

19 February 2016

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Department for Communities and Local Government
Fry Building
2 Marsham Street
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Dear Sirs,

LGPS: REVOKING AND REPLACING LGPS INVESTMENT REGULATIONS 2009

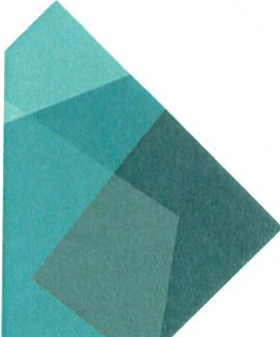
We are the Pensions and Lifetime Savings Association; the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels. We also represent public service pension schemes and have 71 LGPS funds in membership.

Our purpose is simple: to help everyone to achieve a better income in retirement. We work to get more money into retirement savings, to get more value out of those savings and to build the confidence and understanding of savers.

PRUDENT PERSON APPROACH

The Pensions and Lifetime Savings Association welcomes the new LGPS investment regulations, in particular the removal of the arbitrary limits on the amount Local Authority funds can invest in certain types of legal structures. The Association has argued for some time that such limits are prescriptive, out of date and do not meet the needs of Local Authority Pension Funds to enable them to effectively manage their investment risks and best meet the needs of scheme beneficiaries. This is compounded by the fact that the regulations have also failed to keep up with changes in the investment world making it difficult for funds to make appropriate investment choices.

Therefore the Association welcomes the remove of these limits and more towards the prudent person approach set out in private sector occupational pensions investment regulations.



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Pensions and Lifetime Savings Association is the trading name of the National Association of Pension Funds Ltd, a company registered in England and Wales with company number 1130269.
Registered office: Cheapside House, 138 Cheapside, London, EC2V 6AE

FIDUCIARY DUTY

The Association does however have some concerns that in stripping back the investment regulations Government may have gone too far. In particular we would argue that the regulations need to make some reference to the ultimate purpose of the investments: the fiduciary duty to pay members benefits.

The Shadow Scheme Advisory Board recently went to considerable trouble and expense to clarify the fiduciary duty in the LGPS and Nigel Giffin QC in his opinion said that, whilst he acknowledged the Government's argument that common law fiduciary duty would apply, he did state that 'it would clearly be preferable if the relevant provisions of the Occupational Pension Schemes (Investment) Regulations 2005 were made to apply to the LGPS'. These relevant provisions include the requirement that assets are invested 'in the best interests of members and beneficiaries and, in the event of a conflict of interest, in the sole interests of members and beneficiaries.' Therefore we believe that this requirement should be included in the regulations to put this duty beyond all doubt.

In order to ensure that funds are in a position to apply the prudent person principle and investment in line with their ultimate fiduciary duty it is important that the Pension Committees setting the investment strategy have the appropriate, collective, knowledge and understanding. Whilst many Committees already undertake intensive training it would be helpful to ensure the requirement is clearly set out in regulations. Therefore we believe the Government should also consider extending the knowledge and understanding requirements (currently falling on Local Pension Boards under the Public Service Pensions Act 2013) to the Pensions Committee. A prudent person requirement ultimately only works if those making investment strategy decisions, collectively, have the capacity and capability to do so.

POWER TO DIRECT

The Association also has some concerns about the broad powers being taken to direct funds' investments. We agree with the Governments proposals for pooling and the need to ensure funds are committed to delivering these pools. However there is a risk that such broad powers, combined with the lack of an explicit fiduciary duty, could ultimately be used by a future government to direct what funds invest in, with limited regard on the impact to the payment of members benefits and the costs to employers and members. It would be more reassuring for funds if there were greater checks and balances included in the regulations. In particular the inclusion of a minimum time period for consultation with a fund that the Department was concerned about and an explicit requirement to consult with the Scheme Advisory Board before using any power to direct.

NON FINANCIAL FACTORS

While not wishing to pre-judge, we are sceptical of the merit of the forthcoming guidance stipulating how policies on environmental, social and governmental factors 'should reflect (UK Government) foreign policy.'

There are valid reasons why a pension fund might wish to apply a particular screening or divestment strategy in accordance with the long-term interests and values of their members.

PENSIONS AND LIFETIME SAVINGS ASSOCIATION

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For example, the threat of consumer activism or adverse publicity; the risks associated with geographically unstable regions; or simply because members do not wish their savings to be invested in controversial sectors or markets and it is perfectly possible to achieve significant returns while avoiding these very specific investments. It seems unhelpful and unnecessary for the Government to hinder the flexibility of pension fund governors in this respect, and undemocratic to prevent fund members from placing certain stipulations over how their own savings are invested.

TIMESCALES


Finally the Association is concerned about the timescale for implementation which feels tight given the current focus on pooling activity. Giving funds six months after the regulations come into force to publish an Investment Strategy Statement could be incredibly challenging, especially at a time when funds are focusing on pooling their investments. Such pooling may ultimately impact on such a Statement so it would make sense for Government to take a more proportionate response to such a timescale requirement, potentially linked to the broader timescale for the creation of pooled vehicles.

Yours faithfully



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Policy Lead: Defined Benefit

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