ITEM No …9…..

REPORT TO: **PENSION SUB-COMMITTEE OF THE POLICY & RESOURCES COMMITTEE & PENSION BOARD**

REPORT ON: **COVID-19 AND EMPLOYERS CONTRIBUTIONS**

REPORT BY: **EXECUTIVE DIRECTOR OF CORPORATE SERVICES**

REPORT NO: **145-2020**

1. PURPOSE OF REPORT

This report provides information on Tayside Pension Fund employers and their ability to meet their responsibilities in respect of their monthly pension contributions in light of the current public health restrictions. The report details available remedies allowed within LGPS regulations.

2. RECOMMENDATIONS

It is recommended that authority to make suitable arrangements in relation to amending employer contribution scheduling is delegated to the Executive Director of Corporate Services in line with the requirements of The Pensions Regulator as detailed below and informed by a risk based assessment in keeping with guidance available.

3. FINANCIAL IMPLICATIONS

These are unknown at present. Appendix A provides a list of potential employers and their current monthly contributions.

4. BACKGROUND

Due to public health protection measures put in place to combat Covid-19, many Local Government Pension Scheme employers will encounter problems in the coming months in paying their LGPS employers contributions.

This report deals solely with contributions made by scheme employers and does not cover employee contributions for which no amendments to payment scheduling is allowable. Employers will be aware that furlough pay is pensionable pay under the regulations, and that both employee and employer contributions should be deducted based on the actual pay an employee receives, regardless of being furloughed. They can however claim pension contributions for furloughed employees up to the minimum required for automatic enrolment (3%).

5. EMPLOYER CONTRIBUTION REQUIREMENTS

Scheme employers make payment of their employer’s contributions on a monthly basis. Contributions are based on the overall value of employer’s payroll, at a percentage rate determined by actuaries following triennial valuation to ensure ongoing solvency of the fund. The current rate for Tayside Pension Fund employers is 17% of payroll.

Although monthly payments are required by The Pensions Regulator by 19th of each month (22nd if electronic payment), Local Government Pension Scheme (Scotland) Regulations 2018 (reg62) state that the administering authority has the ability to determine the intervals at which payment is made by the Scheme Employer, but the interval cannot be greater than 12 months from the date at which they become due. Therefore employer contributions due for the period 1st April 2020 to 31st March 2021, would need to be paid in full no later than 31st March 2021 (payable electronically by 22nd April 2021.

The Code of Practice no 14 however stipulate that prior to allowing employers the ability to amend their payment intervals as noted above, an assessment would need to be undertaken to identify the cause and circumstances of why payment needs to be deferred or reduced, any actions the employer has taken to mitigate any non or reduced payment, and also if there are any wider implications or impact of the non or reduced payment, including the risk of the employer not being able to meet the full amount by year end.

Whilst The Pensions Regulator deems any deviation from monthly contributions at set rate to be a reportable breach, they are cognisant of the regulations and stipulate a requirement for a documented proportionate risk based assessment to be carried out in order to ensure that the administering authority complies with the Pensions Regulators Code of Practice 14 – Governance and Administration of Public Sector Pension Schemes. Furthermore, in order to ensure adherence to the Regulators Code, they would require assessment of any deviation from any amended payment schedules in order to determine whether deviation was of great enough

concern to report breach of law and as such reportable to The Pensions Regulator. Therefore if such an arrangement was entered in to with an employer, they would be required to be aware of the implications of breaching the arrangement.
The Pensions Regulator have published guidance setting out how employers can meet their automatic enrolment duties and have extended pension schemes requirement to report payment failures from 90 days to 150 days in order to give pension schemes more time to work with employers to bring payments up to date.

Extracts of the relevant regulations as well as guidance and opinion have been summarised in Appendix B.

6. EMPLOYERS WHO MAY BETO BE AFFECTED

Some of the employers within Tayside Pension Fund are from industries worse hit by the fallout of Covid-19, examples as follows:

Hospitality and Leisure - Live Active Leisure, Angus Alive, Montrose Links Trust
Sport & Entertainment – LACD, Carnoustie Golf Links, Horsecross Arts Ltd
Charities - Dundee Citizens Advice Bureau, Perth & Kinross Society for the Blind, Dundee Voluntary Action

The full impact is currently unknown, however the bodies noted along with their monthly contributions in Appendix A are considered to have greatest potential to be affected.

7. POLICY IMPLICATIONS

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.

There are no major issues other than risks already contained within the Tayside Pension Fund Risk Register.

8. CONSULTATIONS

The Chief Executive and Head of Democratic and Legal Services have been consulted in the preparation of this report.

9. BACKGROUND PAPERS

Links to relevant provided in Appendix B

GREGORY COLGAN
EXECUTIVE DIRECTOR OF CORPORATE SERVICES

Appendix A

Monthly Employer Contributions - Potential Impact Covid-19	
Scheduled Bodies	**Employers Contributions**
DUNDEE SCIENCE CENTRE	£1,397.58
TAYSIDE CONTRACTS	£382,121.72
TOTAL	**£383,519.30**
Admitted Bodies	**Employers Contributions**
ABERTAY HOUSING ASSOCIATION LIMITED	£14,969.84
ANGUS ALIVE	£60,021.31
BALNACRAIG SCHOOL	£4,882.43
CARNOUSTIE GOLF LINKS MANAGEMENT COMMITTEE LIMITED (CGLMC LIMITED)	£30,648.27
CAROLINA HOUSE TRUST	£320.56
CULTURE PERTH & KINROSS	£30,254.65
DORWARD HOUSE CARE HOME	£1,253.56
DOVETAIL ENTERPRISES (1993) LIMITED	£12,741.06
DUNDEE CITIZENS' ADVICE BUREAU	£1,258.77
DUNDEE CONTEMPORARY ARTS LIMITED	£12,475.69
DUNDEE VOLUNTARY ACTION LIMITED	£2,156.18
FORFAR DAY CARE CENTRE	£779.30
HIGHLANDS & ISLANDS AIRPORTS LIMITED	£23,468.03
HORSECROSS ARTS LIMITED	£10,675.95
IDVERDE	£2,231.73
LEISURE & CULTURE DUNDEE	£125,597.53
LIVE ACTIVE LEISURE LIMITED (P&KC)	£65,438.84
MITIE GROUP PLC	£220.25
MONTROSE GOLF LINKS LIMITED	£554.20
MONTROSE PORT AUTHORITY	£17,498.46
PERTH CITIZENS' ADVICE BUREAU	£3,018.69
PERTH & KINROSS COUNTRYSIDE TRUST (P&KC)	£2,337.69
PERTH & KINROSS SOCIETY FOR THE BLIND	£3,598.81
ROBERTSON FACILITIES MANAGEMENT LIMITED	£1,058.93
ROSSIE SECURE ACCOMMODATION SERVICES	£60,057.54
SODEXO	£993.72
TAYSIDE PUBLIC TRANSPORT COMPANY LIMITED	£30,613.40
UNIVERSITY OF ABERTAY DUNDEE	£114,646.89
UNIVERSITY OF DUNDEE	£4,207.28
TOTAL ADMITTED BODIES	**£637,979.56**
TOTAL SCHEDULED & ADMITTED BODIES	**£1,021,498.86**

Appendix B

Summary of Relevant Reference Sources

- **Local Government Pension Scheme (Scotland) Regulations 2018**

Payments
62. Employer's contributions
(1) A Scheme employer must contribute to the appropriate fund in each year covered by a rates and adjustment certificate under regulation 60 (actuarial valuations of pension funds) or 61 (special circumstances where revised actuarial valuations and certificates must be obtained) the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).
(2) During each of those years a Scheme employer must make payments to the appropriate fund on account of the amount required for the whole year.
(3) Those payments on account must-

(a) be paid at the end of the intervals determined under regulation 64 (payment by Scheme employers to administering authorities); and

(b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the primary percentage for that year of-

(a) the pensionable pay on which contributions have been paid into the fund by active members in accordance with regulations 9 to 12, 14 and 15 (contributions), except where sub-paragraph (b) applies; and

(b) the assumed pensionable pay in respect of members on leave due to sickness or injury on reduced contractual pay or no pay or on child-related leave,

increased or reduced by any secondary rate adjustments specified for that employer for that year in the rates and adjustments certificate except where actual pay received during child-related leave is greater than assumed pensionable pay.
(5) The primary percentage is the primary rate of the employer's contribution specified in that certificate expressed as a percentage of the pay of its employees who are active members.
(6) A Scheme employer must also pay into the appropriate fund in each year any employer contributions made under regulation 16 (additional pension contributions).

- **Local Government Association Guidance**

On 1st April 2020 the Local Government Association published an FAQ document for LGPS administrators and employers. Below is their response to the question "Can administering authorities allow contribution "holidays".

"Our view is that regulations confirm that an administering authority may determine the intervals for employer contribution payments, as they consider appropriate. There must be at least one payment per year but whatever intervals are set, the total contributions due for the year, as set out in the rates and adjustments certificate, must be received by year end and each payment must equal the appropriate proportion of the total contributions due for the year.

If, as a last resort, administering authorities consider deferring the commencement of payments to later in the year it is imperative they consider the risks to the fund. These include but are not limited to the risk of the employer not being able to meet the full amount by year end and the risk to the fund's cash flow requirements. Although not directly applicable to the LGPS, administering authorities should be mindful of guidance issued by TPR on this matter."

The full document can be found at http://scotlgpsregs.org/news/covid-FAQs.php

- **Scottish Public Pensions Agency**

Although they have not publicly issued guidance, the following is an extract of an email from Kim Linge, SPPA Policy Manager, LGPS.

“I was reviewing the Pensions Regulator guidance COP14 yesterday after reading your email and agree that it does allow for contribution lapses in exceptional circumstances such as COVID 19.
Scottish Ministers would be supportive if funds were to offer a short suspension of 2-3 months to those employers that need it, but as to whether that would be a ‘material breach’ would be for Trustees to decide.”

- **The Pensions Regulator Code of Practice 14 – Governance and Administration of Public Service Pension Schemes**

Maintaining contributions

Legal requirements

147. Employer contributions must be paid to the scheme in accordance with any requirements in the scheme regulations. Where employer contributions are not paid on or before the date they are due under the scheme and the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the regulator in the exercise of any of its functions, the scheme manager must give a written report of the matter to the regulator as soon as reasonably practicable.

Managing overdue contributions

168. When schemes identify or are notified of a problem, they should assess whether a payment failure has occurred before taking steps to resolve and, if necessary, report it. During their assessment, schemes should take into account:

- legitimate agreed payments made directly by an employer for scheme purposes, ie where the scheme has agreed that a contributions payment can be made late due to exceptional circumstances
- legitimate agreed payment arrangements made between an employee and employer, ie where the employer has agreed that a contribution payment can be made late due to exceptional circumstances
- contributions paid directly to a pension provider, scheme administrator or investment manager
- any AVCs included with an employer’s overall payment.

169. Where schemes identify a payment failure, they should follow a process to resolve issues quickly. This should normally involve the following steps:
a. Investigate any apparent employer failure to pay contributions in accordance with the contributions monitoring record or legal requirements.
b. Contact the employer promptly to alert them to the payment failure and to seek to resolve the overdue payment.
c. Discuss it further with the employer as soon as practicable to find out the cause and circumstances of the payment failure.
d. Ask the employer to resolve the payment failure and take steps to avoid a recurrence in the future.

170. Schemes should maintain a record of their investigation and communications between themselves and the employer. Recording this information will help to provide evidence of schemes’ effective monitoring processes and could help to demonstrate that the scheme manager has met the legal requirement to establish and operate adequate internal controls. It will also form part of the decision of whether or not to report a payment failure to the regulator and, where relevant, members.

175. While schemes are not expected to undertake a full investigation to establish materiality or investigate whether an employer has behaved fraudulently, schemes should ask the employer:
• the cause and circumstances of the payment failure
• what action the employer has taken as a result of the payment failure, and
• the wider implications or impact of the payment failure.

179. Examples of payment failures that are likely to be of material significance to the regulator include:
• where schemes have reasonable cause to believe that the employer is neither willing nor able to pay contributions, for example in the event of a business failure or where an employer becomes insolvent and is unable to make pension payments
• where there is a payment failure involving possible dishonesty or a misuse of assets or contributions, for example where schemes have concerns that an employer is retaining and using contributions to manage cash flow difficulties or where schemes have become aware that the employer has transferred contributions elsewhere other than to the pension scheme, which may be misappropriation

• where the information available to schemes may indicate that the employer is knowingly concerned with fraudulently evading their obligation to pay employee contributions

180. Examples of payment failures which are not likely to be of material significance to the regulator include:
• where a payment arrangement is being met by an employer for the recovery of outstanding contributions, or
• where there are infrequent one-off payment failures or administrative errors such as where employees leave or join the scheme and those occasional failures or errors have been corrected within 90 days of the due date.

The full document can be viewed at : **https://www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/code-14-public-service-pension-code-of-practice**

And also**: https://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/db-scheme-funding-and-investment-covid-19-guidance-for-trustees**