WIRRAL

PENSIONS COMMITTEE

2 FEBRUARY 2021

REPORT TITLE:	**FSS POLICY UPDATES**
REPORT OF:	**DIRECTOR OF PENSIONS**

REPORT SUMMARY

This report covers updates to the termination policy and a new contributions flexibilities policy in light of the new Regulations that came into force on 23 September 2020. The Regulations require these policies to be included in the Funding Strategy Statement.

Updated Termination Policy

The default position for exit payments is that they are paid in full at the point of exit. The termination policy has therefore been updated to allow for the new Regulations which allow exiting employers (subject to a suitable review of the unaffordability of an immediate exit debt payment) to spread their exit debt over a set period or to enter into a Deferred Debt Arrangement allowing them to remain in the Fund with no active members. The policy sets out the process that must be followed by the Fund when an employer exits the Fund (usually triggered when the last active contributing member leaves pensionable service).

New Contributions Flexibilities Policy

The new Regulations also permit contribution rates to be adjusted between valuations. Currently the contribution rates set out in the valuation report stay in place until the next valuation (except in limited circumstances or where an employer exits the Fund). These Regulations allow changes to contributions to be made before the next valuation if an employer's circumstances meet the specified criteria. The policy sets out the situations where contributions may be reviewed between actuarial valuations and the conditions that must be met.

RECOMMENDATION

That Committee:

1. Approves the draft policy for 'Deferred Debt Agreements' based on HMRC's draft statutory guidance and the Scheme Advisory Board (SAB) guide.

2. Approves the draft policy for 'Flexibility in Contribution Rates' based on HMRC's draft statutory guidance and the SAB guide.

3. Delegates to the Director of Pensions any final changes to the draft policies - following consultation with employers on the updated Funding Strategy Statement, and after having taken advice from the Scheme Actuary along with consideration of the publication of the final statutory guidance and SAB guide.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION

1.1 There is a requirement for Members of the Pension Committee to approve any significant changes to the Funding Strategy Statement and associated policies.

2.0 OTHER OPTIONS CONSIDERED

2.1 Not relevant for this report.

3.0 BACKGROUND INFORMATION

3.1 A number of regulatory changes came into force on 23 September 2020 (LGPS (Amendment No.2) Regulations 2020). These allow for more flexibilities with contributions both on exit from the Fund (via spreading of exit payments and allowing employers to remain in the Fund with no active members) and via interim contribution reviews between actuarial valuations. In line with these Regulations, the Fund is required to include policies within its Funding Strategy Statement (FSS) which sets out how the flexibilities will apply in practice to employers. The Fund has therefore updated its policies to incorporate the new Regulations. These policies aim to provide much needed flexibilities to manage employer liabilities.

3.2 To assist with drafting the policies and applying the Regulations, the Scheme Advisory Board (SAB) has produced a practical guide in draft form for Funds and the MHCLG has issued draft statutory guidance on the amendments to the FSS. A consultation took place on the practical guide from the SAB which ran until 9 January 2021 and the final documents are awaiting publication.

3.3 It is the intention to undertake a short consultation with Fund employers on the updated termination policy and the new contributions flexibilities policy following committee's approval of the draft policies. The FSS will then be updated to include the new policies. These policies do not alter the main principles of the current funding plan but instead provide the Fund and employers with further flexibilities.

3.4 There will be further cosmetic updates to the FSS which will be included in the consultation for completeness. In addition, there are also some refinements to the wording in the following areas:

a) The termination policy has been updated to include the process involved in determining how an exit credit (i.e., a surplus) should be dealt with when an employer exits the Fund. In particular, the Fund will provide the exiting employer with a notice setting out who will receive the exit credit and the reasons behind this decision (e.g., details of the commercial or admission agreements referenced). The employer will be able to appeal this decision if they disagree.
b) The wording within the ill health captive policy will be expanded to allow for an automatic review of any ill health retirements where an employer exits the Fund and has been part of the captive. This is to ensure that the employers within the captive arrangement have the correct governance in place.

3.5 The policies have been drafted based on the drafts of the statutory guidance and SAB guide. It is proposed that any changes required to the draft policy once the final documents are issued will be made by Officers on the advice of the Actuary. We do not expect substantive changes will be required but if so consideration will be given to whether this is brought back to the Chair of the committee.

3.6 Further information regarding the changes made to the policies are set out below.

DRAFT TERMINATION POLICY UPDATES - FLEXIBILITY FOR EXIT DEBT PAYMENTS AND DEFERRED DEBT AGREEMENTS

3.7 The default position for exit payments is that they are paid in full at the point of exit and this will continue under the new policy. The previous regulations generally required the exit debt to be paid in full on exit. This restricted the ability of employers to leave the Fund in an ordered and affordable manner and put the Fund (and therefore the taxpayer) at higher risk of unrecoverable debts. This is especially the case for those employers in a weak financial situation. As a consequence, employers tended to remain in the Fund building up further, often unaffordable, liabilities. The new Regulations provide greater flexibility to manage this debt in conjunction with the employer and allow the employer to limit the further accrual of liabilities.

3.8 The new Regulations permit LGPS funds to develop policies that provide alternative options to employers when the last active member leaves the employer (subject to a covenant assessment and consideration of security):

a) **Spreading payments** - Allow the Fund and the employer to enter into an agreement which instead spreads the payment of the final exit debt calculated by the Actuary over an agreed period of time (the amounts and frequency of the payments in the payment plan will be agreed at the outset along with any early payment terms), or

b) **Deferred Debt Arrangement (DDA)** - The Fund may enter into a DDA with a scheme employer. This allows the employer to defer its obligation to make an exit payment and continue to make 'deficit' (secondary rate) contributions to the Fund. Contribution requirements will continue to be reviewed as part of each actuarial valuation under this option, which is essentially an employer continuing ongoing participation, but with no contributing members. The Fund or employer can terminate the DDA and settle a revised (potentially more affordable) exit debt.

3.9 The Fund can only enter into one of the above arrangements if the FSS includes a policy setting out how the employer will be treated. The Fund is also required to consult with the exiting employer, following advice from the Fund Actuary as well as any other specialists as appropriate as part of the process.

3.10 Appendix 1 sets out the draft policies for these flexibilities for the Committee to consider. The policies have been designed to strengthen the Fund's ability to manage employer liabilities, ensuring there is no detriment to the solvency of the Fund.

FLEXIBLE CONTRIBUTIONS POLICIES - DRAFT POLICY

3.11 The new Regulations also permit contribution rates to be adjusted between valuations. Currently the contribution rates set out in the valuation report stay in place until the next valuation except in limited circumstances or where an employer exits the Fund. These Regulations allow changes to contributions to be made before the next valuation if an employer circumstances meet the specified criteria.

3.12 Such a revision to contribution rates is only permitted if the Fund's policy is set out in the FSS and one of the following apply:

a) it appears likely to the administering authority that the amount of the liabilities arising or likely to arise has changed significantly since the last valuation.

b) it appears likely to the administering authority that there has been a significant change in the ability of the Scheme employer to meet their obligations in the Scheme; or

c) a Scheme employer requests a review of employer contributions and has undertaken to meet the costs of that review (and point (a) or (b) also applies)

3.13 Appendix 2 sets out the draft policy for the Committee to consider. The policy ensures that any contribution changes will only be due to significant liability or covenant changes which would create additional risk to the Fund or employer.

4.0 FINANCIAL IMPLICATIONS

4.1 The FSS sets out the funding basis and related policies through which the Fund manages the scheme liabilities and payment of contributions by scheme employers (including on exit from the Fund).

4.2 Actuarial and covenant advice regarding the FSS and related policies is provided for in the annual budget.

5.0 LEGAL IMPLICATIONS

5.1 There are none arising from this report.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are none arising from this report.

7.0 RELEVANT RISKS

7.1 There are none arising from this report.

8.0 ENGAGEMENT/CONSULTATION

8.1 The Scheme Advisory Board conducted a consultation on its draft guide on employer flexibilities for administering authorities and employers.

8.2 The Fund will consult with participating employers on the changes to the Funding Strategy Statement and its associated policies. Feedback will be assessed and responded to in advance of final publication by 1 April 2021.

9.0 **EQUALITY IMPLICATIONS**

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2 MHCLG and HMT undertake equality impact assessments with regard to the statutory reform of the public sector pension schemes and LGPS.

10.0 **ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 There are none arising from this report.

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APPENDICES

Appendix 1 - Draft Termination Policy updates regarding exit debt payments and deferred debt agreement flexibilities

Appendix 2 - Draft Policy regarding flexible contributions

BACKGROUND PAPERS

Draft MHCLG Statutory Guidance on Preparing and Maintaining Policies on Review of Employer Contributions, Employer Exit Payments and Deferred Debt Agreements.

Draft SAB Guide to Employer Flexibilities for Administering Authorities and Employers

SUBJECT HISTORY (last 3 year)

Council Meeting	**Date**
The Funding Strategy Statement is reviewed at least annually with the last review taking place as part of the 2019 valuation	3 February 2020