

AGENDA ITEM 6

Investment, Governance and Engagement Committee **5 December 2016**

Investment Regulations

New investment regulations and statutory guidance came into force on 1st November 2016. The purpose of the report is to update the committee on concerns raised by stakeholders on the status and operation of the new regulations.

Report

1. A number of fund authorities have questioned whether the new regulations still allow funds to invest in vehicles that are no longer referred to as an investment, for example, stock lending. Questions have also been asked about the status of the new regulations given that an Early Day Motion seeking their annulment has been tabled.
2. **Stock lending, etc** – Under the 2009 Regulations, specific references could be made to certain investment vehicles where concerns had been raised by fund authorities or the investment community. However, under the new prudential framework of the new regulations, the type of investments to be made are matters for each administering consider to determine as part of their Investment Strategy Statement having regard to statutory guidance and the requirement to take proper advice. The fact that there is no reference in the new regulations is not therefore to be taken as an indication that authorities may no longer invest in stock lending. The committee may wish to consider whether there is a need to for guidance on how funds operate in the new prudential framework.
3. The committee may wish to consider whether the statutory guidance published by DCLG is fit for purpose regarding the new prudential framework and whether a schedule of amendments should be sent to DCLG for consideration.
4. **Early Day Motions** are used by Members in the House to draw attention to a wide range of issues. Most do not envisage any Parliamentary action but they can be used to pray against statutory instruments that have been made under the negative resolution procedure. The new investment regulations were made and laid in September 2016 and came into force on 1st November 2016.
5. Almost immediately after the Westminster Hall debate on the e-petition tabled by UNISON, an Early Day Motion was tabled by the Opposition front bench on 24th October seeking annulment of the new investment regulations. Prayer motions do not offer any clues as to the grounds on which the annulment is being sought but it would be reasonable to assume that they would be similar to the concerns raised during the Westminster Hall debate about the new power

of direction, investments being made in the best interests of scheme members and the role of scheme members in the new pooling arrangements.

6. The new regulations can only be annulled by Parliament following a vote taken on a prayer debate. Whether a debate is tabled is largely in the hands of the Speaker and although there are no hard and fast rules on the criteria any decision is based on, in general terms, prayer motions are given priority. Prayer debates in the House are not uncommon, but successful ones are very rare indeed.
7. At the time of writing, the Early Day Motion had attracted 102 signatories. However, it has no effect on the status of the new regulations which came into force on 1st November. These will remain in force unless there is a successful prayer debate. In these circumstances, the 2016 Regulations would be suspended in the expectation that the Government would be ready to re-introduce them in whatever form it considers appropriate and acceptable to the House.
8. It is important to note that any action or decisions taken under the 2016 Regulations up to the point where they may be suspended will remain lawful.

Conclusion

9. There is no action for the committee to take at this stage. There may be a need at some time in the future for consideration to be given to recommending that the statutory guidance should be revised to address concerns raised by fund authorities and others, but in terms of timing, it would be best to wait until the impact of the Early Day Motion is known for certain.

Note:

A copy of the statutory guidance can be found at
<https://www.gov.uk/government/publications/local-government-pension-scheme-guidance-on-preparing-and-maintaining-an-investment-strategy-statement>

A copy of the 2016 investment regulations can be found at
<http://www.legislation.gov.uk/search?title=&year=2016&number=946&type=uksi>

Progress on the EDM can be found at <http://www.parliament.uk/edm>.