

Causeway Coast & Glens Shadow Council

To: Shadow Council

Pension Apportionment agreement

Date 26/03/2015

For Decision

1.0 Reporting to Council

Linkage to Corporate Plan	
Strategic Priority	Winding up or Legacy Councils
Objective	Transfer of assets/liabilities
Lead Officer	David Wright
Cost: (If applicable)	£1,100 approx

1.1 Background

The four legacy councils have included in their balance sheets accounted for their respective share of the shortfall in funding for pensions under the NILGOSC pension scheme.

1.2 Detail

The liabilities are quantified by way of an annual actuarial report for inclusion in each council's accounts in accordance with relevant accounting standards. From a legal standpoint when an employer ceases to exist this shortfall in effect crystallises and becomes payable to the pension fund provider. Under the Local Government Review whilst the legacy councils will legally cease to exist on 31 March 2015, they are being replaced by Causeway Coast and Glens District Council therefore the liability that is the pension shortfall for each of the four legacy councils will simply be aggregated and this combined figure will become the liability for the new Council. The advice from our pension provider is that to avoid the need to have councils make a payment to NILGOSC in this regard and continue on an on-going basis there needs to be an apportionment agreement in place legally transferring the liability in totality to the new organization. A copy of this apportionment agreement has been attached as an appendix. A copy of the agreement has been signed by the relevant officials of the four legacy councils and requires approval and counter signature.

1.3 Recommendation

It is recommended that the Causeway Coast and Glens District Council approves the apportionment agreement as set out transferring the liability relating to pension funds from each legacy council to Causeway Coast and Glens District Council and the countersignature by Presiding Councillor and Chief Executive.

APPORTIONMENT DEED

between

The Northern Ireland Local Government Officers' Superannuation Committee (1)

and

Causeway Coast and Glens District Council (2)

and

Ballymoney Borough Council (3)

and

Coleraine Borough Council (4)

and

Limavady Borough Council (5)

and

Moyle Borough Council (6)

THIS APPORTIONMENT DEED is made on the ____ of _____ 2015 and is made under the provisions of Regulation 33A of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 (the "**Administration Regulations**") as amended.

BETWEEN:

- (1) **THE NORTHERN IRELAND LOCAL GOVERNMENT OFFICERS' SUPERANNUATION COMMITTEE** (the "**Committee**");
- (2) **CAUSEWAY COAST AND GLENS DISTRICT COUNCIL** of Cloonavin, 66 Portstewart Road, Coleraine, BT52 1EY (the "**New Council**");
- (3) **BALLYMONEY BOROUGH COUNCIL** of Riada House, 14 Charles Street, Ballymoney, BT53 6DZ (the "**First Departing Employer**");
- (4) **COLERAINE BOROUGH COUNCIL** of Cloonavin, 66 Portstewart Road, Coleraine, BT52 1EY (the "**Second Departing Employer**");
- (5) **LIMAVADY BOROUGH COUNCIL** of 7 Connell Street, Limavady, BT49 0HA (the "**Third Departing Employer**"); and
- (6) **MOYLE DISTRICT COUNCIL** of Sheskburn House, 7 Mary Street, Ballycastle, BT54 6QH (the "**Fourth Departing Employer**")

WHEREAS:

- (A) The Committee is the body established under Section 1 of the Local Government (Superannuation) Act (Northern Ireland) 1950 for the purposes of administering the Scheme.
- (B) The First Departing Employer, Second Departing Employer, the Third Departing Employer, the Fourth Departing Employer (together the "**Departing Employers**" and each a "**Departing Employer**") and the New Council are each local authorities and are accordingly "employing authorities" within the meaning of Schedule 1 of the Administration Regulations, whose employees and councillors are eligible to join the Scheme.
- (C) Section 1 of the Boundaries Act provides for the reorganisation of the 26 local government districts (as at 31 March 2015) into 11 new local government districts (as at 1 April 2015).

- (D) Under Regulation 33A of the Administration Regulations, in the event of a relevant transfer the Committee, the employing authority and the inheriting body may agree with effect from a specific date that some or all of the liabilities of the employing authority shall transfer to and be attributable to the inheriting body. Such an agreement is known as an apportionment agreement.
- (E) The New Council (as an inheriting body) intends, with the agreement of the Committee and each relevant Departing Employer (as employing authorities) to assume the liabilities under the Scheme of each relevant Departing Employer in accordance with this deed.

IT IS AGREED AND DECLARED as follows:

1 INTERPRETATION

"Administration Regulations" means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 (as amended) and the reference to a **"Regulation"** means a regulation of the Administration Regulations;

"Boundaries Act" means the Local Government (Boundaries) Act (Northern Ireland) 2008;

"Scheme" means the Local Government Pension Scheme (Northern Ireland);

"Scheme Actuary" means the person appointed to act as actuary to the Scheme as defined in the Administration Regulations; and

"Transfer Date" means 31 March 2015.

2 TRANSFER

- 2.1 In accordance with Regulation 33A, with effect from the Transfer Date, the Committee, the New Council and the First Departing Employer agree to the transfer to the New Council of the entire liabilities under the Scheme of the First Departing Employer and the New Council agrees to accept such liabilities and agrees that it shall accordingly be treated for all purposes as if it had originally been the employing authority and/or admission body to which such liabilities relate.

- 2.2 In accordance with Regulation 33A, with effect from the Transfer Date, the Committee, the New Council and the Second Departing Employer agree to the transfer to the New Council of the entire liabilities under the Scheme of the Second Departing Employer and the New Council agrees to accept such liabilities and agrees that it shall accordingly be treated for all purposes as if it had originally been the employing authority and/or admission body to which such liabilities relate.
- 2.3 In accordance with Regulation 33A, with effect from the Transfer Date, the Committee, the New Council and the Third Departing Employer agree to the transfer to the New Council of the entire liabilities under the Scheme of the Third Departing Employer and the New Council agrees to accept such liabilities and agrees that it shall accordingly be treated for all purposes as if it had originally been the employing authority and/or admission body to which such liabilities relate.
- 2.4 In accordance with Regulation 33A, with effect from the Transfer Date, the Committee, the New Council and the Fourth Departing Employer agree to the transfer to the New Council of the entire liabilities under the Scheme of the Fourth Departing Employer and the New Council agrees to accept such liabilities and agrees that it shall accordingly be treated for all purposes as if it had originally been the employing authority and/or admission body to which such liabilities relate.

3 CONSEQUENCES OF TRANSFER

- 3.1 It is noted and agreed that the transfer of liabilities referring to in 2.1 shall in accordance with Regulation 33A (and subject always to Regulation 33A and any other applicable legislation as amended from time to time) be reflected as follows and the liabilities shall be discharged in such manner and at such times as set out below:
- (a) the Committee, with the advice of the Scheme Actuary, shall vary the rates and adjustments certificate in place at the date of this deed in respect of the Departing Employers to reflect the transfer in accordance with this deed and in particular, the parties acknowledge that the Scheme Actuary, to the extent he considers necessary, may reflect the transfer in the individual adjustments relating to each of the Departing Employers. The revised certificate shall show the

revised contributions payable by each of the Departing Employers and the New Council as a result of the transfer;

- (b) the Committee, with the advice of the Scheme Actuary, shall produce a rates and adjustments certificate in respect of the New Council (and or adjust any existing rates and adjustments certificate) to reflect the transfer in accordance with this deed and, in particular, the parties acknowledge that the Scheme Actuary, to the extent he considers necessary, may reflect the transfer in the individual adjustment relating to the New Council. The revised certificate shall show the revised contributions payable by the New Council as a result of the transfer;
- (c) whilst the New Council continues to employ active members of the Scheme or otherwise remains an employing authority within the Scheme, any future rates and adjustments certificate required under Regulation 31 or any applicable successor legislation of equivalent effect, including the calculation of any individual adjustment relating to the Departing Employers and the New Council, shall be calculated as if the New Council had originally been the employing authority and/or admission body in relation to liabilities transferred in place of the relevant Departing Employer; and
- (d) on the New Council ceasing to employ active members, for the purposes of Regulation 33(2) or any applicable successor legislation of equivalent effect, the actuarial valuation showing the liabilities of the Scheme, the revision of the rates and adjustments certificate in respect of the New Council and the revised contributions due from the New Council, shall be calculated by the Scheme Actuary so that the liabilities of the Scheme in respect of the New Council include the liabilities transferred under this deed as if these liabilities related to current or former employees of the New Council.

3.2 The New Council agrees to accept responsibility for the liabilities transferred under this deed and agrees to pay all increased sums (if any) specified in any rates and adjustments certificate in force from time to time or otherwise and meet allocated liabilities consequent on the transfer (if any).

3.3 The parties agree that liabilities transferred under this deed shall be discharged by the New Council at such times and in such manner as is

required in accordance with the Regulations and any other powers of the Committee in respect of such liabilities, as if the New Council had initially been the employing authority and/or admission body to which such liabilities relate instead of the relevant Departing Employer.

4 CONDITIONS OF TRANSFER

4.1 The New Council agrees that it will pay such contributions to the Scheme as are calculated by the Scheme Actuary as if the liabilities transferred under this deed related to current and former employees of the New Council.

4.2 If for any reason this deed is held not to be effective under Regulation 33A to transfer the liabilities intended to be transferred to the New Council with the consequences set out in clause 3, the New Council will on demand pay such sum as the Scheme Actuary estimates to have been the lump sum which, had this deed not been entered into, would have been due from each of the Departing Employers in accordance with Regulation 33(2) on the Departing Employers ceasing to employ active members, provided that such sums may be adjusted by the Scheme Actuary to take account of the assets of the Scheme notionally allocated in respect of the transfer intended to be effected under this deed.

5 WARRANTIES

5.1 Each of the Departing Employers and New Council each on its own behalf hereby represents and warrants to the Committee that:

- (a) it has the power to enter into and perform its obligations under this deed;
- (b) the entry into this deed and the performance of its obligations under this deed do not conflict with any law or regulation or judicial or official order to which it is subject or conflict with its constitutional documents or conflict with any document which is binding upon any of its assets; and
- (c) all authorisations required in connection with the entry into and performance of its obligations under this agreement have been obtained or effected and are in full force and effect and that the persons signing this agreement on its behalf are authorised to do so.

6 MISCELLANEOUS

- 6.1 Each Departing Employer appoints the New Council as agent to the extent permissible by the Regulations, so that for the purposes of any consent required under the Regulations from the relevant Departing Employer, the New Council may give consent to the Committee on the relevant Departing Employer's behalf, and the New Council agrees that it shall pay to the Committee such additional sums which would have been due from the relevant Departing Employer to the Committee had it given such consent.
- 6.2 Any question which may arise between the Committee and the New Council, or between the Committee and any of the Departing Employers relating to the construction of this deed or to the rights and obligations under this deed shall be determined by the Department of the Environment and such determination shall be binding on all parties provided that any party may subsequently refer the matter to the courts of Northern Ireland.
- 6.3 This deed shall be governed by the laws of Northern Ireland and each party submits to the jurisdiction of the courts of Northern Ireland.
- 6.4 The Contracts (Rights of Third Parties) Act 1999 is excluded. Only the parties to this deed can enforce it.
- 6.5 This deed shall be made available for public inspection at the head office of the Committee and at the head office of the New Council.
- 6.6 This deed may be altered or varied by the agreement of all parties to it. This deed may also be altered or varied by agreement between the Committee and the New Council, but not so as to impose additional liabilities on any Departing Employer.
- 6.7 For the avoidance of doubt, any failure by the Committee to exercise its rights under this deed shall not be deemed a waiver of the New Council's obligations under this deed.
- 6.8 This deed may be executed in any number of counterparts, all of which taken together shall constitute the same deed.

EXECUTED and delivered as a Deed the day and year first before written.

THE COMMON SEAL of NORTHERN)

IRELAND LOCAL GOVERNMENT)

OFFICERS' SUPERANNUATION)

COMMITTEE was hereunto affixed in the)

presence of:-)

Signature of Member/Authorised Signatory

.....

EXECUTED as a Deed by)

CAUSEWAY COAST AND GLENS DISTRICT COUNCIL

)

CLlr J Finlay, Chair

.....

David Jackson, Chief Executive

.....

EXECUTED as a Deed by)

BALLYMONEY BOROUGH COUNCIL)

CLlr B Kennedy, Chair

.....

John Dempsey, Chief Executive

.....

EXECUTED as a Deed by)

COLERAINE BOROUGH COUNCIL)

CLlr G Duddy, Chair

.....

AS SENT 9 MARCH 2015

Kieran Doherty, Chief Executive

EXECUTED as a Deed by)

LIMAVADY BOROUGH COUNCIL)

Cllr A Robinson, Chair

Liam Flanagan, Chief Executive

EXECUTED as a Deed by)

MOYLE DISTRICT COUNCIL)

Cllr D Cunningham, Chair

Richard Lewis, Chief Executive