WIRRAL COUNCIL

PENSIONS COMMITTEE

13 JANUARY 2010

REPORT OF THE DIRECTOR OF FINANCE

THE LOCAL GOVERNMENT PENSION SCHEME (MANAGEMENT AND INVESTMENT OF FUNDS) REGULATIONS 2009

1. EXECUTIVE SUMMARY

1.1. This report informs Members that the above Regulations replace the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998.

1.2 The Regulations are primarily a consolidation of the LGPS Regulations 1998 with the numerous instruments which have amended them. The opportunity has also been taken to update the 1998 Reulations and to make a small number of more substantive changes

1.3 The new Regulations came into force on 1 January 2010.

2. BACKGROUND

2.1 The Department for Communities and Local Government (DCLG) published draft regulations on 6 February 2009 to consolidate the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 ("the investment regulations") SI 1998/1831, and to make various amendments. A consultation exercise was launched to which MPF submitted a response as reported to the Pensions Committee on 6 April 2009.

3. SUBSTANTIVE CHANGES TO THE REGULATIONS

3.1 Ending Use of Pension Fund Money by the Administering Authority

The provisions in the 1998 regulations which allow such use have been revoked. **From 1 April 2010**, use of pension fund money by the administering authority for any purpose for which it may borrow money will no longer count as an "investment".

There is a transitional provision covering the period between the date of the coming into force of these Regulations and 31 March 2010. Related CIPFA guidance for authorities is being prepared. This will advise on best practice if an authority does use fund money during the interim period prior to 1 April 2010.

Section 1 in Part 1 of the Local Government Act 2003 sets out the purposes for which a local authority may borrow, namely: "(a) for any purpose relevant to its functions under any enactment, or (b) for the purposes of the prudent management of its financial affairs". The practical effects of the regulatory change are therefore that the administering authority, in its capacity as a local authority, will no longer be able to use fund money for those purposes from 1 April 2010.

3.2 **Borrowing power**

Regulation 5 gives the administering authority an explicit power to borrow, for up to 90 days, for the purposes of its pension fund. Borrowing in order to invest on behalf of the fund is not permitted.

Regulation 5 clarifies the legal position, following Part 1 of the Local Government Act 2003, which deals with the capital finance provisions of local government finance legislation and provides a borrowing power for local authorities, but only in respect of their general local authority functions.

Regulation 5(2) sets out the purposes for which the power may be used, ie for cash flow purposes - for instance to ensure that all scheme benefit payments can be made on time, or in a transition management situation when the allocation of fund assets is being changed. The pension fund needs to have identifiable income from which repayment of the borrowed amount and any related interest can be funded. In response to suggestions from consultees, the period for which borrowing can last is specified as 90 days - rather than 30 days as suggested in the statutory consultation.

3.3 **Separate bank account for the pension fund.**

This change was proposed in the statutory consultation paper. In view of the comments from consultees on a suitable and practical lead-in time, regulation 6(1) provides that the new requirement must be complied with **from 1 April 2011**. For the avoidance of doubt, authorities should be aware that a physically separate entity with a different bank account number is necessary in order to comply with this regulation, not just an accounting separation.

Regulation 6(2) defines "deposit-taker" for the purposes of this regulation. A provision forbidding set-off by the deposit-taker has been added at regulation 6(3).

3.4 Statement of Investment Principles

3.4.1. Stock lending & Risk

An administering authority must now include in its statement of investment principles (SIP) information about its policy on the lending of stocks or other securities from its pension fund; and on the ways in which risks are to be measured and managed.

The first such statement must be published by **1 July 2010.**

3.4.2 Keeping the SIP up to date

Regulation 12 has been amended to require any material change in policy, to be reflected in a revised published SIP within six months of the change.

3.5 Stocklending – References to COLL

The Regulations update references to the relevant Financial Services Authority Sourcebook, now called COLL. They adapt COLL to the LGPS context, by making the administering authority responsible for compliance with the rules and guidance specified.

The paragraphs of COLL which allow certain USA broker-dealers and banks to be used as counter parties are not considered appropriate at the present time for LGPS funds.

3.6 Secretary of State guidance on investing

Each administering authority is required to report on its compliance with the Myners principles, as set out for the LGPS in CIPFA Guidance Note Issue No.5 The principles for all funded occupational schemes were significantly revised in 2008.

Regulation 12(3) now provides that authorities should report on their compliance with guidance given by the Secretary of State. Such guidance will be issued as and when necessary in the light of developments. The statutory consultation did not mention this alteration, but including this will avoid the need to amend regulation 12 whenever the guidance changes. The guidance from the Secretary of State is expected shortly.

3.7 **Overriding regulations concerning Employer-Related Investments**

The Regulations now contain a reference to the Occupational Pension Scheme (Investment) Regulations 2005, SI 2005/3378 as amended, in order to clarify their potential relevance in relation to some LGPS fund investment decisions.

3.8 The explanatory memorandum issued by the DCLG is attached as Appendix A to this report.

4. FINANCIAL AND STAFFING IMPLICATIONS

4.1 There are no direct implications arising from this report.

5. COMMUNITY SAFETY IMPLICATIONS

5.1. There are no specific implications arising from this report.

6. HUMAN RIGHTS IMPLICATIONS

6.1. There are no Human Rights implications arising from this report.

7. LOCAL MEMBER SUPPORT IMPLICATIONS

7.1. There are no specific implications for any Member or Ward.

8. LOCAL AGENDA 21 IMPLICATIONS

8.1. None.

9. PLANNING IMPLICATIONS

9.1 There are no specific implications arising from this report.

10. BACKGROUND PAPERS

10.1 The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009

10.2 Letter from the Department for Communities and Local Government 1 December 2009.

11. RECOMMENDATION

11.1. That Members note the new investment Regulations.

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DIRECTOR OF FINANCE

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