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PAPURAU ATODOL

| | |
|------------------------------------|------------------------------------------------------------------------------------------|
| Pwyllgor | PWYLLGOR PENSIYNAU |
| Dyddiad ac amser y cyfarfod | DYDD MAWRTH, 2 TACHWEDD 2021, 5.00 PM |
| Lleoliad | CYFARFOD O BELL |
| Aelodaeth | Cynghorydd Weaver (Cadeirydd) YCynghorwyr Dilwar Ali, Howells, Lay a/ac Graham Thomas |

Nid oedd y papur canlynol (Atodiad 1) ar gael ar yr agenda a gylchredwyd yn flaenorol.

3 **DIWYGIADAU I'R CYTUNDEB AWDURDOD RHYNGWLADOL PARTNERIAETH PENSIWN WALES** *(Tudalennau 3 - 16)*

Davina Fiore

Cyfarwyddwr Llywodraethu a Gwasanaethau Cyfreithiol

Dyddiad: Dydd Mercher, 27 Hydref 2021

Cyswllt: Andrea Redmond, 02920 872434, a.redmond@caerdydd.gov.uk

Mae'r dudalen hon yn wag yn fwriadol

REPORT OF CORPORATE DIRECTOR RESOURCES**AGENDA ITEM : 3**

**AMENDMENTS TO THE INTER AUTHORITY AGREEMENT OF
THE WALES PENSION PARTNERSHIP****Reason for this Report**

1. To ask Pension Committee to consider the proposed amendments to the Inter Authority Agreement (IAA) of the Wales Pension Partnership (WPP) and if appropriate to recommend to Council that these amendments are approved.

Background

2. The City of Cardiff Council is the administering authority for the Cardiff & Vale of Glamorgan Pension Fund ('the Fund') which is part of the Local Government Pension Scheme (LGPS) for England and Wales. Following a report to Full Council on 30 June 2016, the Council established a Pensions Committee and strategic functions relating to Pensions were delegated to the Committee. Operational and administrative functions are delegated to the Corporate Director Resources.
3. In February 2017 the Corporate Director Resources presented a report to Council which outlined how the eight LGPS funds in Wales had responded to the MHCLG recommendations for LGPS investment pooling. The report recommendations included that the Council approve the establishment of a Joint Committee, which is known as the Joint Governance Committee (JGC), to become the decision making body of the Wales Pension Partnership (WPP) and oversee its activities.
4. The February 2017 report also asked Council to note the draft Inter Authority Agreement (IAA) between the eight Constituent Authorities in the WPP with delegated authority to sign the final version of the IAA being passed to the Corporate Director Resources. The IAA sets out the governance arrangements for the WPP, the rights and obligations of the eight participating authorities and the powers and responsibilities delegated to the JGC. The IAA can only be amended or terminated with the agreement of all eight constituent authorities.

Amendments to the Inter Authority Agreement (IAA)

5. The WPP is now well established and has made good progress with the establishment of eight investment sub-funds in listed assets covering both Equity (3 sub-funds) and Fixed Income (5 sub-funds) with a further Equity Fund launch due at the end of October 2021. The WPP's attention will now turn to providing investment opportunities for the WPP Constituent Authorities Funds to cover the less liquid, "Private Market" assets. In addition the JGC to seeking to enhance its governance arrangements in accordance with developing best practice. Both these developments require changes to the IAA with the revised version of the IAA included as Appendix 1.
6. Private Markets Assets include Property, Infrastructure, Private Equity and Private Credit which have different characteristics to listed assets. As a consequence the route to market to establish Funds in which the Constituent Authorities can invest for these assets is more bespoke and specialist than those that the WPP has successfully adopted for listed equity and fixed income. The JGC, after taking appropriate professional advice, has agreed that specialist "Allocator(s)" with extensive experience and specialist knowledge of Private Markets are appointed to develop these sub-funds for the WPP. The proposed amendment to the IAA will pass the responsibility for future appointments and terminations of the Allocator role to the JGC.
7. The JGC has for some time been considering how Scheme Member representative could be appointed to the JGC. It is proposed that a Scheme member representative would be able to join the JGC but only as a non-voting member. They would however, be able to receive JGC papers as well as attending and speaking at meetings, including exempt items. The IAA as currently drafted does not make provision for the inclusion of Scheme Member representatives which is now included in the revised version.
8. In addition to the two amendments outlined above the opportunity has also been taken to undertake a full review of the IAA and as a consequence a number of minor changes will also be made. These changes reflect the practical experience gained since the WPP has been operational and refer to more clearly defining the role of the Officer Working Group (OWG) and the terms of reference of sub-groups that report to it.

Legal Implications

9. The report does not seek a decision and recommends that the Committee consider the proposed amendments to the IAA details of which are set out in the body of the report and if considered appropriate that Committee recommends a report to Council seeking approval of the amendments to the IAA.
10. Committee should be aware that if approved by Council, the content and form of the amended IAA is intended to create a legally binding agreement between the authorities.

General Legal Advice

Any decision must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its tax payers; and (h) be reasonable and proper in all the circumstances and comply with any equalities legislation.

The Council also has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The Protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief.

The Well-Being of Future Generations (Wales) Act 2015 (“the Act”) places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales – a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2021-24.

The well-being duty also requires the Council to act in accordance with ‘sustainable development principle’. This principle requires the Council to act in a way, which seeks to ensure that the needs of the present are met without comprising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrates approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language, the report and Equality Impact Assessment deals with all these obligations. The Council has to consider the Well-being of Future Generations (Wales) Act 2015 and how this strategy may improve the social, economic, environmental and cultural well-being of Wales.

Financial Implications

11. All costs associated with the management and administration of an LGPS pension fund are chargeable to the fund's accounts. No change is proposed to the current principle included in the IAA that the running costs of the Joint Governance Committee will be divided equally between the eight participating authorities. Expenditure incurred in the management of specific WPP pooled investments funds will be charged to the relevant Pension Funds in proportion to the amounts they have invested in those funds.

Recommendations

12. That the Committee considers the proposed amendments to the IAA outlined in this report and appendix and if it is agreement with the proposed changes recommends that Council approves the IAA Amendments.

CHRISTOPHER LEE
CORPORATE DIRECTOR RESOURCES

Appendices:

Appendix 1 – Amended Inter Authority Agreement

Amendment to the Inter-Authority Agreement between

| | |
|-------------------------------------------|-----|
| Carmarthenshire County Council | (1) |
| City & County of Swansea Council | (2) |
| City of Cardiff Council | (3) |
| Flintshire County Council | (4) |
| Gwynedd Council | (5) |
| Powys County Council | (6) |
| Rhondda Cynon Taff County Borough Council | (7) |
| Torfaen County Borough Council | (8) |

Made on

2021

By

- (1) **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall, Carmarthen, Carmarthenshire, SA31 1JP
- (2) **CITY & COUNTY OF SWANSEA COUNCIL** of The Guildhall, Swansea, SA1 4PE
- (3) **THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF** of County Hall, Atlantic Wharf, Cardiff, CF10 4UW
- (4) **FLINTSHIRE COUNTY COUNCIL** of County Hall, Mold, Flintshire, CH7 6NA.
- (5) **GWYNEDD COUNCIL** of Shirehall Street, Caernarfon, Gwynedd LL55 1SH
- (6) **POWYS COUNTY COUNCIL** of County Hall, Llandrindod Wells, Powys, LD1 5LG
- (7) **RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL** of The Pavilions, Clydach Vale, Tonypany, CF40 2XX
- (8) **TORFAEN COUNTY BOROUGH COUNCIL** of Civic Centre Pontypool Torfaen NP46YB

(together referred to as the “**Constituent Authorities**” and individually as a “**Constituent Authority**”)

1 BACKGROUND

- 1.1 The Constituent Authorities are all councils responsible for the administration of local government within their areas as set out in the Local Government Act 1972. The Department for Communities and Local Government in its letter dated 23 November 2016 confirmed that the Constituent Authorities have been granted permission for each Constituent Authority to continue to collaborate with every other Constituent Authority to form a pool of assets in respect of each of their respective funds under the LGPS.
- 1.2 The Constituent Authorities entered into the Agreement to create a formal joint committee pursuant to section 101 and section 102 of the Local Government Act 1972 by Deed dated 26 June 2017. The Agreement in clause 34 allows for amendment of its terms provided that the amendment is made in writing and is signed on behalf of all the Constituent Authorities by duly authorised representatives.
- 1.3 This Amendment is made under clause 34 in order to amend the Agreement to:
 - (a) allow the participation of a co-opted member in the Joint Governance Committee; and
 - (b) allow for a number of changes which support the development and effectiveness of the pooling collaboration.

AGREED TERMS

2 INTERPRETATION

- 2.1 In this Amendment terms shall have the same meaning as set out in the Agreement where:
 - (a) **Agreement** means the deed titled Inter-Authority Agreement made between the Constituent Authorities on 26 June 2017.
 - (b) **Amendment** means this document amending the terms of the Agreement.

3 COMMENCEMENT

This Amendment shall take effect on [] 2021. For the avoidance of doubt, this Amendment is only effective when each Constituent Authority has signed it in accordance with clause 34 of the Agreement.

4 AMENDMENT OF THE AGREEMENT

The Agreement is amended as set out in Schedule 1 to this Amendment.

5 SEVERANCE

5.1 If any provision or part-provision of the Agreement or this Amendment is or becomes invalid, illegal or unenforceable, it shall be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

5.2 If one Constituent Authority gives notice to the other Constituent Authorities of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Constituent Authorities shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended result of the original provision.

6 COUNTERPARTS

This Amendment may be executed in any number of counterparts by the Constituent Authorities, all of which taken together, shall constitute one and the same agreement, and any Constituent Authority (including any duly authorised representative of a Constituent Authority) may execute this Amendment by executing a counterpart.

Schedule 1

Amendments to the Agreement

The following amendments are made to the Agreement:

1 CLAUSE 1 INTERPRETATION

1.1 In clause 1, the following definition is inserted at the start of the list of definitions:

Allocator means the, one or more, allocator for [private market] asset classes who will facilitate the preferred investment structure and select sub-managers, underlying funds and/or direct investments for the purposes of the Pooling Collaboration appointed by the Joint Governance Committee.

1.2 In clause 1, following the definition of “Constituent Authorities”, the following definitions are inserted:

Contact List means the document circulated periodically by the Host Authority setting out relevant contact details for each of the Constituent Authorities.

Co-opted Member means a person, nominated by a Constituent Authority or the Pension Board of a Constituent Authority, and appointed as a Co-opted Member of the Joint Governance Committee by the Members; who is not an elected member of a Constituent Authority but is a Pension Member Representative of a Constituent Authority.

1.3 In clause 1 (and throughout the document thereafter, but including the contents pages), the definition “Host Council” is changed to “**Host Authority**” but retains its meaning throughout the document, being:

Host Authority means the Constituent Authority appointed in accordance with clause 7 and whose duties are described within that clause.

1.4 In clause 1, the definition of Member is delete and replaced by the following definition:

Member means each of the elected members of the Constituent Authorities nominated to be Members of the Joint Governance Committee in accordance with clause 3.3(a).

1.5 In clause 1, following the definition of “Pension Board”, the following definition is inserted:

Pension Member Representative means a person appointed to a Pension Board as a member representative further to regulation 107(2)(b) of the Local Government Pension Scheme Regulations 2013.

2 CLAUSE 3

2.1 Clause 3.3 is delete and replaced by the following:

3.3 The membership of the Joint Governance Committee shall be:

(a) one elected member nominated by each of the Constituent Authorities, provided that the nominated person is an elected member of that Constituent Authority and a member of that Constituent Authority’s pensions committee (or equivalent body) for the purposes of the Local Government Pension Scheme Regulations 2013; and

(b) one Co-opted Member appointed by decision of the Members (or a sub-group of the Members where such a sub-group is formed to consider the candidates), and which Co-opted Member shall be selected from a pool of candidates nominated by each of the Constituent Authorities or their Pension Boards.

2.2 Clause 3.4 is delete and replaced by the following:

3.4 For the purposes of clause 3.3, each Constituent Authority may appoint a named deputy for each Member, which deputy must be an elected member of the same Constituent Authority and the same Constituent Authority's pension committee (or equivalent body) for the purposes of the Local Government Pension Scheme Regulations 2013 as the Member for whom they are acting as deputy; and

3.4 A In the case of the Co-opted Member, a deputy shall be appointed by decision of the Members (or a sub-group of the Members where such a sub-group is formed to consider the candidates), and which deputy for the Co-opted Member shall be selected from a pool of candidates nominated by each of the Constituent Authorities or their Pension Boards.

2.3 A new clause 3.8 as follows is inserted:

3.8 The Co-opted Member shall be invited to and is expected, where possible, to attend all training provided to Members under clause 3.7.

3 CLAUSE 31

3.1 Clause 31.1 is amended by deleting the words "Schedule 1" and replacing them with "the Contact List".

4 SCHEDULE 1

4.1 In Schedule 1, the content of the schedule is held delete and replaced by the following:

As of [date], the Host Authority maintains a list of the relevant contact details for each of the Constituent Authorities. This will be issued periodically by the Host Authority to the Constituent Authorities and is also available on request.

5 SCHEDULE 2

5.1 In Schedule 2, new items are added to the numbered list as follows:

12. Nomination of a Co-opted Member to the Joint Governance Committee (except where that role is carried out by a Pension Board, in which case it is reserved to that Pension Board) .

13. Approval of changes to the terms of reference of the Joint Governance Committee as set out in Schedule 4.

6 SCHEDULE 4

6.1 In Schedule 4 Joint Governance Committee – Terms of Reference the bullet points are replaced with numbering.

6.2 In Schedule 4, item 8 is held delete and replaced by the following:

8. From time to time reviewing policies in respect of environmental, social and governance matters and where appropriate make recommendations to the Constituent Authorities as to any changes deemed necessary.

6.3 In Schedule 4, item 13 is held delete and replaced by the following:

13. Monitoring the implementation and effectiveness of the policies described in Schedule 5 and initiating reviews of these where required.

6.4 In Schedule 4, item 19 is held delete and replaced by the following:

19. Agreeing criteria for the evaluation of bids or tenders for any procurement of the Operator (including for the avoidance of doubt, a replacement Operator) to be put forward for the approval of the Constituent Authorities.

6.5 In Schedule 4, new items are inserted as follows:

20. Any reference in this schedule to the Joint Governance Committee taking any action including agreeing, approving or making recommendations, shall be determined subject to the voting provisions set out in Schedule 6.
21. Approval of an appointment of an Allocator following a recommendation by the OWG, reviewing the performance of an Allocator(s), and reporting on the performance of the Allocator(s) to the Constituent Authorities.
22. Approval of the termination of the appointment of an Allocator following a recommendation by the OWG.

7 SCHEDULE 5

7.1 In Schedule 5, the existing wording is held delete and replaced by the following:

The Joint Governance Committee, with the support of the OWG, will formulate, review and revise on an ongoing basis policies and procedures as deemed appropriate to support robust and effective governance arrangements for the Pooling Collaboration, including the following (which for the avoidance of doubt, is non-exhaustive):

- (a) Responsible Investment Policy
- (b) Climate Risk Policy
- (c) Voting Policy
- (d) Training Policy & Plans
- (e) Communication Policy
- (f) Governance Decision Matrix
- (g) Risk Policy and Risk Register
- (h) Conflict of Interest and Procedure Policy
- (i) Rebalancing and Alteration Policy
- (j) Responsibilities Matrix
- (k) Complaints Policy
- (l) Whistleblowing Policy
- (m) Breaches and Errors Policy
- (n) Business Continuity Plan

8 SCHEDULE 6

8.1 Paragraph 1 of Schedule 6 is held delete and replaced by the following:

1 MEMBERSHIP

1.1. The membership of the Joint Governance Committee shall consist of one Member per Constituent Authority and one Co-opted Member.

1.2 No substitutes other than deputies shall be allowed.

8.2 A new section 1A, ROLE OF THE CO-OPTED MEMBER, is inserted following section 1 of schedule 6 as follows:

1A ROLE OF THE CO-OPTED MEMBER

1A.1 The primary role of the Co-opted Member is to provide scheme member representation on the Joint Governance Committee.

1A.2 The Co-opted Member is entitled to attend all meetings of the Joint Governance Committee, including exempt items, to be provided with copies of all papers, and to speak on any item during meetings of the Joint Governance Committee.

1A.3 The Co-opted Member may ask the Chair to include any matter on the agenda which they consider should be discussed by the Joint Governance Committee.

8.3 Clause 2.3 is amended in the first line by insertion of the words 'executive summaries of following 'agendas',

8.4 Clause 2.4 is held delete and replaced by the following:

2.4 The Joint Governance Committee may decide to allow remote participation in meetings via video-conference or any similar medium having regard to any applicable guidance issued from time to time by the Welsh Government. Any Member or Co-opted Member attending by video-conference shall be held to be in attendance at the meeting for the purposes of this Schedule.

8.5 Paragraph 2.5 of Schedule 6 is held delete and replaced by the following:

2.5 A meeting of the Joint Governance Committee may be called by a proper officer of the Host Authority on the request of the Chair. Members and the Co-opted Member must declare any conflict of interest in respect of any business being conducted at the meeting which would likely to be regarded to prejudice the exercise of a person's function as a participant in the meeting.

8.6 Paragraph 2.6 of Schedule 6 is held delete and replaced by the following:

2.6 The Chair is responsible for the running of meetings. The Chair shall invite Members and the Co-opted Member expressing a desire to speak in turn. All discussion and debate shall be held through the Chair and the Chair may draw a discussion to a vote at any time where they consider that every Member and the Co-opted Member has been given a fair opportunity to speak.

8.7 Sub-paragraph 2.9(a) of Schedule 6 is held delete and replaced by the following:

Where any item to be discussed forms exempt information, the Chair shall move that the public and press are excluded from the meeting for the duration of the discussion and voting on that item. The Co-opted Member is entitled to remain in the meeting and shall not be excluded. Motions to exclude the press and public do not require to be seconded and shall be determined by simple majority vote of the Members present.

8.8 Paragraph 6.2 of Schedule 6 is held delete and replaced by the following:

6.2 A Member or the Co-opted Member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of the provisions of this Schedule, or the law or other competent authority. The Member or Co-opted Member must indicate the provision or law or regulation and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final. The Chair may take advice on the point of order from the appropriate officer.

8.9 Section 7 of Schedule 6 is held delete and replaced by the following:

7 VOTING

7.1 The Chair shall seek consensus wherever possible however where a vote is required the provisions of this section shall apply.

- 7.2 Each Member present will have one vote and voting will be by means of a show of hands or such other method as the Chair may decide is appropriate in the circumstances, including a roll call. The Co-opted Member may not vote. In the event of a tied vote, the Chair shall have a second or casting vote.
 - 7.3 All decisions will be determined by simple majority of Members present.
 - 7.4 In the event that a vote is taken, the voting positions and any abstentions of Members will be recorded in the minutes.
- 8.10 Paragraph 8.1 of Schedule 6 is held delete and replaced by the following:
- 8.1 The Joint Governance Committee shall form such sub-committees and working groups as it considers expedient to performing its function. The Joint Governance Committee shall at the time of forming sub-committees or working groups set out the remit of the sub-committees or working groups, what the sub-committees or working groups are required to deliver and the timescale for that delivery.. The Co-opted Member may be a member of any sub-committee or working group.

Paragraph 8.4 of Schedule 6 is held delete and replaced by the following:

- 8.4 Working groups may invite any person who is not a Member or Co-opted Member to join the group in order to assist in carrying out its function.

9 SCHEDULE 8

- 9.1 In Schedule 8, letters a-o are replaced with numbers 1-17.
- 9.2 In Schedule 8, the following items are inserted after item 14 (with semi-colons and full stops updated accordingly):
 - 15. establishing sub-groups and/or working groups of the OWG if the OWG consider such sub-group or working group would assist the effectiveness of the OWG to progress a particular project or workstream;
 - 16. reviewing, formulating or evaluating governance arrangements and policies for the Pooling Collaboration (including for the avoidance of doubt the policies and procedures described in Schedule 5);
 - 18. managing the procurement process for the procurement of an Allocator, or the replacement of an Allocator, including determining the criteria for the evaluation of bids or tenders;
 - 19. monitoring and reviewing the performance of the Allocator(s) in meeting relevant objectives, service levels and key performance targets.

IN WITNESS whereof the parties have executed this Agreement on the date and year first above written.

THE COMMON SEAL of)
 Carmarthenshire County Council)
 was affixed hereto in the)
 presence of:-)
 Authorised Officer

THE COMMON SEAL of)
Council of the City and County of Swansea)
was affixed hereto in the)
presence of:-)
Authorised Officer

THE COMMON SEAL of)
County Council of the City and County of Cardiff)
was affixed hereto in the)
presence of:-)
Authorised Officer

THE COMMON SEAL of)
Flintshire County Council)
was affixed hereto in the)
presence of:-)
Chair / Legal Services Manager / Chief Officer Governance

THE COMMON SEAL of)
Gwynedd County Council)
was affixed hereto in the)
presence of:-)
Authorised Officer

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