

WYFRA	AUTHORITY	18 APRIL 2008	ITEM No
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REPORT OF: DIRECTOR OF CORPORATE RESOURCES

PURPOSE OF REPORT: TO UPDATE THE AUTHORITY ON DEVELOPMENTS IN ESTABLISHING A REGIONAL CONTROL CENTRE COMPANY AND TO SEEK APPROVAL TO REVISED TERMS FOR INCORPORATING THE COMPANY.

RECOMMENDATION:

- 1 That the Authority note the current situation concerning the establishment of the Company and approves the proposed terms of incorporation for a regional control centre company in accordance with the proposed Heads of Agreement document attached to this Report at Appendix 2.
- 2 That the Authority approves the establishment of the Company as a company limited by guarantee rather than as a share capital company.
- 3 That the Authority determines whether it wishes to change its decision to appoint human directors to the Company Board and instead adopt the corporate director model.
- 4 That the Authority authorises the Director of Corporate Resources to sign the Heads of Agreement document on its behalf.
- 5 That the Authority further authorises the Director of Resources in conjunction with the Chief Executive / Chief Fire Officer and the Chief Finance Officer to take such further steps as are necessary to negotiate and conclude terms with the other Yorkshire and Humberside Regional Fire and Rescue Authorities in order to incorporate a jointly controlled regional control centre company - such terms to be in accordance with the principles set out in the Heads of Agreement document with incorporation if possible by the revised target date of 30th September 2008.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT DETAILS

Exemption Category: Nil

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Background Papers: Attached.
EC minutes 30th January 2007 (Appendix 1)
(draft) Heads of Agreement for incorporation of a regional control centre company (Appendix 2)

1. BACKGROUND

- 1.1 On the 30th January 2007 the Executive Committee considered a report concerning the establishment of a company (jointly owned and controlled with the other Y&H regional fire and rescue authorities) to operate the proposed new regional control centre – that being a requirement of the Government’s FRS National Framework and with an original incorporation date requirement of May 2007. The Committee resolved that approval be given to participation in such a company in accordance with a number of approved policies and principles – see minutes of the EC for 30th January 2007 – Appendix 1.
- 1.2 Unfortunately (in large part due to an inability during much of 2007 to agree upon the allocation of voting powers on the company as between the regional FRAs) it was not possible to secure the agreement of all the other FRAs to the terms of incorporation within the original timescale for incorporation. The Government formally extended the incorporation date requirement to the end of September 2007. The voting powers allocation issue was eventually resolved in favour of proportional distribution of company shares / voting powers and director votes in like manner to the way in which the Regional Management Board (RMB) itself operates, which means that with 11 human directors West Yorkshire will have 4 directors or if corporate directors are appointed West Yorkshire will have 4 votes out of 11 on the company board. (SY will have 3 and NY and HU will have 2 each)
- 1.3 Following further discussions at the RMB and between FRA Chairs it was eventually agreed that because the Government’s own timetable for the Y&H control centre to come into operational use had slipped (from the original late 2008) to spring 2011 there was now no substantive local need to incorporate a company before autumn 2008 and a revised target date for incorporation of 30th September 2008 was provisionally agreed – this still provides for the CLG recommended 30 month planning period between the company incorporation date and the centre operational “go live” date originally determined by the Government as being necessary. In the intervening period FRAs have continued to work towards agreeing the terms of incorporation and dealing with other practical issues. The CLG did not approve this deferral of the incorporation date but were made aware of it and have taken no action to seek to enforce an earlier incorporation date.
- 1.4 The process of discussion and resolution of issues has continued and whilst there are still a number of issues which remain outstanding (largely due to continuing delays on the part of CLG in resolving a number of issues such as financial issues and the terms of the national support network agreement) a position has now been reached whereby so far as matters of future corporate governance are concerned the FRA regional legal officers are agreed on the legal terms of a Heads of Agreement document (Appendix 2) which they are all now prepared to recommend to their respective Authorities as the basis upon which independent solicitors can now be instructed to finalise the drafting of the memorandum and articles of agreement and members agreement necessary to incorporate the proposed company.

- 1.5 The Heads of Agreement document (Appendix 2) sets out the broad intentions of the regional FRAs and the principles upon which the Company shall be incorporated. The most significant change in the context of that which was previously determined by the WYFRA EC meeting on the 30th January 2007 (Appendix 1) is the recommendation that the company should now be incorporated on a guarantee basis instead of on a share capital basis. This follows further advice from specialist company commercial solicitors that the guarantee model can be adapted to provide for proportional voting control powers and also provision can be made for future profit distribution (should there be any) and that for all practical purposes there is little difference between the two incorporation modes. All other regional companies have been incorporated using the guarantee basis which is in line with CLG recommendations.
- 1.6 An additional aspect is that at least 2 of the other FRAs appear likely to want to utilise the Corporate Director (CD) model under which the FRA itself as a body corporate will be appointed as the legal Director but will be represented at Board meetings by (councillor) representatives sharing the CD allocated voting powers. This Authority may wish to consider whether it wants to review the EC decision to appoint human directors - there are certain administrative benefits to using the CD method and it may to some extent better insulate (elected) Members in the context of potential director personal liabilities. It is still possible with the CD method for the Authority to send 4 (elected) Councillors with one vote each to Board meetings – The Director of Corporate Resources will expand on this point at the Authority meeting. If all FRAs utilise the CD method then under new legislation coming into force in October 2008 it will be necessary to appoint at least one human director – the proposed method of doing that is to appoint the Company Secretary as a director but without voting powers.
- 1.7 The Heads of Agreement document (Appendix 2) also records the appointment of the RMB to act as a shadow company board pending the formal incorporation of the company – this was agreed by the RMB as being necessary to provide a mechanism for dealing with issues arising such as the need to have authorised procedures for interim (democratic) decision making on such matters as the appointment of the necessary Centre Manager (RCCD) – that process of appointment is currently under way – (elected) Members are involved in the appointment process.
- 1.8 In conclusion the Authority is required by the FRS National Framework to participate in the creation of a company jointly controlled with the other regional FRAs in order to oversee the operation of the new regional control centre. Failure to do so would leave the Authority exposed to the likelihood of CLG intervention powers being invoked under the Fire and Rescue Services Act 2004. The proposed Heads of Agreement document (Appendix 2) provides a consensual mechanism for moving towards incorporation by 30th September and it is recommended that the Authority agree to these Heads of Agreement and authorise the Director of Corporate Resources to sign it on behalf of the Authority and thereafter to resolve outstanding issues with the other FRAs in conjunction with other relevant officers.