

NORTH YORKSHIRE COUNTY COUNCIL**PENSION FUND COMMITTEE****24 NOVEMBER 2016****LGPS INVESTMENT REGULATIONS****Report of the Treasurer****1.0 PURPOSE OF REPORT**

- 1.1 The LGPS Management and Investment of Funds regulations provide for the management and investment of pension fund money as required by the LGPS Regulations 2013.
- 1.2 The new LGPS (Management and Investment of Funds) Regulations 2016 came into effect on 1 November 2016, bringing with them a number of changes.
- 1.3 The Committee is asked to note the changes in the regulatory requirements.

2.0 BACKGROUND

- 2.1 Since they came into force, the North Yorkshire Pension Fund has been monitoring and reporting on compliance with the LGPS Management and Investment of Funds Regulations 2009 (as amended). This followed a similar approach based on the preceding Regulations which were published in 1998.
- 2.2 The 2009 Regulations described the legislative requirements for the following:
 - the definitions of permissible investments
 - administering authority obligations to pay money to or collect money from the Pension Fund
 - restrictions on borrowing
 - Pension Fund bank account arrangements, which must be separate from the administering authority
 - the selection process, terms of appointment and monitoring of external investment managers
 - the formulation of an investment strategy for the Pension Fund, including maintaining a Statement of Investment Principles (SIP), covering:
 - the types of investments to be held

- the balance between different types of investments
- risk, including the ways in which risks are to be measured and managed
- the expected returns on investments
- the realisation of investments
- the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments
- the exercise of the rights (including voting rights) attaching to investments, if there is such a policy
- stock lending
- the extent to which the administering authority complies with guidance given by CLG (in relation to the Investment Principles), and, to the extent the authority does not comply, the reasons for not complying
- the exercise of any discretion by the administering authority to increase the limits on various types of investment
- treasury management arrangements between the administering authority and the Pension Fund
- limits on the proportions of the Fund invested in permissible investment asset classes, and subject to additional requirements the availability of increased limits

2.3 Schedule 1 of the 2009 Regulations identified the 13 permissible investment categories to which limits and increased limits applied.

2.4 Since the 2009 Regulations were published there have been only minor amendments.

3.0 **THE LGPS MANAGEMENT AND INVESTMENT OF FUNDS REGULATIONS 2016**

3.1 The 2016 Regulations came into force on 1 November 2016, replacing the 2009 Regulations (as amended).

3.2 The new Regulations introduce a mixture of new legislative requirements and updates to the 2009 regulatory requirements. Some of the 2009 requirements have been dropped altogether. Overall, the new Regulations are less prescriptive.

- 3.3 The new Regulations require the administering authority to maintain and publish an Investment Strategy Statement (ISS). A copy of the guidance on preparing and maintaining an Investment Strategy Statement is attached to this report (Appendix 1).
- 3.4 The requirement to maintain and publish the ISS replaces the previous requirement to maintain a SIP. The purpose of both documents is actually very similar, being the provision of evidence that administering authorities have considered the suitability of their Fund's investment strategy and the approach to implementing that strategy. The ISS should describe the Fund's investments and investment strategy and must include:
- a requirement to invest money in a wide variety of investments
 - an assessment of the suitability of investments held
 - the approach to risk
 - the approach to pooling investments
 - the policy and approach to social, environmental and corporate governance
 - the policy on the exercise of rights (including voting rights) attaching to investment
- 3.5 The ISS must also set out the maximum percentage of the Fund that it will invest in particular investments or asset classes. This will replace Schedule 1 of the 2009 regulations as noted above.
- 3.6 The need to take proper advice in addressing these issues is strongly emphasised.
- 3.7 The first ISS must be published by 1 April 2017, therefore this document will be presented for approval to the Committee at its meetings on 23 February 2017. Until that date, the Fund will maintain the SIP.
- 3.8 The new Regulations also introduce new powers for the Secretary of State to make a direction if he is satisfied that an administering authority is failing to act in accordance with the legislation and guidance. The power of direction can be used to:
- require changes to the investment strategy
 - require investment in specific assets or asset classes
 - transfer the investment functions to the Secretary of State or a person nominated by the Secretary of State
 - require the administering authority to comply with any instructions

- 3.9 This regulation essentially allows the Secretary of State to intervene in whatever manner is deemed necessary to address a perceived problem.
- 3.10 Before any direction can be issued, the Secretary of State must consult with the administering authority and take due consideration of reports and representations. Although regulation does appear quite draconian, it provides powers to the Secretary of State, where under previous regulations there were none. Its use is likely to be a last resort.
- 3.11 Some of the regulations are essentially an updated version of regulations from 2009, relating them to the current investment environment. They also reflect amendments to definitions, and a general improvement in the clarity of wording. They include:
- the permissible investments definitions, particularly in relation to derivative and insurance contracts
 - administering authority obligations to pay money to or collect money from the Pension Fund
 - restrictions on borrowing
 - Pension Fund bank account arrangements
 - the use of external investment managers
- 3.12 With effect from the date of publication of the first ISS, prescriptive investment limits on asset classes have been dropped from the Regulations, with one exception. No more than 5% of Pension Fund money can be invested in entities connected to the administering authority.

4.0 **RECOMMENDATION**

- 4.1 The Committee is recommended to note the report.

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14 November 2016

Background documents: None



Department for
Communities and
Local Government

Local Government Pension Scheme

Guidance on Preparing and Maintaining an Investment
Strategy Statement



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Foreword

This guidance has been prepared to assist administering authorities in the local government pension scheme in England and Wales with the formulation, publication and maintenance of their Investment Strategy Statement.

New investment regulations to be introduced later this year will include a requirement for administering authorities to publish new Investment Strategy Statements by 1st April 2017 in accordance with the guidance set out below.

Administering authorities will be required to act in accordance with the provisions in this guidance when Regulation 7 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 comes into force.

Part 1

Introduction and background

This guidance has been prepared to assist administering authorities in the formulation, publication and maintenance of their Investment Strategy Statement required by Regulation 7 of The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016. Unless otherwise stated, references to regulations are to the 2016 Regulations.

An administering authority's duty to prepare, maintain and review their Funding Strategy Statement under Regulation 58 of the Local Government Pension Scheme Regulations 2013 ("the 2013 Regulations") is unaffected.

Statutory background

Regulation 7(1) requires an administering authority to formulate an investment strategy which must be in accordance with guidance issued by the Secretary of State.

The Investment Strategy Statement required by Regulation 7 must include:-

- a) A requirement to invest money in a wide variety of investments;
- b) The authority's assessment of the suitability of particular investments and types of investments;
- c) The authority's approach to risk, including the ways in which risks are to be measured and managed;
- d) The authority's approach to pooling investments, including the use of collective investment vehicles and shared services;
- e) The authority's policy on how social, environmental or corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments; and

- f) The authority's policy on the exercise of rights (including voting rights) attaching to investments.

The Investment Strategy Statement must also set out the maximum percentage of the total value of all investments of fund money that it will invest in particular investments or classes of investment. This, in effect, replaces Schedule 1 to the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 ("the 2009 Regulations").

Under Regulation 7(6) and (7), the statements must be published by 1st April 2017 and then kept under review and revised from time to time and at least every three years. Under transitional arrangements, key elements of the 2009 Regulations relating to investment policies will continue in force until such time that the Investment Strategy Statement under Regulation 7 is published.

Directions by the Secretary of State

Regulation 8 enables the Secretary of State to issue a Direction if he is satisfied that an administering authority is failing to act in accordance with this guidance.

One of the main aims of the new investment regulations is to transfer investment decisions and their consideration more fully to administering authorities within a new prudential framework. Administering authorities will therefore be responsible for setting their policy on asset allocation, risk and diversity, amongst other things. In relaxing the regulatory framework for scheme investments, administering authorities will be expected to make their investment decisions within a prudential framework with less central prescription. It is important therefore that the regulations include a safeguard to ensure that this less prescriptive approach is used appropriately and in the best long term interests of scheme beneficiaries and taxpayers.

Where there is evidence to suggest that an authority is acting unreasonably, it may be appropriate for the Secretary of State to consider intervention, but only where this is justified and where the relevant parties have been consulted. Regulation 8 includes a number of safeguards, including full consultation with the relevant authority, to ensure that the proposed power is used appropriately, proportionately and only where justified by the evidence.

The Secretary of State's power of intervention does not interfere with the duty of elected members under general public law principles to make investment decisions in the best long-term interest of scheme beneficiaries and taxpayers.

The power of Direction can be used in all or any of the following ways:-

- a) To require an administering authority to make changes to its investment strategy in a given timescale;
- b) To require an administering authority to invest assets as specified in the Direction;
- c) To transfer the investment functions of an administering authority to the Secretary of State or a person nominated by the Secretary of State; and

- d) To require an administering authority to comply with any instructions from either the Secretary of State or the appointed person in circumstances when the investment function has been transferred.

Before issuing any Direction, the Secretary of State must consult the administering authority concerned and before reaching a decision, must have regard to all relevant evidence including reports under section 13(4) of the Public Service Pensions Act 2013; reports from the scheme advisory board or from the relevant local pension board and any representations made in response to the consultation with the relevant administering authority. The Secretary of State also has the power to commission any other evidence or additional information that is considered necessary.

General

Part 2 below sets out the guidance for authorities under each of the component parts of Regulation 7. The specific requirements under each heading are shown at the end of each sub section in a text box and in bold type. It is important to note, however, that these lists are not exclusive and that administering authorities are also required to comply with general public law principles and act within a prudential framework.

Part 2

Regulation 7(2) (a) - Investment of money in a wide variety of investments

A properly diversified portfolio of assets should include a range of asset classes to help reduce overall portfolio risk. If a single investment class is not performing well, performance should be balanced by other investments which are doing better at that time. A diversified portfolio also helps to reduce volatility.

For example, the range of asset classes could include UK and overseas equities of different sectors; bonds with varying maturity; alternative investment assets such as private equity, infrastructure and cash instruments.

However, this guidance does not purport to prescribe the specific asset classes over which fund monies must be diversified. This remains a decision for individual administering authorities to make. Administering authorities are expected to be able to demonstrate that those responsible for making investment decisions have taken and acted on proper advice and that diversification decisions have been taken in the best long term interest of scheme beneficiaries.

An administering authority must also be able to demonstrate that they review their diversification policy from time to time to ensure that their overall target return is not put at risk.

Summary of requirements

In formulating and maintaining their policy on diversification, administering authorities:-

- **Must take proper advice**

- **Must set out clearly the balance between different types of investments**
- **Must identify the risks associated with their overall investment strategy**
- **Must periodically review their policy to mitigate against any such risks**

Regulation 7(2)(b) - The suitability of particular investments and types of investments

The concept of suitability is a critical test for whether or not a particular investment should be made. Although individual investment classes will have varying degrees of suitability in the context of an authority's funding and investment strategies, the overall aim of the fund must be to consider suitability against the need to meet pension obligations as they fall due.

Assessing the suitability of different investment classes involves a number of factors including, for example, performance benchmarks, appetite for risk, policy on non-financial factors and perhaps most importantly, funding strategy.

What constitutes suitability is clearly a matter for individual administering authorities to consider and decide in the light of their own funding and investment strategies, but there is a clear expectation that the assessment should be broadly consistent across all administering authorities. Administering authorities must therefore take and act on proper advice in assessing the suitability of their investment portfolio and give full details of that assessment in their Investment Strategy Statement.

Summary of requirements

In formulating their policy on the suitability of particular investments and types of investments, administering authorities:-

- **Must take proper advice**
- **Should ensure that their policy on asset allocation is compatible with achieving their locally determined solvency target**
- **Must periodically review the suitability of their investment portfolio to ensure that returns, risk and volatility are all appropriately managed and are consistent with their overall investment strategy**

Regulation 7(2)(c) - The approach to risk, including the ways in which risks are to be measured and managed

The appetite of individual administering authorities for taking risk when making investment decisions can only be a matter for local consideration and determination, subject to the aim and purpose of a pension fund to maximise the returns from investment returns within reasonable risk parameters.

Some of the key risks that an administering authority needs to be aware include financial, demographic or regulatory risks. A detailed summary of the identification of all risks and counter-measures to mitigate against them is beyond the scope of this guidance, but administering authorities will continue to have regard to the requirement under Regulation

58 of the 2013 Regulations to have regard to the “Guidance on Preparing and Maintaining a Funding Strategy Statement” published by CIPFA, which includes a section on risk and the ways in which it can be measured and managed.

Summary of requirements

In formulating their policy on their approach to risk, administering authorities:-

- **Must take proper advice**
- **Should clearly state their appetite for risk**
- **Should be aware of the risks that may impact on their overall funding and investment strategies**
- **Should take measures to counter those risks**
- **Should periodically review the assumptions on which their investment strategy is based**
- **Should formulate contingency plans to limit the impact of risks that might materialise**

Regulation 7(2)(d) - The approach to pooling investments, including the use of collective investment vehicles and shared services

All authorities must commit to a suitable pool to achieve benefits of scale. Administering authorities must confirm their chosen investment pool meets the investment reform and criteria published in November 2015, or to the extent that it does not, that Government is content for it to continue.

Any change which results in failure to meet the criteria must be reported by the administering authority, and/or pool, to the Secretary of State and the Scheme Advisory Board.

Administering authorities should set out their approach to pooling and the proportion of assets that will be invested through the pool. This must include the structure and governance arrangements and the mechanisms by which the authority can hold the pool to account.

Where services are shared or jointly procured, the administering authority must set out the rationale underpinning this and the cost benefit of this, as opposed to pooling.

Administering authorities must provide a summary of assets to be held outside of the pool, and how this demonstrates value for money. The progress of asset transfers to the pool must be reported annually against implementation plans and submitted to the Scheme Advisory Board. Where it is possible that an asset could be pooled in the future, authorities must set a date for review and criteria that need to be met before the asset will be pooled.

Summary of requirements

In formulating and maintaining their approach to pooling investment, including the use of collective investment vehicles and shared services, an administering authority must:-

- **Confirm the pooling arrangements meet the criteria set out in the November 2015 investment reform and criteria guidance at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479925/criteria_and_guidance_for_investment_reform.pdf, or have been otherwise agreed by the Government**
- **Notify the Scheme Advisory Board and the Secretary of State of any changes which result in failure to meet the criteria**
- **Set out the proportion of assets that will be invested through pooling**
- **Set out the structure and governance arrangements of the pool and the mechanisms by which the authority can hold the pool to account**
- **Set out the services that will be shared or jointly procured**
- **Provide a summary of assets that the authority has determined are not suitable for investing through the pool along with its rationale for doing so, and how this demonstrates value for money;**
- **Regularly review any assets, and no less than every 3 years, that the authority has previously determined should be held outside of the pool, ensuring this continues to demonstrate value for money**
- **Submit an annual report on the progress of asset transfers to the Scheme Advisory Board**

Regulation 7(2)(e) - How social, environmental or corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments

When making investment decisions, administering authorities must take proper advice and act prudently. In the context of the local government pension scheme, a prudent approach to investment can be described as a duty to discharge statutory responsibilities with care, skill, prudence and diligence. This approach is the standard that those responsible for making investment decisions must operate.

Although administering authorities are not subject to trust law, those responsible for making investment decisions must comply with general legal principles governing the administration of scheme investments. They must also act in accordance with ordinary public law principles, in particular, the ordinary public law of reasonableness. They risk challenge if a decision they make is so unreasonable that no person acting reasonably could have made it.

The law is generally clear that schemes should consider any factors that are financially material to the performance of their investments, including social, environmental and

corporate governance factors, and over the long term, dependent on the time horizon over which their liabilities arise.

However, the Government has made clear that using pension policies to pursue boycotts, divestment and sanctions against foreign nations and UK defence industries are inappropriate, other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government.

Although schemes should make the pursuit of a financial return their predominant concern, they may also take purely non-financial considerations into account provided that doing so would not involve significant risk of financial detriment to the scheme and where they have good reason to think that scheme members would support their decision.

Investments that deliver social impact as well as a financial return are often described as “social investments”. In some cases, the social impact is simply in addition to the financial return; for these investments the positive social impact will always be compatible with the prudent approach. In other cases, some part of the financial return may be forgone in order to generate the social impact. These investments will also be compatible with the prudent approach providing administering authorities have good reason to think scheme members share the concern for social impact, and there is no risk of significant financial detriment to the fund.

Summary of requirements

In formulating and maintaining their policy on social, environmental and corporate governance factors, an administering authority:-

- **Must take proper advice**
- **Should explain the extent to which the views of their local pension board and other interested parties who they consider may have an interest will be taken into account when making an investment decision based on non-financial factors**
- **Must explain the extent to which non-financial factors will be taken into account in the selection, retention and realisation of investments**
- **Should not pursue policies that are contrary to UK foreign policy or UK defence policy**
- **Should explain their approach to social investments**

Regulation 7(2)(f) - The exercise of rights (including voting rights) attaching to investments

The long-term investment interests of administering authorities are enhanced by the highest standards of corporate governance and corporate responsibility amongst the companies in which they invest. Poor governance can negatively impact shareholder value.

Stewardship aims to promote the long term success of companies in such a way that the ultimate providers of capital also prosper. Stewardship activities include monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure

and corporate governance, including culture and remuneration. Engagement by administering authorities is purposeful and can identify problems through continuing dialogue with companies on these matters as well as on issues that are the immediate subject of votes at general meetings.

Engagement enables administering authorities as long term shareholders to exert a positive influence on companies to promote strong governance, manage risk, increase accountability and drive improvements in the management of environmental, social and corporate governance issues.

Administering authorities are encouraged to consider the best way to engage with companies to promote their long-term success, either directly, in partnership with other investors or through their investment managers, and explain their policy on stewardship with reference to the Stewardship Code. Administering authorities should become Signatories to the Code and state how they implement the seven principles and guidance of the Code, which apply on a “comply or explain” basis.

Concern has been expressed in the past about the scope of Regulation 12(2)(g) of the 2009 Regulations which, in effect, allowed each administering authority to decide whether or not to adopt a policy on the exercise of the rights attaching to investments, including voting rights. To increase awareness and promote engagement, Regulation 7(2)(f) now requires every administering authority to formulate a policy that reflects their stewardship responsibilities.

Summary of requirements

In formulating their policy on the exercise of rights, administering authorities:-

- **Must give reasons in their Investment Strategy Statement for not adopting a policy of exercising rights, including voting rights, attaching to investments**
- **Should, where appropriate, explain their policy on stewardship with reference to the Stewardship Code**
- **Should strongly encourage their fund managers, if any, to vote their company shares in line with their policy under Regulation 7(2)(f)**
- **May wish to appoint an independent proxy voting agent to exercise their proxy voting and monitor the voting activity of the managers, if any, and for reports on voting activity to be submitted annually to the administering authority**
- **Should publish a report of voting activity as part of their pension fund annual report under Regulation 57 of the 2013 Regulations**