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Dear Victoria Edwards,

**LGPS CONSULTATION: REVOKING AND REPLACING THE LOCAL GOVERNMENT PENSION SCHEME (MANAGEMENT AND INVESTMENT OF FUNDS) REGULATIONS 2009**

Thank you for the opportunity to respond to the above consultation on amendment of the Local Government Pension Scheme (LGPS) investment regulations. This response is submitted on behalf of the Devon County Council Pension Fund, and has been approved by the Investment and Pension Fund Committee.

We have structured our response around the questions posed.

**Proposal 1: Adopting a local approach to investment**

**Q1. 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.**

The proposed Investment Regulations do allow a lot more flexibility for LGPS funds, and this is to be welcomed. However there is a concern around how funds assess prudence. When the prudential approach was adopted for Treasury Management a number of Prudential Indicators were required to demonstrate that Local Authorities had considered risk and were staying within set boundaries. The Devon Pension Fund would recommend that a Code of Practice be produced with best practice guidance on assessing prudence.

**Q2. Are there any specific issues that should be reinstated?**

The proposed regulations removed the requirement to report against the Myners principles. However LGPS funds should still have regard for this guidance. The Devon Pension Fund believe the requirement to comply or explain against the Myners principles

should be reinstated. This will provide evidence to the Secretary of State that funds have reviewed their position in this respect.

### **Q3. Is six months the appropriate period for the transitional arrangements to remain in place?**

Under the proposed regulations there is a requirement to publish an Investment Strategy Statement “no later than 1st October 2016”. This should be a reasonable timeframe for most funds to produce the new statement, given that there should already be an investment strategy in place. The regulations also state that “the Authority must review and if necessary revise its investment strategy from time to time, and at least every 3 years”. The Devon Fund supports this requirement.

### **Q4. 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?**

Regulations governing private sector pension funds state that ‘derivative instruments may be made only in so far as they-

- a) Contribute to reductions of risks; or
- b) Facilitate efficient portfolio management.’

The Devon Pension Fund believes that the regulations should be explicit on how derivatives can be used and that this should match the private sector definition.

### **Proposal 2: Introducing a safeguard – Secretary of State power of intervention**

#### **Question 5 – Are there any other sources of evidence that the Secretary of State might draw on to establish whether an intervention is required?**

Regulation 8(4) does provide a clear list of evidence the Secretary of State might draw on. However the Devon Fund would like to see further clarification on how this will be used to determine whether an intervention is required. The Devon Fund believes that intervention should only take place where there is clear evidence of non-compliance with regulations and/or very significant poor performance over the longer term.

#### **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?**

The proposed regulations do not currently state a set period of time for Authorities to review their Investment Strategy Statement or to provide evidence following consultation by the Secretary of State under regulation 8 (3). The Devon Pension Fund recommends that a period of time be stated in the regulations allowing Funds to review their positions. A period of 3 months may be an appropriate timescale, to fit in with the quarterly cycle of pensions committee meetings.

#### **Question 7 – Does the proposed approach allow the Secretary of State sufficient flexibility to ensure that he is able to introduce a proportionate intervention?**

It is still unclear how the Secretary of State would use the power to intervene. The Devon Pension Fund has concerns in relation to regulation 8 (2) (b) where the Secretary of State could specify what investments should be made. This may not meet the objectives of the Fund as stated in the Funding Strategy Statement. The Devon Pension Fund is committed to its fiduciary duty to put in place a diversified investment strategy to provide a return to meet its liabilities to pay members’ pensions, and would be extremely concerned if any intervention sought to ensure LGPS funds invest in specific asset classes, for reasons

other than seeking a return to meet pension liabilities. The Fund also believes that the Secretary of State would be taking significant risk in specifying investments, in that the Secretary of State would then need to assume responsibility for the investment strategy and could be blamed if it failed to meet its objectives.

**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?**

The Devon Fund feels that clear guidance is vital and priority should be given to preparing best practice guidance. Until this is provided Funds will have no way of assessing its usefulness and whether the proposals will meet the policy objective. The guidance needs to be clear to ensure that intervention is only undertaken to meet significant concerns and to ensure that the response is proportionate. The Devon Fund remains concerned that the powers of intervention could be capable of being exercised too widely in the future in ways that would not be in the interests of LGPS funds or their fund members.

In terms of the pooling proposals, plans are currently being designed. Any proposed vehicles will need to be operationally fit for purpose with clear transition arrangements in place. There will also need to be guidance to ensure the pools are operating effectively and meeting best practice.

### **Conclusion**

In conclusion, the Devon Pension Fund welcomes the proposed Investment Regulations. However it is essential that Funds are provided with sufficient guidance to ensure a prudent approach is taken, and to ensure that any intervention is based on significant concern.

Yours Sincerely

Mary Davis  
County Treasurer