

THE LEP NETWORK LIMITED

ADVICE NOTE IN CONNECTION WITH THE PROPOSED INCORPORATION OF THE UNINCORPORATED LOCAL ENTERPRISE PARTNERSHIPS

1. INTRODUCTION AND SCOPE OF ADVICE

- 1.1. We are instructed by the LEP Network Limited to advise on the most appropriate legal form of incorporation for the twelve local enterprise partnerships (**LEPs**) that the government requires to have a legal personality by 1 April 2019. The government's requirements are set out in the paper [Strengthened Local Enterprise Partnerships](#), (the **LEP Review**) published in July by the Ministry for Housing, Communities and Local Government (**MHCLG**).
- 1.2. LEPs are required to submit a response to MHCLG by 31 October 2018 setting out an implementation plan in which the LEPs plans to adopt a legal personality must be outlined.
- 1.3. The LEP Network Ltd (**LEP Network**) has commissioned Sharpe Pritchard to provide legal advice on the most appropriate legal form for the unincorporated LEPs on the understanding that the advice will be shared with the unincorporated LEPs. As we have been instructed by the LEP Network, we are obliged by our professional rules and insurance to highlight that only the LEP Network, as our client, may place reliance on the contents of this advice note. It is therefore shared with each LEP on an 'information only' basis. Should any LEP require legal advice in connection with their incorporation, we should be very happy to engage with that LEP directly.
- 1.4. This advice note will cover the following areas:
 - An analysis of the most appropriate legal forms
 - Governance, including the role of directors and members
 - Related issues, such as HR, finances, contracts, public procurement and State aid

The following sections address each of these areas in turn.

2. POTENTIAL INCORPORATION MODELS

- 2.1. Of the 38 LEPs in England, 18 LEPs are already incorporated. Of these 18, 15 LEPs incorporated as companies limited by guarantee (**CLGs**) and 3 incorporated as community interest companies (**CICs**).
- 2.2. Our view is that these two forms of incorporation are the most appropriate for a local enterprise partnership. Other legal forms, such as companies limited by shares, charitable companies and community benefit societies are not appropriate for the following reasons:
 - 2.2.1. Companies limited by shares. The existence of a distinct share capital is designed to foster investment and to enable profits to be distributed to the shareholders. This profit-driven model is unlikely to be endorsed as an appropriate model for a LEP that is has been established to stimulate collaboration and economic activity in a particular area and therefore has a wider social function.

- 2.2.2. *Charitable companies.* Charities can take a number of legal forms but are often CLGs with charitable status. There are advantages to charitable status, particular in relation to tax and the availability of grant funding, but to become a charity an organisation must have objects that are exclusively charitable. What is considered charitable is determined by the 13 purposes set out in the Charities Act 2011¹. The activities of a LEP would not meet any of the 13 charitable purposes.
- 2.2.3. *Community benefit societies (CBS).* The CBS is a legal form that must reflect a commitment to conduct its business for the benefit of the community. A CBS can be a charity, but, even if it is not, it generally has objectives that are benevolent in nature. Although it could be argued that a CBS model would be appropriate for a LEP, they are predominantly used to benefit communities on a much smaller scale (e.g. running sports clubs etc.). They are also less well understood, so may not meet MHCLG's requirement that LEPs are accountable and transparent.
- 2.3. The LEP Network has produced a [comparison table](#) that sets out the key differences between CLGs and CICs. Our view is that this table provides an accurate and helpful comparison between the two most suitable legal forms. We therefore just summarise the headline differences in the following paragraphs.

Companies limited by guarantee

- 2.4. CLGs are most useful where there is no immediate need for capital to carry out the objects of the company and it is necessary or desirable to:
- 2.4.1. Incorporate;
- 2.4.2. Limit the liability of the members ('members' being an equivalent term used for shareholders in the context of a CLG); and
- 2.4.3. Avoid the need to transfer a share every time a member leaves or joins.
- 2.5. As CLGs do not have the inbuilt "for-profit" framework which CLSs do allowing investors in the company to receive a return on their investment, the CLG brand has been traditionally associated with charities, trade associations and not-for-profit companies. In recognition of the fact that a CLG is not designed as a "for-profit" vehicle, each member of a CLG has its liability limited to a nominal amount – usually £1.00.
- 2.6. CLGs are registered at Companies House in the same way as any other company: Form IN01 will need to be submitted together with the first articles of association (constitution) of the company and a list of the first members (called subscribers to the memorandum).
- 2.7. It is common for CLGs with a non-profit purpose to specify a series of objects in its articles of association (its constitution) within which it must operate. Restricting a company's activities in this way ensures that it will be run for the reasons for which it was originally established. For example, many incorporated LEPs have the following objects (or similar ones) set out in their articles:

"The objects for which the Company is established are:

¹ <https://www.gov.uk/government/publications/charitable-purposes/charitable-purposes>

- to stimulate economic growth, employment, community development, inward investment and commerce in [the relevant LEP area]; and
- to promote [the relevant LEP area] positively at regional, national, European and international levels on matters affecting economic development.”

- 2.8. To the extent that a company acts outside its stated objectives, those actions are considered by company law to be *ultra vires* and therefore void. This provides a key protection in ensuring that a CLG acts in accordance with its stated objectives and remains accountable.

Community interest companies

- 2.9. A CIC is a form of company which has been available since 2005, developed in order to address the lack of a legal vehicle for non-charitable social enterprises. Fundamentally, CICs are normal companies – they can be established either as CLGs or as CLSs. However, CICs have some particular features to safeguard the social mission.
- 2.10. A CIC must satisfy the community interest test at formation and continue to do so for as long as it remains a CIC. A CIC will satisfy the community interest test if it can show that a reasonable person might consider that its activities are being carried on for the benefit of the community. A company will not satisfy the test if its activities only benefit members of a particular body or its activities are political. Not all of the activities carried on by a CIC need to have a direct benefit to the community to which it serves but everything a CIC does should somehow contribute to benefiting the community it is set up to serve.
- 2.11. It is a legal requirement that the CIC cannot transfer its assets (including any profits or other surpluses generated by its activities) for less than market value unless transferring them to another CIC or charity (that is either specified in its articles or consented to by the regulator of CICs) or if the transfer is for the benefit of the community it was set up to serve (known as the asset lock). This asset lock is set out in the articles of association of the CIC. CICs must consider the asset-lock when entering into commercial relationships and when deciding remuneration for its employees and directors. The asset lock protects the assets of the CIC and ensures that the assets and profits of the CIC will be devoted to the benefit of the community and not for rewarding shareholders and directors.
- 2.12. A CIC has to deliver to the Registrar of Companies an annual community interest company report with its annual accounts. This report records the CIC's activities for that year including any details on assets transferred for less than market value, dividends paid and the remuneration of directors.
- 2.13. CICs are regulated by the Regulator of Community Interest Companies, so it has an additional layer of scrutiny and accountability over a CLG.

Which is the most appropriate legal form?

- 2.14. Given the LEP Review's central theme of increased transparency and accountability, it might be reasonable to conclude that the additional requirements attached to a CIC would make it the most appropriate legal form for the 12 unincorporated LEPs. However, we suggest that the requirements already imposed on LEPs through the national assurance framework, when coupled with carefully drafted objects written into a CLG's articles of association would

provide more than a sufficient level of accountability for the LEPs. The addition of a further level of governance through the CIC structure may place an unnecessary administrative burden on the LEPs. The CLG model is also well-understood and accepted structure for organisations of this nature.

- 2.15. Our view is that the CLG provides the most appropriate legal form for the 12 unincorporated LEPs.

3. GOVERNANCE

Layers of decision-making and the membership structure in a CLG

- 3.1. A CLG (whether it is a CIC or otherwise) will have two decision-making layers. Firstly, the CLG will have a board of directors. Directors are entrusted by law (and by the company's articles of association) to manage a company on a day-to-day basis. Secondly, it will have its members (the collective term for shareholders in a CLS and guarantors in a CLG).
- 3.2. The separation of directors and members in a CLS is a well-understood concept: the directors are paid by the company in order to run the company for the benefit of the shareholders. The shareholders will generally be involved in decision-making only where the articles or other agreement requires, or if required to make the decision by law (for example, changing the company's name or altering its articles of association, both of which require shareholder approval).
- 3.3. The distinction is less obvious in a CLG due to the absence of a share capital and therefore no tangible layer of 'ownership'. CLGs typically adopt one of two structures when it comes to membership:
- 3.3.1. Members as directors. In this structure, the membership is composed entirely of those individuals appointed as the company's directors. This is appropriate where a larger, distinct membership with voting rights would not be appropriate or desirable. With such a structure the decision-making layers are not particularly well defined as the directors also 'wear the hat' of a member, but they are considered to be easier to administer and operate.
- 3.3.2. Separate membership. A separate membership structure is more democratic and accountable, with a body of members separate from (but including) its directors. Typically, the members will be individuals or organisations who are actively interested or involved in the work of the company. The role of the members is to elect directors from among their number and to scrutinise how the directors exercise their duties in the management and administration of the charity, but without becoming involved in its day-to-day affairs. The rules concerning membership will be set out in the articles of association and membership is often restricted to certain types of persons or bodies, or indeed restricted to those persons of whom the directors approve.
- 3.4. LEPs will need to consider what the most appropriate membership structure is for them. LEPs that are incorporated have on the whole adopted the separate membership model, albeit tailored in such a way that an appropriate level of control is maintained. For example, LEPs including New Anglia LEP and Coventry and Warwickshire LEP have an open membership for private sector bodies, (subject to private sector member applications being approved by the

directors) but with distinct membership categories for the local authority member(s) and further and higher education bodies. With open membership for private sector bodies, it is possible that a broad range of businesses can become involved in the LEP, albeit at a level that does not dilute or hamper decision making. Their influence may be heard at the annual general meeting which, whilst not required for companies as a matter of law, are set out as a requirement for newly-incorporated LEPs in the LEP Review.

- 3.5. The LEP Review also hints at a preference for a separate membership structure that is accessible to all businesses by highlighting that *“to ensure that all businesses in an area have equal access to their Local Enterprise Partnership, we will not permit any Local Enterprise Partnership to operate on a paid-membership basis.”*

Directors

- 3.6. Although membership would likely be open to individuals and organisations, company law dictates that only individuals can be company directors. If a LEP is to have a separate membership, the board of directors will likely be a smaller, more manageable group and there is no reason why current LEP board arrangements can't be replicated on the board of the new, incorporated entity. Numbers vary amongst LEPs that are already incorporated, but are typically no fewer than 10 and no more than 20.
- 3.7. Representation from the local authority accountable body and other local authorities, as well as further/higher education establishments is typically enshrined into the articles in a manner that will largely reflect the arrangements that the LEPs currently have in place with regard to representation from these organisations. Indeed, the terms of reference underpinning the current governance arrangements can be used as the basis for the governance arrangements of the incorporated entity. This provides consistency in the transition period and softens the impact of the new governance arrangements.

Local authority influence

- 3.8. Newly-incorporated LEPs that are considering any form of trading will need to be mindful of the law relating to local authority influenced companies². A company is deemed to be influenced by a local authority if there is a business relationship between the company and the local authority and where there is a “personnel relationship” between the company and the local authority. Such a personnel relationship exists when:
- at least 20% of the total voting rights at a general meeting are held by persons associated with the local authority; or
 - at least 20% of the directors are persons associated with the authority; or
 - at least 20% of the total voting rights at a directors' meeting are held by persons so associated.
- 3.9. The implications of being a local authority influenced company are not overly onerous but will require that the company states on all documents and its website that it is influenced by the local authority in this way. There is therefore a degree of friction between MHDCLG's wish for LEPs to incorporate into companies and by so doing displaying a degree of independence from

² Local Government and Housing Act 1989 and Local Authorities (Companies) Order 1995

its local authority accountable body if the result of this incorporation is a requirement to state formally that the influence of the local authority exists. We do not know whether MHDCLG considered these legal requirements at the time of publishing the LEP Review. Please note, however, that this relates to companies established for a trading activity and it is likely that many LEPs will incorporate into companies but will effectively be dormant for trading purposes.

- 3.10. Some of the incorporated LEPs (notably, Cornwall and Isles of Scilly LEP) have recognised this issue and have included provisions in its articles providing that local authority voting rights and board representation is kept under the 20% threshold. We suggest that such an approach is a sensible one.

Directors' duties and personal liability

- 3.11. On the incorporation of a LEP into a company, the directors will owe certain statutory and common law duties to the company, breaches of which can in some circumstances give rise to personal liability. It should be noted, however, that there is a longstanding principle that the directors of a company are not the guarantors of its success. A decision taken in good faith by the directors that later turned out to be wrong (for example, a commercial misjudgement leading to a significant loss) will not give rise to personal liability; there has to be a meaningful level of wrongdoing for personal liability to arise.
- 3.12. There are seven statutory duties of directors³:
- *Duty to act within the powers conferred by the company's constitution.*
 - *Duty to promote the success of the company.* In so doing, a director must take a long-term view of wider considerations such as employees, the environment, suppliers and customers.
 - *Duty to exercise independent judgement.*
 - *Duty to exercise reasonable care, skill and diligence.* A director is expected to exercise the level of care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and the general knowledge, skill and experience that the director has.
 - *Duty to avoid conflicts of interest* (to the extent that these are not authorised by the other directors).
 - *Duty not to accept benefits from third parties.*
 - *Duty to declare an interest in proposed transactions or arrangements* of the company
- 3.13. A detailed analysis of these specific duties is beyond the scope of this advice note, but directors will need to be mindful of these throughout their time as directors. Directors will also need to be aware of the need to act in the best interests of creditors if the company is approaching insolvency. Failure to do so can lead to personal liability arising from wrongful or fraudulent trading.

³ Section 172 Companies Act 2006

Directors' liability to third parties

- 3.14. The directors' duties are owed to the company, so the members or third parties will normally only have a cause of action against the company, not against individual directors. However, directors may also incur liabilities to shareholders and third parties where they act in a way which creates a personal obligation. This is not lightly implied, but could be assumed, for example, by an express representation by a director accepting a personal obligation to the member or third party. We suggest that such representations are unlikely in the context of an incorporated LEP.

Directors' liability and insurance

- 3.15. The legal position is that a company may not generally exempt a director from liability in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company⁴. This means that a company cannot exempt a director from liability for breach of one or more of his duties to the company or limit his liability for such a breach. However, this prohibition is subject to a relaxation that allows a company to provide an indemnity to a director against liability incurred by the director to another person other than the company but such an indemnity will not be allowed:
- to pay a fine imposed in criminal or regulatory proceedings against a director; or
 - in defending any criminal proceedings in which the director is convicted or in defending any civil proceedings brought by the company in which judgment is given against the director.
- 3.16. To enhance the statutory protections available, companies often take out directors' and officers' insurance. D&O insurance has the following benefits:
- For the directors, a policy provides personal asset protection if the company's indemnification fails for any reason.
 - For the company, a policy provides balance sheet protection where the company has indemnified its directors as the policy will reimburse the company to the extent of such indemnification.

It should be noted, however, that policies typically exclude claims for fraud or dishonesty.

- 3.17. It would, in our view, be prudent for each newly-incorporated LEP to take out D&O insurance.

4. COMPANY INCORPORATION

- 4.1. The LEP Review does not require the non-incorporated LEPs to be incorporated until 1 April 2019, although there is a requirement for each LEP to outline their plans for incorporation by 31 October 2018.
- 4.2. Once each LEP has decided on its preferred model and submitted its implementation plan to MHDCLG, the process for incorporation should be started reasonably swiftly. Incorporating a CLG or a CIC can be done within 24-48 hours if the standard, 'model' articles are adopted, but these articles will not be appropriate for the newly-incorporated LEPs. Our advice would be

⁴ Section 232 Companies Act 2006

for each LEP board to consider carefully the contents of its articles of association. In our experience this process can take several months, particularly if the LEP concerned wishes to include tailored provisions relating to membership and proceeds to discuss these documents at convened board meetings. This process may take less time if it is more a case of developing the governance arrangements that each LEP has in place through its own assurance framework.

- 4.3. We should be very happy to assist the LEPs in the incorporation process⁵. After initial consideration we also feel there is some scope to provide a draft set of articles that can be adapted by each of the LEPs. This template draft would provide a framework on which specific, tailored provisions could be built. The result of this might be a certain level of consistency across those LEPs undertaking the incorporation process, which is in line with MHCLG's desire for consistency of approach across the LEP network.

5. **FURTHER ISSUES FOR CONSIDERATION**

- 5.1. The incorporation of the unincorporated LEPs will have implications for finance, tax, staffing and contracts. In addition, consideration will need to be given to the impact (or otherwise) of the public procurement regime and the rules relating to State aid. In this section we set out headline comments on these areas, but it is likely that further advice will be required by the LEPs (through the LEP Network or directly) once each LEP has submitted its report to MHDCLG at the end of October.

Finance and the role of the accountable body

- 5.2. The LEP Review states that *"Local Enterprise Partnerships will continue to be individually accountable for the allocation of funding and the delivery and evaluation of projects, with Section 151 Officers (or equivalent) maintaining accountability for the proper conduct of financial affairs within the Local Enterprise Partnership"*. Further detail from MHDCLG is expected with regards to governance and financial oversight, although it is anticipated that the current accountable body will continue to be responsible for receiving and distributing the grant funding from central government as well as continuing to have overall oversight of the LEPs activities.
- 5.3. LEPs that are already incorporated do not seem to have share a common approach for financial reporting, with some LEPs, such as Coventry and Warwickshire LEP only reflecting the operating costs of the company in its annual accounts and not the grant funding, which by way of contrast is recognised in the accounts of other incorporated LEPs, such as Cornwall and Isles of Scilly LEP. The approach taken by other LEPs, including the Greater Birmingham and Solihull LEP, is different again with no income or expenditure being recognised as evidenced by the submission of dormant company accounts. This variance in reporting was highlighted by the National Audit Office in their 2016 report into LEPs.⁶ Clearly there is a lack

⁵ As each LEP is currently unincorporated, any instruction to us would need to be made by the accountably body local authority. As a firm we sit on a number of local authority frameworks. Helpfully, we also sit on the newly-created CCS Wider Public Sector framework. This framework allows any public body to make a direct award to us without being required to undertake a procurement process. This may assist LEPs as a procurement process can put the incorporation process back by a number of weeks.

⁶ <https://www.nao.org.uk/wp-content/uploads/2016/03/Local-Enterprise-Partnerships.pdf>, page 45

of consistency across the incorporated LEPs as to their financial reporting, but in the absence of further guidance from government the newly-incorporated LEPs will have a certain degree of flexibility in this regard.

- 5.4. We recommend that specialist financial and accounting advice is taken in relation to the most appropriate method of recognising operating revenue (if any) and grant funding in the accounts of the newly-incorporated LEPs.
- 5.5. We also recommend that separate tax advice is taken in relation to the impact of VAT on operational and other revenue streams as we, as legal advisers, are not qualified to advise in this area.

Human resources and TUPE

- 5.6. If the operational aspects of the LEPs activities are to be undertaken by the newly-incorporated entity, regardless of its form, rather than remain with the accountable body local authority, it is likely that the contracts of employment of those staff working predominantly on LEP matters for a local authority will automatically transfer to the new LEP company on their existing terms⁷ under the provisions of TUPE⁸. The new company would effectively step into the shoes of the local authority in respect of the transferring employees. All of the local authority's rights, powers, duties and liabilities under or in connection with the transferring employees' contracts pass to the new LEP company and any acts or omissions of the local authority before the transfer are treated as having been done by the LEP.
- 5.7. Both the local authority and the LEP will need to inform and (if appropriate) consult with recognised trade unions or elected employee representatives (if there is no recognised union) in relation to any of their own employees who may be affected by the transfer or any measures taken in connection with it. Certain information must be provided to the representatives long enough before the transfer to enable the transferor to consult with them about it. Although there will be a duty to inform on every TUPE transfer, the duty to consult only arises where an employer envisages taking measures in respect of affected employees. A failure to comply with these obligations exposes the parties liable to pay compensation equivalent to up to 13 weeks' uncapped pay.
- 5.8. Although the provisions of TUPE do appear onerous and certainly need to be considered when considering the timeline to incorporation, the liabilities set out above can to a large extent be assumed by the local authority by way of an indemnity under any transfer agreement. What the LEPs will need to consider is whether the obligations that it would assume are too onerous in the general sense post-incorporation based on the level of core funding that it will have available.
- 5.9. LEPs will also need to consider whether staff would be willing to transfer across to a newly-incorporated company. Some employees may not wish to transfer, preferring instead to have the local authority as their employer. Employees who object to the transfer will not become employees of the LEP. Instead, their contracts of employment terminate by operation of law

⁷ The exception to this is in relation to old age benefits, which do not transfer

⁸ Transfer of Undertakings (Protection of Employment) Regulations 2006

on the transfer date. LEPs therefore need to assess whether such a transfer is likely to have an impact on staffing levels.

- 5.10. The requirements relating to informing and consulting will vary according to the number of potential employees that would be subject to a transfer so each LEP will need to take separate legal advice on their precise obligations.

Contracts and novation

- 5.11. If it proposed that operational activity is to take place through the newly-incorporated LEP and not through the accountable body, consideration will need to be given to transferring the contractual arrangements that are in place between any third party and the relevant local authority. The new LEP company will not be a contracting party to the arrangements and will need to have the various contracts novated to it under the terms of a novation agreement.
- 5.12. The novation process can be time-consuming so LEPs will need to consider what contracts (if any) it would want to be a party to after incorporation at an early stage and engage with the third party accordingly to arrange the necessary novation.

Public procurement

- 5.13. An area of uncertainty for LEPs relates to the applicability (or otherwise) of the Public Contracts Regulations 2015 (PCR). The PCR sets out what bodies are required to follow the EU-wide public procurement rules. These bodies, known as contracting authorities, are listed in the PCR and include all local authorities as well as organisations that are deemed to be “bodies governed by public law”. A body governed by public law is described in the PCR as any body:
- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
 - having legal personality; and
 - financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.
- 5.14. Although the number of members on the board of LEPs appointed by local authorities will be fewer than half, most LEPs rely heavily on the core funding settlements from government as administered by the local authority accountable body. The LEPs are also arguably subject to management supervision by central and local government. It follows that incorporated LEPs will be subject to the public procurement regime after incorporation.
- 5.15. In practical terms, this is unlikely to represent a significant change from the current arrangements where all procurements will need to be fed run through the accountable body.

State aid

- 5.16. The founding treaty of the EU⁹ contains a general prohibition on the provision of aid by any member State. Broadly, public authorities, which includes local authorities, are prohibited from providing aid to private sector entities that would have an adverse effect on trade between member states and therefore the functioning of the European common market.
- 5.17. The concern for LEPs is that they will technically be private sector entities following incorporation. Four criteria must be present to aid to constitute State aid:
- it must be granted by the State or through State resources;
 - it must favour certain undertakings or the production of certain goods;
 - it must distort or threaten to distort competition; and
 - it must affect trade between member states.
- 5.18. If all four criteria are satisfied – and unless an appropriate exemption applies or a pre-existing approved scheme exists – the aid must not be granted until it has been notified to (and approved by) the Commission of the European Union (the **Commission**). If it is granted in breach of these requirements it constitutes unlawful State aid and can be challenged either by (or on complaint to) the Commission itself or in the UK domestic courts. Aid which is found to be unlawful must be repaid by the recipient to the State with interest from the point at which it was granted.
- 5.19. The concern for LEPs will be that the core funding granted to it in order for it to operate will amount to unlawful State aid. Our view is that this will not be the case as the general interest function of LEPs means that they are not undertaking an economic activity (as defined in EU law) that makes it an undertaking for the purposes of the second State aid test. For the LEPs general activities, therefore, our view is that no State aid will be present.
- 5.20. The situation would be different if a LEP was to undertake any commercial trading activity outside its core function. At that point it would no longer be fulfilling the general interest function and would be competing with other organisations in the marketplace. Unless an exemption was available, the public funding used for these commercial activities would likely amount to unlawful State aid unless an appropriate exemption existed. LEPs will need to take further detailed advice if such a trading activity is being proposed.

6. A PHASED APPROACH

- 6.1. The LEP Review contains a requirement that each LEP has its new legal structure in place by April 2019. The legal entity itself will therefore need to be incorporated by that date complete with the articles of association that will contain the governance arrangements for the LEP. However, there is nothing in the LEP Review that requires the operational arrangements to be in place by that date. A LEP may take the view, for example, that it wishes to continue to use its accountable body for the majority of its functions until such a time as it believes is appropriate to transfer the operational element to the new company. This means that current arrangements could remain largely in place, albeit with the governance arrangements being directed through the company.

⁹ Article 107(1) of the Treaty on the Functioning of the European Union

- 6.2. It follows that the timing of any TUPE transfer can be managed and does not need to be linked specifically to the 1 April deadline or put in place before that date. This means that any obligations to inform and consult can be run on a timescale that is suitable for each LEP. The same goes for the timing of any contract novations and the implementation of any new accounting arrangements.
- 6.3. This phased approach is subject to what further arrangements MHDCLG set out in their response to the implementation plans.

SHARPE PRITCHARD LLP

03/10/2018

