Information note for FE and 6th form College who participate in the Local Government Pension Scheme

1. To support the Government's Area Reviews of post 16 education and skills sector, this document sets out some information for those employers in the Local Government Pension Scheme (LGPS). It will be important that employers affected by the review think about pension issues early on in the decision making process so they understand what the implications of any change in legal entity might be. It is vital that employers talk to their LGPS pension administering authority as soon as proposals become clear.

The Area Reviews

2. 'Rigour and Responsiveness in Skills' (April 2013) sets out the Government's commitment to creating a world-class network of skills providers, and 'Reviewing post-16 Education and Training Institutions' (July 2015) restated the importance of colleges tackling financial issues as a matter of urgency; and reminded Governing bodies of their critical role in the scrutiny of college finances. Looking at the implications for pension provision and the effect of any changes will be important an important part of the process.

3. The Area Reviews proposed in 'Reviewing Post 16 Education and Training Institutions' may suggest a range of options to ensure the continuation of high quality education in a geographical area. This may result in the merger or take over of one or more individual institutions to ensure the delivery of quality education and training and strong long term financial resilience.

The Local Government Pension Scheme Regulations

4. A further education corporation, a 6th form College, or a higher education corporation within the meaning of section 90 of the Further and Higher Education Act 1992, are Scheme employers listed in Schedule 2, Part 1, paragraph 14 of the Local Government Pension Scheme Regulations 2013. This means that all employees of these corporations are eligible to participate in the Local Government Pension Scheme ("the Scheme").

5. These education corporations participate in the Scheme administering authority in the geographical area of their local authority unless stated to the contrary in the Regulations. There are 90 administering authorities in England and Wales and their boundaries are mainly those of a County Council, Metropolitan Borough Council or London Borough Council.

6. Regulation 64 of the Scheme Regulations specifies that when an employer leaves the Scheme, an 'exit payment' may be needed where the value of an employer's liabilities are greater then the value of an employer's assets within a Scheme Fund. The liabilities include the value of pensions that will be paid to former employees who are in receipt of pensions, or who have not yet accessed their pension, as well as contributing staff. There can be exit payment obligations

when one or more employers are merged with another, or when one or more employers are taken over by another.

7. There are some legal options to manage those obligations without the costs of an exit payment where there is an employer who can continue to manage pension liabilities.

8. Paragraphs 3 and 4 of Part 2 of Schedule 3 of the Scheme Regulations permit, on the request of the employer, applications to the Communities Secretary to direct that one pension administering authority can be substituted for the one currently identified as the appropriate authority. This provision was designed to help manage the pension costs when workforce reorganisation took place. The direction can ensure that unmet liabilities can be managed where a merger occurs and set out how the transfer of assets and liabilities from one employer to another will be made. The consequence of this is that the need for a one off exit payment is avoided because the pension liability can be managed over a period of years by the continuing employer.

9. The Scheme Regulations can be found here http://www.lgpsregs.org/index.php/regs-legislation/timeline-regulations-2014?showall=&start=18#sch2p1

Ways to manage the asset and liability position of Colleges looking to change their current position.

A. Two or more Colleges merge where the Colleges had been participating in more than one administering authority and one continues to be a participating employer.

10. The continuing College would take responsibility for all current and former staff employed by the former College which means that all members' pension details in the subsumed College's administering authority transfer to the continuing College's administering authority. Arrangements will need to be made to ensure that there is no disruption in pensions in payment and the continuing College will become responsible for deferred pension awards in respect former employees. All members' should be informed about the change. One effect of consolidating two College's pension administration is that there is likely to be a change of staff profile and this could result in an increase (or possibly a decrease) in employer rates for the continuing employer but it is unlikely, in the long term, to remain the same. Budgets for the continuing College should anticipate this change and an early discussion with the relevant administering authority is encouraged as the administering authority's actuary will need to assess the effect of the changes on the cost of providing pension benefits going forward.

11. If a reformed College wanted part of its workforce remaining in the former administering authority area, it is possible to permit members to continue to participate in the former administering authority subject to the agreement of all the parties. The continuing College would be participating in more than one administering authority and it would require a Secretary of State's direction. It

would be necessary to legally identify which group of staff should be covered by the substitution direction. The administering authority for this scenario would want to have assurances that the continuing College would make good any unforeseen pension liabilities in the future.

12. There will be actuarial costs involved in assessing assets and liabilities in respect of all members in the Colleges that merge with another and cash amounts will need to be transferred. The receiving administering authority and its actuary would need to work with the ceding administering authority to reach agreement to the cash amounts being transferred.

13. Good communications cannot be over stated as employees and former employees will need to be informed about the change of their pension administrator. Scheme administrators will need to take particular care that the payment of pensions is not interrupted. When decisions are clearer, the relevant Scheme administering authorities will be able to give more information about how long the transfer of membership data is likely to take.

B. Where two or more Colleges merge within the same Scheme Administering authority and one continues to be a participating employer.

14. If two or more Colleges merge but their pension administration is contained within the same Scheme administering authority, the process is mainly the same as in 11 to 14 but it is unlikely that a Secretary of State direction will be needed. The administering authority’s actuary would undertake the work needed to calculate the assets and liabilities of the merging Colleges and those being assigned to the continuing College and the actuary will look at the effect of the change on the continuing Colleges employer contribution rate to ensure that it reflected the new membership profile going forward.

C. Where a College closes with no successor body to manage liabilities.

15. In the event of a full closure, or where a College has no remaining active members in an administering authority, the College becomes an exiting employer. Regulation 64 of the Local Government Pension Scheme Regulations 2013 requires an exiting employer to pay an exit payment. The appropriate administering authority must obtain an actuarial valuation, as at the date of exit, which will state the amount of the exit payment due from the exiting employer. There are other provisions in regulation 64 that allow an administering authority to anticipate the exit of a participating employer so that employer contributions can be adjusted to reduce the liabilities and consequently eliminate some of the deficit by the time the College leaves the Scheme. This might be helpful where closure can be anticipated as part of the review.

16. Regulation 64 (8) provides that an “exit payment" means the assets required to be paid by the exiting employer over such period of time as the administering authority considers reasonable to meet the liabilities specified. This provides the parties with some flexibility in the repayment of the exit payment as long as it is

agreed with the administering authority. This can be taken into account and early discussions with the appropriate administering authority are recommended.

http://www.lgpsregs.org/index.php/regs-legislation/timeline-regulations-2014?showall=&start=11#reg64

Role of DCLG

17. The Communities Secretary is responsible for the Local Government Pensions Scheme. Officials, on behalf of the Secretary of State, consider each application for a direction to substitute another administering authority on its merits. The Regulations require a consultation with all persons that are seen to be affected by the proposal, a including the employers who are affected by the direction. It should be noted that substitutions and the consequential transfer of assets and liabilities will be more likely to be granted if all the involved employers and administering authorities affected have been fully involved in developing the application and are in agreement.

18. The information needed to support an application, and contact details at DCLG are contained in Annex A. DCLG generally allows 28 days for interested parties to respond to consultations where it appears that there is agreement when the application is made. Other consultation periods may be needed depending on the circumstances.

19. Please contact Sandra Layne at DCLG for further information. sandra.layne@communities.gsi.gov.uk

Details required for the Secretary of State's Direction to Substitute Local Government Pension Scheme Fund

1. Name and contact details of the Scheme employer(s).

2. Proposed date of move or change.

3. Details of change that has lead to the application to the Secretary State under paragraph 3, of Part 2 Schedule 3 of the LGPS (Administration) Regulations 2013.

4. Details of the affected Fund that the Employer (or Employers) is currently involved with.

5. Preferred substituted Fund. Please give the reason for preference.

6. Please explain if assets and liabilities are to be transferred to a relevant receiving Fund in respect of active members (current employees) only or all Scheme members ie active, deferred and pensioner members.

7. Is the move by common consent? If there are papers to support this could they be supplied with wet ink signatures?

8. Actuarial reports already available relating to the proposed move or changes.

9. Details of how active members with Additional Voluntary Contribution contracts would be dealt with.

10. Other information that you feel may be relevant such as, but necessarily limited to a Cost/Benefit analysis or rationale for the request on cost grounds, including costs of providing legal and/or actuarial reports and any other cost to be incurred by the relevant pension funds or other parties.

On behalf of the Secretary of State, Workforce, Pay, and Pensions Division may ask for any other such information that might be needed to enable the Secretary of State to decide whether or not to make such a direction. It is envisaged that the substitution would be a permanent.

DCLG aims to process all applications ready for the decision within 2 months unless all relevant information is not supplied at the date of application and additional information is requested.

Please send applications to Sandra Layne
Department for Communities and Local Government.
Workforce, Pay and Pensions Division

Sandra.layne@communities.gsi.gov.uk