

DATE: 9 March 2018

SUBJECT: The setup of a not for profit company – Company Limited by Guarantee

REPORT OF: Michelle Rainbow, Skills Director

EXECUTIVE SUMMARY

The purpose of this report is to:

Provide information in relation to the setup of a not for profit company – Company Limited by Guarantee following agreement by the North East Local Enterprise Partnership (LEP) Board and endorsement of the proposed approach and model from the North East Combined Authority as its Accountable Body.

RECOMMENDATIONS

It is recommended that the Head of Paid Service, on the advice of and in consultation with the Chief Financial Officer and Monitoring Officer, authority to take all steps necessary or desirable to establish a company limited by guarantee without limitation, to approve the form of the company's constitutional documents and other documents to be filed in connection with the formation of the company.

1. Background

Of the 38 Local Enterprise Partnerships (LEPs) twenty have an associated Limited Company (see Appendix A for the List of LEPs and Companies Associated) Seventeen of these are set up as a Company Limited by Guarantee (CLG) and 3 are set up as a Community Interest Company (CIC)

Four of these companies pre-date the formation of LEPs and have updated their articles of association to support the delivery of their Strategic Economic Plans in their LEP area. The other 17 have been set up since the formation of the LEPs with the most recent formed in the last year.

Following the agreement at the North East LEP Board on 27th July 2017, the LEP Executive team are progressing the development of the optimum model to meet the required needs

It is important to note that this proposal does not replace the North East LEP's current voluntary partnership model with an accountable body host, but a vehicle to sit alongside these arrangements to enable additional funding to be secured. It is an enabling initiative which will fill an identified gap in the regional delivery architecture and will not seek to supplant the roles of other organisations or compete with private sector organisations.

Following the North East LEP Board approval, the NECA Monitoring Officer and an external law firm have reviewed the existing LEP incorporated bodies to inform the most appropriate model for the North East.

2. Proposals

We propose to set up a not for profit Company Limited by Guarantee for the purpose of attracting funding which the LEP is currently precluded from applying or bidding for.

It will be set up as a not for profit company and these restrictions will be written into the company's articles.

This will be registered with Companies House and will produce accounts and an annual return each year

It is proposed that a company will be formed with individual members nominated as set out in paragraph 2.6 below.

Research suggests that having corporate members would disqualify the company from obtaining funding from the target funding sources and therefore only individuals will be Members of the Company.

All of the Members of the Company will also be Directors of the company to keep the structure simple.

Having reviewed LEP models elsewhere, it is suggested that the Company's Board is made up of:

- The Chair and two Vice Chairs of the North East LEP Board (The LEP Constitution requires that there is one public sector Vice Chair and one private sector Vice Chair) OR three LEP Board Members nominated by the LEP Board;
- The Executive Director of the North East LEP;
- The NECA Head of Paid Service;
- The NECA Monitoring Officer (who will also discharge responsibilities as company secretary);
- The NECA Chief Finance Officer.

The structure reflects the governance structure of a company designed to deliver LEP objectives, whilst also respecting the obligations on NECA to ensure probity and lawfulness as the Accountable Body.

3. Reasons for the Proposals

The setup of a not for profit company will allow the North East LEP to apply and / or bid for funding where the eligibility criteria currently precludes non-incorporated or public sector organisations. The nomination of individual members rather than having corporate members should address this issue whilst maintaining an appropriate connection and effective control on behalf of the North East LEP Board.

The key issues to overcome if funding is to be sought from multiple sources, particularly philanthropic sources are:

The North East Local Enterprise Partnership is not a separate legal entity from its accountable body, and therefore incapable of receiving funds directly, save through its accountable body, NECA.

- Most, if not all, philanthropic donations are required to be made to legal entities with charitable status or a non-profit organisation, rather than a public sector organisation.

Recent examples where the LEP had an opportunity to secure funding on a LEP-area wide basis for activities aligned to the delivery of the Strategic Economic Plan, but where the unincorporated partnership mode created a barrier, are

- The Edge Foundation
- The Nuffield Foundation

- UK Innovation Fund

Applications could also be made going forward for more substantial funding, for example

- The Tyne and Wear Community Foundation itself (rather than individual fund holders)
- Large national philanthropic bodies such as Joseph Rowntree Trust, Esme Fairburn, National Lottery, Comic Relief etc
- Significant private trusts in the North East such as Ballinger, Halburton, Shearer Foundation, Barbour Foundation and Moyes Trust.

4. Alternative Options Available

A Community Interest Company structure was also considered, which could also bring the following benefits:

It is a model recognised as one for community benefit and should also be an attractive model for funders;

The 'Asset Lock' mechanism ensures assets are used for the clear purposes set out, the delivery of the Strategic Economic Plan;

However there are some additional compliance requirements, which may bring additional cost and regulations, without adding any significant value to the model.

An incorporated charity model could use a traditional Company Limited by Guarantee model or the newer Charitable Incorporated Organisation Model. However it is unlikely that the activities of the company would meet the requirements for the charitable registration or charitable activities.

5. Next Steps and Timetable for Implementation

- 5.1 The requisite documentation will be drafted to create the Company in consultation with the NECA Head of Paid Service, Chief Financial Officer and Monitoring Officer.

6. Potential Impact on Objectives

- 6.1 The proposal will enable the North East LEP to have the ability to access additional funding sources.

7. Financial and Other Resources Implications

- 7.1 The cost of taking legal advice and forming the company will be in the region of £5,000 which will be sourced from the LEP operational budget. The purpose of the Company is to secure additional funding to support the delivery of the Strategic Economic Plan.

8. Legal Implications

8.1 There will be an on-going compliance obligation (accounts, returns, etc) but this can be absorbed within existing resources.

9. Key Risks

9.1 The key risk is that Company set up would not be able to access the fund as identified. We are mitigating this by engaging in advance with potential funding providers to ensure the structure would be suitable and working from best practice on how other LEPs have set up similar models.

10. Equality and Diversity

10.1 There are no equality and diversity implications as a result of this proposal.

11. Crime and Disorder

11.1 There are no crime and disorder implications as a result of this proposal.

12. Consultation/ Engagement

12.1 The LEP Board approved the principle to set up a not for profit company in July 2017.

The NECA Monitoring Officer has been consulted on the proposal and also DWF LLP have provided research to support the proposal looking at existing LEP structures.

13. Other Impacts of the Proposals

13.1 There are no further impacts as a result of this proposal

14. Appendices

14.1 Appendix A shows a list of LEPs and companies associated.

15. Background Papers

15.1 There are no background papers.

16. Contact Officer(s)

16.1 Michelle Rainbow
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17. Sign Off

- 17.1
- Head of Paid Service: ✓
 - Chief Finance Officer ✓
 - Monitoring Officer ✓

18. Glossary

- 18.1 N/A