

Essex Pension Fund Strategy Board	PSB 03
Date: 16 December 2020	

Government Consultations and Reform Update

Report by the Technical Hub Manager in consultation with the Independent Governance and Administration Adviser (IGAA)

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1. Purpose of the Report

1.1 To share with the Board:

- the Fund's final response to the Ministry of Housing, Communities and Local Government (MHCLG) consultation concerning 'Amendments to the statutory underpin';
- the Fund's final response to the MHCLG consultation concerning 'Reforming local government exit pay'; and
- an update concerning the reforming local government exit pay.

2. Recommendations

2.1 It is recommended that the Board note:

- the Fund's final response to the consultation concerning 'Amendments to the statutory underpin';
- the Fund's final response to the consultation concerning 'Reforming local government exit pay'; and
- the update provided concerning the reforming local government exit pay.

3. Background

- 3.1 At its 23 September meeting, the Board was provided with an update on LGPS Regulatory Reform by the Interim Director for Essex Pension Fund and the Fund's Independent Governance and Administration Adviser (IGAA).
- 3.2 The update included details of two Ministry of Housing, Communities and Local Government (MHCLG) consultations concerning 'Amendments to the statutory underpin' and 'Reforming local government exit pay'.
- 3.3 It was agreed that due to the timing, the Fund's consultation responses concerning 'Amendments to the statutory underpin' and 'Reforming local government exit pay' be delegated to the Chairman and Vice Chairman for sign off.

4. Amendments to the statutory underpin

- 4.1 A draft response to the 'Amendments to the statutory underpin' consultation was shared with the Chairman, Vice Chairman along with Cllr Dent and Cllr Hedley (as they had expressed an interest in taking part in this process) on 5 October 2020.
- 4.2 A virtual meeting was held on Teams on 6 October 2020 with the Chairman, Vice Chairman, Cllr Dent and Cllr Hedley, the Interim Director for Essex Pension Fund and the Technical Hub Manager to discuss the draft response. No changes were deemed necessary and the final response was submitted to MHCLG the same day and is attached at Appendix A of this report.

5. Reforming local government exit pay

- 5.1 A draft response to the 'Reforming Local Government Exit Pay' consultation was shared with the Chairman and Vice Chairman on 29 October 2020.
- 5.2 The Chairman and Vice Chairman both confirmed they were happy with the draft response and the final response was submitted to MHCLG on 30 October 2020 and is attached at Appendix B of this report.
- 5.3 The closing date for responses was 9 November 2020, however draft regulations were subsequently issued after the main consultation document and the closing

date for comments on the draft regulations is 18 December 2020. Because any comments on the draft regulations will be purely of a technical nature (i.e. whether or not they successfully implement the proposals) Fund Officers will submit any comments to MHCLG, after studying the draft regulations, without needing sign off from the Chairman or Board Members.

6. Further update on reforming local government exit pay

- 6.1 Unfortunately, whilst MHCLG have not yet responded to the consultation in relation to the changes in the LGPS nor made the amending regulations, HMT has gone ahead and made changes to overriding legislation which introduce an overall exit cap of £95k when employees leave public sector employers (usually this will be through redundancy). This conflicts with current LGPS regulations that require immediate payment of unreduced pension benefits when a member is made redundant, which in turn might push an employee over the £95k cap. It is therefore unclear whether LGPS members affected by the £95k cap should:
- Be paid immediate unreduced pension benefits (i.e. in line with LGPS regulations); or
 - Given the option of immediate reduced pension benefits or a deferred pension (to meet the requirements of the new HMT regulations); or
 - Be provided with some other option.
- 6.2 At this point in time, Fund Officers are not aware of any scheme members leaving in the near future who might be impacted by the HMT regulations. Processes have been put in place to remove the risk of providing quotations that might transpire to be incorrect, either as a result of the conflicting legislation or once the amending LGPS regulations are in place. However, this may become more difficult to manage if employers wish to proceed with redundancy or other severance type programmes. It is hoped that clarity will be provided before a situation arises within the Fund and this could be either through the making of the amending LGPS regulations or as a result of a legal challenge in relation to another LGPS fund.
- 6.3 However, should such a situation arise where a scheme member is leaving and is impacted by the £95k cap, it will be necessary for a decision to be made by the Fund as to what benefits (if any) are paid to them. Given this potentially could be subject to challenge, it may be appropriate to take legal advice in conjunction

with Essex Legal Services. The out of committee meeting approval process may need to be enacted.

7. Link to Essex Pension Fund Objectives

- 7.1 Ensure compliance with the Local Government Pension Scheme (LGPS) regulations, other relevant legislation and the Pensions Regulator's Codes of Practice.

8. Risk Implications

- 8.1 Regulatory risks impacting on Investments, Funding and Administration.

9. Background Papers

- 9.1 LGPS Regulatory Reform and Resource Implications, PSB 15, 23 September 2020.