

WIRRAL COUNCIL

EMPLOYMENT AND APPOINTMENTS COMMITTEE

19 NOVEMBER 2007

REPORT OF THE DIRECTOR OF FINANCE

BEST VALUE AUTHORITIES STAFF TRANSFERS (PENSIONS) DIRECTION 2007

1. EXECUTIVE SUMMARY

- 1.1. This report informs Members of the publication of the Direction Order making the protection of employees' pension rights on transfer a statutory requirement which came into force on 1 October 2007.

Members are asked to note this report.

2. BACKGROUND

- 2.1. Until the publication of this Direction Order pensions have not been covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), legislation intended to protect employees' conditions of service on transfer under Best Value legislation to private contractors.

- 2.2. A recommendation that suitable pension protection should be provided has been included in the Government Guidance set out in the Cabinet Office: Statement of Practice for Staff Transfers in the Public Sector (2000) but a number of authorities had failed to act in accordance with the guidance to ensure suitable arrangements to protect pension rights. The Government has therefore made the Direction Order to make the provision of such protection a statutory requirement.

- 2.3. The Direction order provides that where an authority enters into a contract with a person for the provision of services and those services are, in the period immediately before the contract is entered into, provided by the authority and carried out by employees of the authority

- a. The contract between the authority and the contractor must require the contractor to secure pension protection for each transferring employee and provide that the provision of pension protection is enforceable by the employee; and
- b. Pension protection is secured if the transferring employee, after change in employer, has rights to acquire pension rights that are the same as or are broadly comparable to or better than those he had as an employee of the authority

2.4 The Direction Order also requires similar pension protection in relation to those former employees of an authority, who were transferred under TUPE to a contractor, in respect of any re-tendering of a contract for the provision of services.

2.5 Either the provision of an admission agreement to enable employees to remain in the LGPS or the provision of a broadly comparable scheme would satisfy the requirements contained in the Direction. The Government Actuary's Department (GAD) has however recently withdrawn all "scheme comparability passports" issued in respect of the LGPS because of the introduction of the New Look Scheme from April 2008 with a different accrual rate and various changes to both the contributions and benefits. Contractors would therefore need to seek new approval from the GAD of any proposed alternative comparable scheme before it could be accepted as satisfying the new requirements.

3. FINANCIAL IMPLICATIONS

3.1. The cost of providing protection of pension rights is initially a matter for the contractor and will depend on the availability of a suitable approved broadly comparable alternative scheme.

3.2. Discussions are ongoing between the Department for Communities and Local Government (DCLG) and various interested parties about ways to facilitate admission agreements by use of so called "pass through arrangements" which allow contractors to limit their pension risk by agreement with the local authority as part of the best value contractual arrangements. Contractors may seek to limit their pension risk and recover costs above pre determined levels from the contracting authority.

3.3. The contracting authorities will be responsible for carrying out a risk review of the potential costs involved to determine whether a bond or indemnity is required to protect against the potential pension costs that may ultimately fall on the contracting authority in the event of the premature termination of the best value contract and admission agreement.

4. STAFFING IMPLICATIONS

4.1. There are none directly arising from this report.

5. EQUAL OPPORTUNITY IMPLICATIONS

5.1. There are none arising from this report.

6. COMMUNITY SAFETY IMPLICATIONS

6.1. There are none arising from this report.

7. HUMAN RIGHTS IMPLICATIONS

7.1. There are none arising from this report.

8. LOCAL AGENDA 21 IMPLICATIONS

8.1. There are none arising from this report.

9. PLANNING IMPLICATIONS

9.1. There are none arising from this report.

10. MEMBER SUPPORT IMPLICATIONS

10.1. There are none arising from this report.

11. BACKGROUND PAPERS

11.1 DCLG letter dated 27 June 2007.

11.2. The Best Value Authorities Staff Transfers (Pensions) Direction 2007

12. RECOMMENDATION

12.1 That Members note the report.

IAN COLEMAN
DIRECTOR OF FINANCE

FNCE/241/07