

LGPS Governance Regulations 2014  
Department for Communities and Local Government  
Zone 5/F5 Eland House  
Bressenden Place  
LONDON SW1E 5DU

15<sup>th</sup> August 2014

Dear Sandra

**Local Government Pension Scheme**

Please find attached to this letter the LGA's response to the consultation:-

The Local Government Pension Scheme (Amendment) Regulations 2014 - Draft Regulations on Scheme Governance.

Please feel free to get in touch if you have any questions.

Yours sincerely



Jeff Houston  
Head of Pensions

Mobile: 07786 681 936 Office: 020 71877346  
Email [jeff.houston@local.gov.uk](mailto:jeff.houston@local.gov.uk)

## Local Government Association (LGA)

**Response to the consultation:** The Local Government Pension Scheme (Amendment) Regulations 2014 Draft Regulations on Scheme Governance

### 1. Summary

1.1 This paper sets out the LGA's response to the questions posed in the above consultation issued by the Department of Communities and Local Government (DCLG) in respect of the Local Government Pension Scheme (LGA). In summary the responses are as follows:-

### 2. Regulations

2.1 LGA wishes to comment on the following regulations

- **General** - Use of the terms member and person in regulations **107, 111** and **113** should be clarified to ensure the meaning is clear (i.e. elected member, scheme member or local board member)
- **105** - LGA would like to see the power to delegate the responsibilities under these regulations limited to prevent existing pension committees, or officers exercising them so as to avoid the potential for conflict of interest
- **107(2)(a)** - LGA is strongly opposed to elected members being prevented from serving on pension boards in the capacity of employer or member representatives. There are more effective methods for the regulations to prevent hegemony of the administering authority over the membership of pension boards without using such a blunt tool.
- **110(4)** - The use of the term joint committees in this regulation is potentially misleading given its meaning in Local Government legislation, and should be replaced by 'working group'
- **111**- Add a requirement for the Chair of the Local Government Pension Scheme Advisory Board to ensure that board members:-
  - I. Have the necessary knowledge and understanding to perform their role
  - II. Have access and regard to appropriate advice when making recommendations to the Secretary of State

2.2 Furthermore regulations covering governance compliance statements require amendment to refer to these regulations

### 3. Connected Policy Issues

#### **Combined committee/boards**

3.1 LGA believes that provision should be made for combined committee/boards but that a high hurdle should be set to ensure both the wording and spirit of the Local Government Act 1972 and Public Service Pensions Act 2013 are met

### **Establishment of local boards**

3.2 LGA would like to see as much flexibility as possible at the local level and therefore would support the second option for regulation 106(5) - discretion for administering authorities

### **Funding**

3.3 LGA supports the proposal to fund the Scheme Advisory Board as scheme administration costs and consider a subscription calculated using membership bands to be the fairest way to achieve this aim

### **Joint pension boards**

3.4 LGA supports a provision in regulation for joint pension boards but only where the scheme manager function is being delivered wholly or mainly via a joint committee

### **AGMs**

3.5 LGA supports compulsory annual forums for employers and scheme members

### **Public Sector Equality Duty**

3.6 LGA supports the extension of duties for both the scheme advisory board and local boards to have regard to the Public Sector Equality Duty

### **Knowledge and understanding**

3.7 LGA is strongly in favour of a regulatory duty on pension committee members to obtain a level of knowledge and understanding at least as comprehensive as that required for pension board members.

3.8 Furthermore LGA would recommend that statutory guidance specify the minimum requirement in terms of the curriculum and frequency of required training

## **4. Other Policy Issues**

### **Duty of care to the pension fund**

4.1 The LGA would like to see a specific regulation placing on the scheme manager and local pension board a duty to act at all times in the best interest of the pension fund.

### **Adequacy of resources**

4.2 Regulations should place a duty on scheme managers and pension boards to ensure that sufficient resources are available to effectively deliver the functions required by these regulations, the LGPS 2013 and earlier schemes.

## **Response in detail**

## **5. Regulations**

**General - Use of the terms member and person in regulations 107, 111 and 113 should be clarified to ensure the meaning is clear (i.e. elected member, scheme member or local board member)**

5.1 Regulation 107 makes multiple use of the word member which may lead to confusion and could benefit from clarification as follows (our suggested amendments in italics):-

- (2) A local pension board must include an equal number, which is no less than 4 in total, of **Scheme** employer representatives and **Scheme** member representatives (5) and for these purposes—
- (a) an **elected** member of a local authority is not to be appointed as a **Scheme** employer or **Scheme** member representative; and
  - (b) the administering authority must be satisfied that—
    - (i) a person to be appointed as a **Scheme** employer representative has relevant experience and the capacity to represent **Scheme** employers on the local pension board; and
    - (ii) a person to be appointed as a **Scheme** member representative has relevant experience and the capacity to represent **Scheme** members on the local pension board.
- (3) The number of **board** members appointed under paragraph (2) must exceed the number of members otherwise appointed to a local pension board

### 111

(2) When deciding whether to give or withhold approval to appointments under paragraph (1)(b) the Secretary of State must have regard to the desirability of there being equal representation of persons representing the interests of Scheme employers and persons representing the interests of **Scheme** members.

### 113.—

- (2) The Local Government Pension Scheme Advisory Board must identify the amount to be paid by each administering authority towards its annual costs based on—
- (a) its annual budget approved by the Secretary of State; and
  - (b) the number of **Scheme members** persons for which the administering authority is the appropriate administering authority.

### **105 - LGA would like to see the power to delegate the responsibilities under these regulations limited to prevent existing pension committees or officers exercising them, so as to avoid the potential for conflict of interest**

5.2 The purpose of the pension board is to assist the scheme manager, in particular in the compliance with regulation and codes of practice. This infers a level of scrutiny to be included in the wider role of the pension board. Giving the pension committee (or officer) which is acting in the scheme manager role delegated authority over the creation, remit, membership and voting rights of pension boards appears counter to the effective delivery of that scrutiny function.

5.3 LGA would therefore wish to see the regulations exclude the committee or officer acting as the scheme manager for the administering authority from these powers of delegation.

5.4 If this were not possible then LGA would like to see statutory guidance make it clear that the responsibilities under these regulations should be exercised from within the democratic services function of the administering authority.

### **107(2)(a) - LGA is strongly opposed to elected members being prevented from serving on pension boards in the capacity of employer or member representatives.**

**There are more effective methods for the regulations to prevent hegemony of the administering authority over the membership of pension boards without using such a blunt tool.**

5.5 the restriction in regulation 107(2)(a) preventing elected members of any local authority from serving as a Scheme employer or Scheme member representative is in the view of LGA counter to the democratic nature of the LGPS and ultimately will prove ineffective if the purpose is to prevent the hegemony of administering authorities on pension board membership.

5.6 The LGPS is a creature of local government and therefore the direct involvement of democratically elected representatives of local taxpayers on those bodies which form the governance structure of the Scheme is essential in terms of accountability and transparency. We are aware that elected members may be part of pension boards as 'other members' but this would seem strange as by definition elected members are recognised as the 'employer' in a variety of other bodies and committees across local government and national government.

5.7 The Independent Public Service Pension Commission report published in March 2011 also identified the key role of elected representatives in the LGPS. Paragraph 6.22 refers to locally administered schemes in respect of governance and administration and the role of "democratically elected local government representatives" within that structure. Removing a position for elected representatives would appear to jar with such a statement.

5.8 If the purpose is to ensure representation beyond the administering authority the regulation is ineffective for two reasons. Firstly the restriction is too broad as it would prevent elected members from district, town and parish councils who are Scheme employers in that fund from representing those employers.

5.9 Secondly the regulation does not prevent the administering authority filling employers seats with its officers and then adding three elected members of the authority as 'other members'. This would effectively give the administering authority 5 seats on a 7 seat board.

5.10 A simpler and in our view more effective method of achieving such an aim would be a regulation that ensures that the administering authority does not have a majority of board members.

**110(4) - The use of the term joint committees in this regulation is potentially misleading, given its meaning in Local Government legislation, and should be replaced by 'working group'**

5.11 The term 'joint committee' may be misconstrued as relating to joint committees as referred to in the Local Government Act - i.e. the forming of committees to discharge the function of two or more authorities. The Board would however make use of working groups and therefore the regulation would better read as:-

**110.—(1) A scheme advisory board ("the Local Government Pension Scheme Advisory Board") is established.**

*(4) Subject to these Regulations, the Local Government Pension Scheme Advisory Board may determine its own procedures including as to voting rights, the establishment of sub-committees, formation of ~~joint committees~~ **working groups** and the payment of remuneration and expenses.*

#### **111- Add a requirement for the Chair of the Local Government Pension Scheme Advisory Board to ensure that board members:-**

- I. Have the necessary knowledge and understanding to perform their role**
- II. Have access and regard to appropriate advice when making recommendations to the Secretary of State**

5.12 It would be sensible for Scheme Advisory Board members to be subject to the same requirements for knowledge and understanding as the scheme managers and boards to which they may give advice. Therefore LGA would like to see a regulation setting out such a requirement.

5.13 Furthermore before making recommendations on possible future changes to the scheme it would be sensible for the Scheme Advisory Board to ensure it has taken appropriate advice on the matter in hand. This is not to say that the Board must appoint permanent advisors, merely that it has access to an appropriate level of advice at its meetings.

#### **Regulations covering governance compliance statements require amendment to refer to these regulations**

5.15 Scheme regulations relating to governance compliance statements (in particular regulation 55(1)(d)) should be amended to refer to the provisions of these regulations which relate to pension boards.

## **6. Connected Policy Issues**

**LGA believes that provision should be made for combined committee/boards but that a high hurdle should be set to ensure both the wording and spirit of the Local Government Act 1972 and Public Service Pensions Act 2013 are met**

6.1 Although supportive of the flexibility that a regulatory provision for combined committees and boards would bring to the new governance structures, LGA is mindful of the potential challenges inherent in such a provision.

6.2 Creating and maintaining committees that meet the requirements of both the Local Government Act 1972 and the Public Service Pensions Act 2013 will require a great deal of thought and planning and should not be entered into lightly.

6.3 In particular ensuring that the administering authority neither cedes its responsibilities for political accountability nor seeks to diminish the important role of pension boards will be a vital element in assessing the suitability of any proposed merger of the two functions.

6.4 In this regard LGA would like to see an appropriately high hurdle for such assessments that ensures any proposals meet both the letter and the spirit of the primary legislation.

**LGA would like to see as much flexibility as possible at the local level and therefore would support the second option for regulation 106(5) - discretion for administering authorities**

6.5 Applying Part 6 of the Local Government Act 1972 to the establishment of local boards would in the view of LGA be too restrictive and not provide a sufficient level of flexibility to reflect local circumstances.

6.6 Therefore LGA supports the second option for regulation 106(5) in order to provide a greater level of discretion at the local level.

*(5) An administering authority may determine the procedures applicable to a local pension board, including as to voting rights, the establishment of sub-committees, formation of joint committees and payment of expenses.*

6.7 However LGA would wish to see an amendment to the wording in order to better scope the discretion to be provided for as follows:

*(5) An administering authority may determine the procedures applicable to a local pension board, including **but not limited to establishment, voting rights, remit, information and reporting requirements and payment of expenses.***

**LGA supports the proposal to fund the Scheme Advisory Board as scheme administration costs and consider a subscription calculated using membership bands to be the fairest way to achieve this aim**

6.8 Determining the level of costs to be met by funds on the basis of membership is the view of LGA equitable. However a banded approach would be simpler than calculating the cost down to the exact membership number and would allow for normal variations while providing a degree of certainty in respect of budgeting for future years.

6.9 The current bands used for the Local Government Pensions Committee subscription (small, medium and large) provide a useful example of such an approach already in use.

**LGA supports a provision in regulation for joint pension boards but only where the scheme manager function is being delivered wholly or mainly via a joint committee**

6.10 Joint pension boards may provide a useful tool for administering authorities working together. However, care must be taken to ensure such boards are appropriate to the circumstances in place.

6.11 The test for such joint boards, in the view of LGA, must reflect the extent to which the scheme manager role is being shared and in particular the governance structures in place. For example using a shared administration service or treasury management team or being members of the same Collective Investment Vehicle would not in the view of LGA provide sufficient grounds for a joint board

6.12 Furthermore joint boards must be able to effectively represent the full range of scheme employers and scheme members in any shared arrangement.

6.13 For these reasons LGA would wish to see a strict regulatory definition that ensures any joint arrangements in place are comprehensive, transparent and provide for appropriate levels of accountability.

6.14 Such a regulatory definition could include:-

- I. A requirement that the scheme manager functions of the administering authorities to which the joint arrangement relates has been wholly or mainly delegated to a joint committee established under the Local Government Act 1972
- II. A requirement that the joint pension board contains sufficient members to adequately represent the scheme employers and scheme members of the funds included in the joint arrangement

### **LGA supports compulsory annual forums for employers and scheme members**

6.15 Given the expanding number and range of scheme employers in the LGPS the LGA would support a requirement for an annual event to enable those employers to be informed on developments in, and to hold the administering authority to account for, the service it provides.

6.16 Of equal importance is the need for regular, clear and comprehensive information to scheme members which such forums can only enhance.

### **LGA supports the extension of duties for both the scheme advisory board and local boards to have regard to the Public Sector Equality Duty**

6.17 As the administering authorities which these boards would be advising and assisting are already subject to this duty it could be argued by extension the boards are already covered by that duty. However it would be sensible to make this clear in regulation.

### **LGA is strongly in favour of a regulatory duty on pension committee members to obtain a level of knowledge and understanding at least as comprehensive as that required for pension board members.**

### **Furthermore LGA would recommend that statutory guidance specify the minimum requirement in terms of the curriculum and frequency of required training**

6.18 It would seem counter intuitive that the scheme managers (the committees or officers of the administering authority) which pension boards are assisting are not to be subject to at least the same requirements in relation to knowledge and understanding. Therefore, while recognising the additional burden this may place on some elected members and the officers who support them, LGA would support such a regulatory duty.

6.19 Furthermore LGA would like to see statutory guidance clearly set out the minimum standards in terms of the areas of knowledge to be included, the regularity with which



such knowledge should be refreshed and the manner in which such standards should be assessed.

6.20 The LGA's own 'fundamentals' course which many elected members already attend on an annual basis could provide the basis of such a standard while recognising that other providers may be needed to meet the anticipated demand.

## **6. Other Policy Issues**

**The LGA would like to see a specific regulation placing on the scheme manager and local pension board a duty to act at all times in the best interest of the pension fund.**

6.1 The Shadow Scheme Advisory Board has already undertaken to examine ways in which the 'ring fence' separating the pension fund from the host authority could be enhanced and this proposal does not seek to pre-empt that work in detail.

6.2 However, in preparation for the outcome of that work and in recognition that this new system of governance provides an opportunity to revisit the challenges inherent in the current situation, LGA believe that regulation in this area would provide a level of necessary clarity.

6.3 A regulatory duty on the scheme manager and pension board to always act in the best interests of the pension fund would provide members of committees and boards with a clear guide when faced with potential conflicts.

**Regulations should place a duty on scheme managers and pension boards to ensure that sufficient resources are available to effectively deliver the functions required by these and earlier regulations in respect of the LGPS**

6.4 These regulations place additional demands on the support systems in place at administering authorities and in particular those which through reasons of size or circumstance are already strained.

6.6 Cost of administration for these new governance requirements, and those stemming from existing regulations, can be charged to the pension fund. However for many authorities this does not provide a clear direction on how best to allocate scarce resources. Being able to recharge costs from budgets already subject to restrictions due to changes in local authority finance does not always provide the means of ensuring appropriate resources can be applied to this function.

6.7 Placing a statutory duty on administering authorities to ensure the scheme manager and pension board have sufficient resources in place to meet the requirements of the function may provide the level of flexibility and certainty needed by finance managers to effectively ring fence the necessary funding.

The LGA and in particular its pensions team is available to discuss and answer any questions the department may have on this response.