



Department for
Communities and
Local Government

Local Government Pension Scheme (England and Wales) new governance arrangements

Discussion paper

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Introduction

- 1.1 The Public Service Pensions Act 2013¹ includes several key provisions relating to the administration and governance of the new public service pension schemes established under Section 1 of the Act. In the case of the Local Government Pension Scheme in England and Wales, these arrangements will apply to the new Scheme which comes into effect on 1 April 2014.
- 1.2 This paper explores five specific sections of the Act which impact on the governance arrangements in the new Scheme :-
- Responsible authority
 - Scheme manager
 - Pension board
 - Pension board information, and
 - Scheme advisory board
- 1.3 Each section includes background and a more detailed summary of what we are required to include in the new Scheme to comply with the Act. Where appropriate, the paper also invites comment on consequential issues. Responses to the questions posed throughout the paper will enable us to start work on preparing draft regulations on governance for consultation later in the year.

How to respond

- 1.4 You should respond to this discussion paper by **30 August 2013**.
- 1.5 You can respond by email to Philip.perry@communities.gsi.gov.uk

When responding please ensure you have the words "Scheme governance discussion paper" in the email subject line.

Alternately you can write to:

Scheme governance discussion paper
Department for Communities and Local Government
Zone 5/G6 Eland House
Bressenden Place
LONDON SW1E 5DU

- 1.6 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please give a summary of the people and organisations it represents and, where relevant, who else you have consulted in reaching your conclusions.

¹ <http://www.legislation.gov.uk/ukpga/2013/25/contents/enacted>

Timing

- 1.7 Although the Act requires the Secretary of State and scheme managers to establish a scheme advisory board and local pension boards respectively, there is nothing in the Act to say when these bodies are to become operational. This would appear to be a matter left for each individual scheme to consider and determine. We also know that the Pensions Regulator will not commence any of their formal duties or responsibilities under the Act until April 2015.
- 1.8 In overall terms, our clear priority is to ensure that we have a new Scheme in place so that pensions can continue to be accrued and paid from 1 April 2014 onwards. Between now and the end of the year, most, if not all, of our resources will need to be directed towards that aim, which leaves very little time to introduce new regulations on governance in time for the scheme advisory board and local pension boards to be operational with effect from 1 April 2014.
- 1.9 Our intention therefore, is to aim for the new governance regulations to be in place by April 2014, and for these to require the new national and local bodies to become operational later in the year. Between April 2014 and whenever the new scheme advisory board and local pension boards become operational, it is envisaged that existing governance arrangements under Section 101 of the Local Government Act 1972 will continue to apply.

Q1. What period, after new governance regulations are on the statute book, should be given for scheme managers/administering authorities to set up and implement local pension boards?

Q2. How long after new governance regulations are on the statute book should the national scheme advisory board become operational?

Part 1 - “Responsible authority”

- 1.10 Section 2 of the Act, when read in conjunction with Schedule 2, provides that scheme regulations for local government workers (defined in Schedule 1 as “persons employed in local government service and specified in scheme regulations”) may be made by the Secretary of State. Under the Act, the Secretary of State has the title of “responsible authority”.

Implementation

- 1.11 There is no requirement for us to establish the Secretary of State as the Scheme’s responsible authority in the new Scheme regulations. In that respect, Section 2 of the Act is self-standing. On first reading of the Act, it may appear that the Secretary of State’s regulation making power only covers local government workers. But the Act does provide for this to be extended by definition in the new Scheme regulations and the two consultation exercises on draft regulations

commenced in December 2012 and March 2013 included such provision to ensure that regulations cover all members of the Scheme, including non-local government workers.

Part 2 -“Scheme manager”

- 1.12 Section 4 of the Act requires the new Scheme regulations to provide for a person (“the scheme manager”) to be responsible for managing or administering the Scheme. The term “person” is not to be taken literally. For example, in a centrally administered scheme, Section 4(1) of the Act would allow the Secretary of State to be both the “responsible authority” and “scheme manager”. But in the locally administered Scheme, the “scheme manager” for the purposes of Section 4 will be each of the individual Scheme administering authorities in England and Wales.
- 1.13 Under Section 4(1)(b), the “scheme manager” is also responsible for managing or administering any statutory pension scheme that is connected with the main Scheme but section 4(4) provides that this does not include injury or compensation schemes.

Q3. Please give details of any such “connected” scheme that you are aware of.

Implementation

- 1.14 In draft new Scheme regulations we are currently consulting on², Regulation 2(2) provides that the scheme manager responsible for the local administration of pensions and other benefits under the new Scheme regulations is to be referred to as the “administering authority”. We are satisfied that this is sufficient to comply with Section 4 of the Act.
- 1.15 Section 4(1)(b) of the Act extends the responsibilities of a scheme manager to include any statutory scheme connected with a main scheme. We are unaware of any such scheme that is connected to the Local Government Pension Scheme but invite consultees to tell us otherwise. As noted above, injury or compensation schemes are excluded by virtue of Section 4(4) of the Act.

Q4. Are there any schemes connected to the main Local Government Pension Scheme, other than an injury or compensation scheme, that the new Scheme regulations will need to refer to in setting out the responsibilities of scheme managers?

² <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>

Part 3 - “Pension board”

- 1.16 Section 5 of the Act requires the new Scheme regulations to provide for the establishment of a board with responsibility for assisting the scheme manager, or each scheme manager, in :-
- a) securing compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme and any statutory pension scheme connected with it;
 - b) securing compliance with requirements imposed in relation to the scheme and any connected scheme by the Pensions Regulator, and
 - c) such other matters as the scheme regulations may specify.
- 1.17 In making these regulations, the Department, as the “responsible authority”, must have regard to the desirability of securing the effective and efficient governance and administration of the Scheme and any connected schemes.
- 1.18 Our regulations will also need to include provision requiring each scheme manager to be satisfied that a person to be appointed as a member of a pension board does not have a conflict of interest, either at the outset, or from time to time. Section 5(5) of the Act defines “conflict of interest” as any financial or other interest which is likely to prejudice the person’s exercise of functions as a member of the board, but does not include a financial or other interest arising merely by virtue of being a member of the Scheme.
- 1.19 Scheme regulations will also need to require any person appointed to the pension board or proposed to be appointed, to provide information that can reasonably be requested by the scheme manager to determine whether or not a conflict of interest exists.
- 1.20 By virtue of Section 5(4)(c), the regulations will also need to ensure that each pension board includes employer representatives and member representatives in equal numbers. Under the Act “employer representatives” means persons appointed to the board for the purpose of representing employers for the Scheme and “member representatives” means persons appointed to the board for the purpose of representing members of the Scheme. In this respect, it is noted that the Act permits nominations for scheme member representatives to come from trades unions or from members who are not members of trades unions.
- 1.21 Under Section 5(7) of the Act, where the scheme manager is a committee of a local authority, Scheme regulations may provide for that committee also to be the board for the purposes of Section 5.

Implementation

1.22 It is clear that the new Scheme regulations will need to require each scheme manager/administering authority to establish their own pension board. To comply with Section 5 of the Act, the new Scheme regulations will need to include :-

- The role of each pension board to assist the scheme manager/administering authority in securing compliance with scheme regulations and other legislation; with Pension Regulator's codes of practice and with any other matters specified in Scheme regulations.

Q5. What “other matters”, if any, should we include in Scheme regulations to add to the role of local pension boards?

- A requirement for scheme managers/administering authorities to check that no person appointed to the board has any conflict of interest as defined in the Act (see paragraph 1.18 above) and also to undertake regular checks;

Q6. Should Scheme regulations make it clear that nobody with a conflict of interest, as defined, may be appointed to or sit on a pension board?

- A provision requiring a member of the board or person proposed to be a board member to provide whatever information about conflict of interest that the scheme manager/administering authority reasonably requires.

Q7. Should Scheme regulations prescribe the type of information that may be “reasonably required”?

- A requirement that each pension board must include employer representatives and member representatives in equal numbers.

Q8. Although not required by the Act, should Scheme regulations prescribe a minimum number of employer and employee representatives?

1.23 In addition to the above requirements imposed on the new Scheme by the Act, there are many other issues that we will need to address in preparing draft regulations for consultation. These include :-

Can a statutory committee also be the local pension board?

1.24 Section 5(7) of the Act would allow the new Scheme regulations to permit a committee of a local authority to also be the local pension board. This option was deliberately left open in the Act to ensure that a proper discussion of the issues with all interested parties could be undertaken.

1.25 The argument for and against separate bodies is finely balanced. Those who support the committee and pension board being one and the same body argue that local government cannot afford to spend more time and money setting up new bodies, particularly when the function could easily be undertaken by existing pension or investment committees. Others argue that a statutory decision making

committee is in no position to fulfil the clear scrutiny role set out in the Act. It cannot, in effect, scrutinise itself and be in a position to assure the scheme manager that it is complying with all relevant legislation and Pension Regulator's codes of practice.

- 1.26 A further consideration is that combining a statutory committee with a pension board would, by virtue of Section 5(4)(c) of the Act, require the combined body to have equal numbers of employer and scheme member representatives.
- 1.27 Although we are seeking your views on the status of local pension boards and statutory committees, the Department is clear that the final outcome must be applied consistently across the Scheme as a whole. We do not therefore contemplate giving individual scheme managers/administering authorities the same choice afforded to us by the Act. All pension boards will either be combined or separated from statutory committees.
- 1.28 If the new Scheme regulations were to require local pension boards to be separate from any statutory committee, we would certainly encourage scheme managers/administering authorities to use existing non-statutory bodies to take on or adapt to the role of the new pension boards, but bearing in mind that the requirement to have equal number of employer and scheme member representatives would still apply.

Q9. Should the new Scheme regulations require local pension boards to be a body separate from the statutory committee or for it to be combined as a single body?

Level of prescription

- 1.29 Paragraph 1.22 above sets out the provisions of the Act that we must carry forward into the new Scheme. Apart from requiring equal numbers of employer and scheme member representatives and the restriction on conflicts of interest, the Act is silent on key issues including, for example, membership, constitution, frequency of meetings, the nomination process and training. In responding to Questions 10 and 11 below, it would be helpful if you could set out any particular views you might have on how the nomination process should operate.
- 1.30 As a general rule, the Department's preference would be to leave as much of the detailed workings of local pension boards as possible for determination at local level.

Q10. Apart from what is required under the Act, what other elements of local pension boards should be set out in the new Scheme regulations?

Q11. Apart from what is required under the Act, what other elements of local pension boards should be left to local determination?

Restrictions on membership

- 1.31 In early discussions with interested parties, concerns were expressed that scheme managers/administering authorities may look for savings by moving any scheme

member representative from their statutory committee to their pension board (if the committee and the board are not one and the same body).

Q12. Should the new Scheme regulations prevent any incumbent scheme member representative being moved from a statutory committee to the local pension board (if the committee and the board are not one and the same body)?

Annual report

1.32 Under Section 6(1) of the Act, Scheme regulations will need to require scheme managers/administering authorities to publish certain membership details of their local pension board. Given that the main function of the board will be to assure the scheme manager/administering authority that those to whom they have delegated the pensions function to are complying with legislation and codes of practice, there is a case for the new Scheme regulations to also require each board to publish an annual report summarising its work.

Q13. Should the new Scheme regulations include a requirement for each local pension board to publish an annual statement of its work and for this to be sent to the relevant scheme manager, all scheme employers, the scheme advisory board and Pensions Regulator?

Training and qualifications

1.33 Paragraph 14 of Schedule 4 of the Act amends Section 90 of The Pensions Act 2004 and requires the Pensions Regulator to issue various codes of practice, including one on the requirements for knowledge and understanding of members appointed to pension boards of public service pension schemes. The Department, together with other interested parties, will be consulted on the content of this and other codes of practice and this ought to be sufficient to ensure that the specific circumstances of the Local Government Pension Scheme and the role of new local pension boards can be taken into account.

Q14. Apart from the training and qualification criteria that may be covered by the Pensions Regulator in a code of practice, are there any specific issues that we should aim to cover in the new Scheme regulations as well?

Part 4 – Pension board – information

Implementation

1.34 Scheme regulations will need to include provision for each scheme manager to publish information about the pension board and to keep that information up to date. This information includes who the members of the board are; representation on the board of members of the scheme and the matters falling within the board's responsibility.

Part 5 – “Scheme advisory board”

- 1.35 Section 7(1) of the Act will require Scheme regulations to provide for the establishment of a board with responsibility for providing advice to the Secretary of State, at the Secretary of State’s request, on the desirability of changes to the Scheme.
- 1.36 For locally administered schemes like the Local Government Pension Scheme where there is more than one scheme manager, Scheme regulations may also provide for the board to provide advice (on request or otherwise) to the scheme managers or the scheme’s pension boards, in relation to the effective and efficient administration and management of the Scheme or any pension fund of the Scheme.
- 1.37 Under Section 7(4), Scheme regulations will need to apply the same provisions relating to conflicts of interest to the scheme advisory board as described at paragraph 1.18 above, except that it will be for the Secretary of State to consider and act on actual cases.

Implementation

Scope/role

- 1.38 Section 7(1) of the Act defines the scope and role of the scheme advisory board in the widest possible terms (see paragraph 1.35 above). Replicating the wording of the Act in Scheme regulations would be advantageous in terms of allowing the work of the scheme advisory board to evolve without the need for regulatory amendments, but equally, there may be merit in clearly defining certain areas of work, for example, making recommendations to the Secretary of State on cost management proposals.

Q15. Should Scheme regulations simply replicate the wording of the Act? If not, what specific areas of work should the new Scheme regulations prescribe?

- 1.39 Section 7(1) of the Act provides that the scheme advisory board is responsible for providing advice to the Secretary of State, as the responsible authority, at the Secretary of State’s request. This would suggest that the board can only advise when asked to do so on a case by case basis by the Secretary of State. We have taken advice from HM Treasury who take a more lenient view and suggest that it would be in order for Scheme regulations to set out the terms on which advice may be given.

Q16. Should Scheme regulations include a general provision enabling the scheme advisory board to advise the Secretary of State on the desirability of changes to the Scheme as and when deemed necessary?

Q17. Are there any specific areas of advice that Scheme regulations should prohibit the scheme advisory board from giving?

Membership

1.40 As Section 7 of the Act makes no provision for membership of the scheme advisory board, it will be for Scheme regulations to make such provision. This could be achieved in a number of different ways, for example :-

- The Secretary of State could appoint a small membership panel whose remit would be to nominate and appoint initial members of the board, including the Chairperson;
- As above, but Scheme regulations could also prescribe the sectors from which members of the board are to be drawn;
- The membership profile of the shadow scheme advisory board could be carried forward.

Q18. What options (if any other, please describe) would be your preference for establishing membership of the scheme advisory board?

Q19. Should Scheme regulations require the Secretary of State to approve any recommendation made for the position of Chair?

Q20. Should Scheme regulations prescribe tenure of office? If so, what should the maximum period of office be and should this also apply to the Chair of the board?

Q21. Should Scheme regulations make provision for board members, including the Chair, to be removed in prescribed circumstances, for example, for failing to attend a minimum number of meetings per annum? If so, who should be responsible for removing members and in what circumstances (other than where a conflict of interest has arisen) should removal be sought?

Q22. Should Scheme regulations prescribe a minimum number of meetings in each year? If so, how many?

Q23. Should Scheme regulations prescribe the number of attendees for the board to be quorate? If so, how many or what percentage of the board's membership should be required to be in attendance?

Q24. Rather than make specific provision in Scheme regulations, should the matters discussed at Q19 to Q23 be left as matters for the scheme advisory board itself to consider and determine?

Funding

1.41 If the scheme advisory board is to undertake its full range of duties effectively, the annual cost of administration is likely to be significant. It has been estimated that this may be in the region of an additional £3k per annum per fund, or £5k if project work is also to be included rather than as a separate cost to be levied. In early discussions with the shadow scheme advisory board it has been made clear that both it and the scheme advisory board must be self financing.

1.42 In terms of funding there would appear to be two clear alternatives. Funding the board could be achieved either by voluntary subscription or a mandatory levy from scheme managers/administering authorities. A clear risk associated with a voluntary subscription is that the board's agenda and workplans would be subject to an uncertain level of funding, dependent on whether or not individual fund authorities considered the work of the board to represent good value for money. However, a mandatory levy would give the board the financial certainty that it would need to be able to discharge its functions and could be justified on the grounds that it is advising the Secretary of State and assisting local pension boards on behalf of the Scheme as a whole. In either case, we envisage that the cost would be regarded as an administration cost and therefore rechargeable to the fund.

Q25. Should the scheme advisory board be funded by a voluntary subscription or mandatory levy on all Scheme pension fund authorities?

Constitution

1.43 The Act requires the setting up of the scheme advisory board but not the manner of its legal constitution. This would imply some form of body corporate to be set out in scheme regulations. Beyond setting out the corporate status of the board, scheme regulations would also need to spell out the personal liability protection for board members.

Q26. What would be your preferred manner of legal constitution of the scheme advisory board and how should Scheme regulations deal with the issue of personal liability protection for board members?

Conclusion

1.44 Significant steps have been taken in the past to improve Scheme governance and, in particular, to ensure the effective representation of Scheme beneficiaries. Ministers have consistently remarked on the importance of good Scheme governance and the Public Service pensions Act now provides us with the opportunity to build on this earlier success. We would strongly encourage you to consider this paper carefully and to respond to as many of the questions as you see fit. Your contribution will be of great assistance in helping us to prepare a set of draft regulations on Scheme governance for formal consultation later in the year.

List of questions

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Q2. How long after new governance regulations are on the statute book should the national scheme advisory board become operational?

Q3. Please give details of any such “connected” scheme that you are aware of.

Q4. Are there any schemes connected to the main Local Government Pension Scheme, other than an injury or compensation scheme, that the new Scheme regulations will need to refer to in setting out the responsibilities of scheme managers?

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Q15. Should Scheme regulations simply replicate the wording of the Act? If not, what specific areas of work should the new Scheme regulations prescribe?

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Q25. Should the scheme advisory board be funded by a voluntary subscription or mandatory levy on all Scheme pension fund authorities?

Q26. What would be your preferred manner of legal constitution of the scheme advisory board and how should Scheme regulations deal with the issue of personal liability protection for board members?