

Report of the Section 151 Officer

Pension Fund Committee - 10 March 2016

UPDATED INVESTMENT REGULATIONS RESPONSE TO CONSULTATION

Purpose:	The report presents the response of the City & County of Swansea Pension Fund Committee to the above consultation exercise by DCLG.
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FOR INFORMATION

1 Background

- 1.1 The Pension Fund Committee made approved the following recommendation at its December 2015 meeting in respect of the updated Investment Regulations upon which consultation was sought by DCLG :

It is recommended that:

The Section 151 Officer is delegated to formulate the response having consulted with LGPS colleagues in Wales via the Society of Welsh Treasurers and circulates the response to Pension Fund Committee members for information prior to submission

- 1.2 Attached at Appendix 1 is the submitted response as approved (via e-mail) by Pension Committee Members which was submitted on the 19th February 2016.

2 Legal Implications

- 2.1 There are no legal implications

3 Financial Implications

- 3.1 There are no financial implications

4 Equality Impact Assessment Implications

- 4.1 None

APPENDIX 1

1	<p>Question 1- Does the proposed deregulation achieve the intended policy aim of removing any unnecessary regulation while still ensuring that authorities’ investments are made prudently and having taken advice?</p>
	<p>The proposed deregulation does broadly achieve the intended policy aim in terms of removing unnecessary regulation and ensuring that a prudent approach is taken with regard to investment.</p> <p>The investment regulations could be more robust on the need for authorities to frame and document appropriate investment objectives in a manner that is consistent with the requirement of the funding strategy statement which in turn must have regard to the statement of investment principles</p>
2	<p>Question 2. Are there any specific issues that should be reinstated? Please explain why.</p>
	<p>We welcome and are in favour of greater investment freedom for LGPS funds with the safeguards of the need to both adopt a prudent approach and take proper advice.</p> <p>Draft regulation 7(1) changes the tenor of compliance with guidance from the Secretary of State from “comply or explain” to “must be in accordance with”. This gives the Secretary of State broad powers to provide direction on specific aspects of an investment strategy which may not be appropriate to the circumstances of any particular authority.</p> <p>The interaction of draft regulation 7(1) and the associated guidance could potentially be interpreted as compelling authorities to follow a particular course of action. Given the power to intervene under draft regulation 8 will require authorities to explain their rationale for non-compliance with any guidance, the wording as it stands shifts the balance of power too far away from authorities to determine what is, or is not, an appropriate investment strategy. It would therefore be appropriate to either reinstate the original wording or ensure that there is sufficient consultation with authorities prior to the introduction of any new guidance.</p>
3	<p>Question 3. Is six months the appropriate period for the transitional arrangements to remain in place?</p>
	<p>Noting the already full investment reform agenda exacerbated by triennial valuations, 6 months would seem a wholly inadequate period for transitional arrangements</p>
4	<p>Question 4. Should the regulation be explicit that derivatives should only be used as a risk management tool? Are there any other circumstances in which the use of derivatives would be appropriate?</p>

	<p>We do not think that regulations should be more explicit when derivatives should be used – the combination of a prudent approach and the requirement to take proper advice will underpin the appropriate use of derivatives without the need for explicit regulations</p>
5	<p>Question 5. Are there any other sources of evidence that the Secretary of State might draw on to establish whether an intervention is required?</p>
	<p>Intervention from the Secretary of State should be considered as a last resort. In reaching such a decision the Secretary of State must be able to fully understand the reasons why it has pursued that course of action.</p> <p>An Administering Authority would prefer evidential sources to be clearly specified and indeed clearer guidance on what might constitute a reason for intervention.</p> <p>Similarly as guidance is to be reviewed, Administering Authorities and their advisors shall have a strong interest in the development of such guidance.</p>
6	<p>Question 6. Does the intervention allow authorities sufficient scope and time to present evidence in favour of their existing arrangements when either determining an intervention in the first place, or reviewing whether one should remain in place?</p>
	<p>Intervention should only be considered as a last resort – however it is unclear how that process will be applied notably timetable and period for suitable response and action and right of appeal.</p>
7	<p>Question 7. Does the proposed approach allow the Secretary of State sufficient flexibility to ensure that he is able to introduce a proportionate intervention?</p>
	<p>Draft regulation 8(2) (a) and (b) give the Secretary of State powers to direct an Authority to make changes to the investment strategy or to invest in particular asset classes- This is wholly inconsistent with the framework within which an Administering Authority is expected to take responsibility for formulating an investment strategy.</p> <p>It is right that there is power to hold an Authority to account but it should be referenced against that fund’s investment and risk objectives not objectives and aims of the Secretary of State’s determination.</p> <p>The overall objective of LGPS funds is to pay LGPS member benefits as they fall due in as cost effective manner as possible for scheme employers- this aim is achieved by achieving the best risk adjusted investment returns net of costs. These aims could be damaged by any intervention or direction by the Secretary of State to invest in certain funds or projects at any time.</p> <p>The guidance in this respect needs clarity and transparency to ensure</p>

	expectations are managed and achievable
8	Question 8. Do the proposals meet the objectives of the policy, which are to allow the Secretary of State to make a proportionate intervention in the investment function of an administering authority if it has not had regard to best practice, guidance or regulation?
	<p>We refer to our response above:</p> <p>Draft regulation 8(2) (a) and (b) give the Secretary of State powers to direct an Authority to make changes to the investment strategy or to invest in particular asset classes- This is wholly inconsistent with the framework within which an Administering Authority is expected to take responsibility for formulating an investment strategy.</p> <p>It is right that there is power to hold an Authority to account but it should be referenced against that fund's investment and risk objectives not objectives and aims of the Secretary of State's determination.</p> <p>The overall objective of LGPS funds is to pay LGPS member benefits as they fall due in as cost effective manner as possible for scheme employers- this aim is achieved by achieving the best risk adjusted investment returns net of costs. These aims could be damaged by any intervention or direction by the Secretary of State to invest in certain funds or projects at any time.</p> <p>The guidance in this respect needs clarity and transparency to ensure expectations are managed and achievable</p>