPE indemnities making Wiltshire Council liable for employee issues prior to their TUPE transfer and the new company liable for those after.
- (ii) As the new company will be an independent company, the Council will not be able to award work to it directly. The award of contracts for services provided by the new company will be governed by the Council's Contract Regulations and, if the relevant value threshold is exceeded, the Public Contract Regulations.

Options Considered

18. Doing nothing is not an option as the SWUKBO is no longer financially viable following the termination of funding from the SWRDA.

Conclusions

19. Wiltshire Council cannot continue to be the Secretariat for SWUKBO due to the withdrawal of funding from SWRDA which has made current arrangements unviable. The setting up of a social enterprise which can continue to provide the services offered by SWUKBO has been approved in principle by the Partnership. The TUPE transfer of existing staff is an integral part of the success of such a venture.

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The following unpublished documents have been relied on in the preparation of this Report:

Future of the South West Brussels Office – Transition Support: Stage 2
Business Plan Preparation

Appendices:

None