

Local Government Pension Scheme (Scotland) New Governance Arrangements

Discussion paper

FINAL Version 1.0 – 23 December 2013

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How to respond

You should respond to this discussion paper by **Monday 3 February 2014**

You can respond by email to; locgovpensionsreform@scotland.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:

Kimberly Linge, Policy Manager, Local Government Pension Scheme, Scottish Pensions Agency, 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE.

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.

Introduction

The [Public Service Pensions Act 2013](#) 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 Scotland, these arrangements will apply to the new Scheme which comes into effect on 1 April 2015.

This paper explores four specific sections of the Act which impact on the governance arrangements in the new Scheme:-

- **Scheme manager**
- **Pension board**
- **Pension board information, and**
- **Scheme advisory board**

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 early in 2014.

Part 1 -“Scheme manager”

1.1 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. In the Local Government Pension Scheme (Scotland), the “scheme manager” for the purposes of Section 4 will be each of the individual Scheme administering authorities in Scotland.

Part 2 - “Pension board”

1.2 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.

1.3 In making these regulations, Scottish Ministers 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.

1.4 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.

1.5 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.

1.6 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.

1.7 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.

1.8 Scheme regulations will also 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.

Implementation

1.9 It is clear that the new Scheme regulations will need to require each scheme manager/administering authority to establish their own pension board.

1.10 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 the Pension Regulator's codes of practice and with any other matters specified in Scheme regulations.

Q1. What "other matters", if any, should we include in Scheme regulations to add to the role of local pension boards?

Comments:

Any additional matters specified in the Scheme regulations should be consistent with the Pension Board's statutory role to assist the Scheme Manager in order to secure compliance with Scheme Regulations and the Pension Regulator's Codes of Practice. The regulations could simply say "such other matters as the Scheme Manager and Pension Board consider appropriate"

Please use this space for additional comments

1.11 There is 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 and also to undertake regular checks;

Q2. 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?

Comments:

Given the wording of S.5(4)(a) of the Public Sector Pensions Act (the PSP Act), it would seem reasonable for the Scheme Regulations to contain a clause excluding a person with a conflict of interest.

Given that "conflict of interest" guidance is likely to be forthcoming from various sources (Regulator, CIPFA, NAPF, etc), then in order to avoid a confusion of mixed messages, it

should be made clear which guidance is to be pre-eminent (e.g. the Regulator's guidance would seem the obvious choice). This would help deliver a consistency of approach across funds.

Please use this space for additional comments

1.12 There is 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 require.

Q3. Should Scheme regulations prescribe the type of information that may be “reasonably required”?

Comments:

No, it should not. This level of detail should be contained in the guidance that is mentioned in Q2 above. The guidance could perhaps draw on the current Code of Conduct for Councillors in Scotland.

It does seem odd that whilst there are statutory provisions relating to Pension Board members not being conflicted, there are no similar provisions relating to the persons who will actually be making the Fund decisions – namely the various members of Pensions Committees. This omission should be addressed through the Scheme regulations.

Please use this space for additional comments

Q4. Should Scheme regulations prescribe the requirement for managers/administering authorities to undertake regular checks to ensure board members do not have any conflicts of interest?

Comments:

This level of detail does not need to be in the Scheme regulations. Again, it should be covered in guidance.

Please use this space for additional comments

1.13 There is a requirement that each pension board must include employer representatives and member representatives in equal numbers.

Q5. Although not required by the Act, should Scheme regulations prescribe a minimum number of employer and employee representatives?

Comments:

No. This is a matter that should be left to local discretion given the significant differences in the size of the Scottish LGPS Funds.

Please use this space for additional comments

1.14 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.

1.15 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.

1.16 Whilst we are seeking your views on the status of local pension boards and statutory committees, it is likely that Scheme Regulations will require that the final outcome must be applied consistently across the Scheme as a whole, i.e. all pension boards will either be combined or separated from statutory committees.

Q6. How should the governance of the local government pension scheme in Scotland change to incorporate the changes required by the Act?

Comments:

There are three levels to effective governance in the LGPS – namely i) the strategic policy/decision making level undertaken by the administering authority and in all likelihood delegated to a Pensions Committee); ii) an employer/member representative level feeding into the decision making process and overseeing the process itself; and iii) an audit and scrutinising role undertaken by Internal and External Audit.

The Public Service Pensions Act 2013 puts the onus for securing regulatory compliance on the Pension Board. It also requires equality of employee and employer representation on the Pension Board.

One would have thought that the body charged with securing compliance should be made up of persons suitably qualified to assess such compliance. Employer and employee members are drawn from a wide variety of disciplines and as such will almost certainly not have the knowledge or skills to know whether scheme rules are being breached.

Equally, if there is a level of the governance structure which requires equality of employer and member representation then, one would have expected this to be the representative body which supports the decision making Pensions Committee, rather than the Pension Board.

Given the onerous requirements for Pension Board members in relation to skills, knowledge and understanding, one solution may have been to have a single Scottish Pension Board that operated nationally and which would undertake the “securing compliance” role for all the Funds.

If this is not feasible, then we would propose to reshape our existing secondary body – our representative panel - into the Pension Board, equalising the employer and employee

membership.

In recognition of the statutory role of the Board in “assisting the scheme manager” in “securing compliance” with Regulations and with Regulator Codes of Practice, consideration would be given to including an independent specialist on the Board.

A two tier structure allowing for broad member and employer representation was deemed best practice in 2010 and has been adopted by Falkirk and well received by participants. For a two tier structure to continue, then our secondary body would have to be replaced with the Pension Board. The danger with that is that all the positive, qualitative benefits flowing from our current arrangement (i.e. the capacity for a broad spectrum of scheme stakeholders to comment on Fund policy) may have to be sacrificed if the Pension Board can only interest itself with the very narrow, compliance based range of duties defined for it in the regulations.

Please use this space for additional comments

Q7. 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? It would be helpful if you could provide the reasons which support your answer.

Comments:

It is not considered that the Pensions Committee and the Pensions Board should be a combined entity. This view is informed by:

- The Pension Board is charged with securing statutory compliance. A combined Committee and Board would be both making the decisions and then policing the decisions. To be credible, the policing process needs to have some separation from the decision making process.
- The Council's Pension Committee has previously expressed the view that the two entities should be separate
- Having a combined Committee/Panel would require there to be equality of member and employer representatives. Legal responsibility for an LGPS Fund rests solely with its Administering Authority. To allow member representatives equal access to the decision making process would be inappropriate as it would give power without the responsibility.
- There remains outstanding the question of whether the Local Government (Scotland) Act 1973 would allow a combined entity – where a majority does not rest with the body corporate - to legally operate.
- Under the proposed scheme funding mechanism, it is fund employers not members who will continue to bear the risk arising from poor investment decisions. It is therefore appropriate that employers retain the levers of power, albeit one has to recognise that the cost cap arrangements could ultimately result in member benefits being affected.

Please use this space for additional comments

Membership of Pensions Boards

1.17 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 of the pension board including, for example, membership, constitution, frequency of meetings, the nomination process and training.

Q8. To what extent should the new Scheme regulations specify the types of members of the pension boards?

Comments:

This is not something that should be explicit in the regulations.

This could be covered in best practice guidance to be produced by the Regulator. Or, it could be included in an updated version of the best practice governance document produced by SPPA in 2010. The same guidance note could conceivably cover the conflict of interest issue.

Once the guidance has been received, we would envisage issuing a proposal regarding Pension Board structure and composition for consultation to Employers and Members.

It is important to recognise once again that the standard of knowledge and understanding required to undertake the compliance role demanded of the Pension Board is high and may be difficult to source.

Please use this space for additional comments

Q9. How should the Pension Boards be chaired?

Comments:

This should be included in the constitution of the Pension Board. Given the equal numbers of employer and employee representatives, it may be desirable to rotate the Chair.

Please use this space for additional comments

Q10. What should happen in the event of a tied vote at a Pensions Board?

Comments:

Chair has the casting vote – but again this is a matter for the constitution

Please use this space for additional comments

1.18 The appointment process should be clear and transparent to ensure accountability of the board.

Q11. To what extent should the new Scheme regulations specify the manner in which members of the pensions boards are selected?

Comments:

No this is a matter that should be left to local discretion given the significant differences in the size of the Scottish LGPS Funds.

Please use this space for additional comments

1.19 Guidance currently sets best practice for funds to include representatives of participating employers, admitted bodies and scheme members (including pensioner and deferred members) in their governance. However the pension board will compel member and employer representation.

Q12. Should the introduction of the pension board affect employer and member representation in other parts of funds' governance? If yes, how?

Comments:

It is inevitable that Scheme Managers will want to review their existing governance arrangements in the light of obligations arising from the PSP Act

If a single Pension Board operating at a national level was established to serve the needs of the 11 Funds, then conceivably there might be no need to alter existing arrangements. However, if the Pension Boards are going to be established locally, then in order to avoid a three tier governance structure (Pensions Committee – Representative Panel – Pensions Board), the Representative Panel would have to mutate into the Pension Board, in which case in order to ensure equal representation, either some employer seats would have to be dispensed with or additional member representatives appointed.

Scottish Ministers or the Regulator should consider revising the SPPA best practice governance guidance of 2010 as part of the current governance reform process.

Please use this space for additional comments

Accountability of the Board

1.20 Under Section 6(1) of the Act, Scheme regulations will 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 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?

Comments:

Yes. It could be a regulatory requirement that the Governance Compliance Statement or Annual Report includes a specific statement from the Pensions Board. The Annual Report should also contain a foreward by the Chair of the Pensions Committee.

Please use this space for additional comments

Training and qualifications

1.21 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.

1.22 Scottish Ministers, together with other interested parties, are being 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 in Scotland 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?

Comments:

The question of Personal Liability Protection for Board members should be addressed (see also Question 29 in relation to the scheme Advisory Board).

With the advent of the new Scheme in 2015, Scottish Ministers could take the opportunity to amend the Investment Regulations to provide certainty, as to whether Funds can legally pursue a policy which excludes certain investments on Environmental, Social or Governance.

Please use this space for additional comments

Part 3 – “Scheme advisory board”

1.23 Section 7(1) of the Act will require Scheme regulations to provide for the establishment of a board with responsibility for providing advice to Scottish Ministers, at their request, on the desirability of changes to the Scheme.

1.24 For locally administered schemes, like the Local Government Pension Scheme in Scotland, 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.

1.25 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 Scottish Ministers to consider and act on actual cases.

Membership

1.26 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 Scottish Local Government Pensions Advisory Group (SLOGPAG), could consider and make recommendations to Scottish Ministers relating to the number of members, where those members should be drawn from and the balance of membership across the representative areas e.g. employer and employee representatives;
- Scottish Ministers could appoint a small membership panel whose remit would be to nominate and appoint initial members of the board, including the Chairperson;
- The membership profile of SLOGPAG could be carried forward.

Implementation

Scope/role

1.27 Section 7(1) of the Act defines the scope and role of the scheme advisory board in the widest possible terms (see paragraph 1.23 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 Scottish Ministers 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?

Comments:

Yes. They should also include the power for the Scheme Advisory Board to provide advice to the Responsible Authority even if it has not been requested.

Please use this space for additional comments

1.28 Section 7(1) of the Act provides that the scheme advisory board is responsible for providing advice to Scottish Ministers, as the responsible authority, at their request. It has been suggested that Scheme regulations include a requirement the advisory board to advise Scottish Ministers on the desirability of changes to the Scheme.

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

Comments:

Yes. This seems to be required by the S.7(1) of the Act.

Please use this space for additional comments

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

Comments:

No. But as the Scottish Ministers remain responsible for making scheme regulations there should be an agreed protocol between the Scottish Ministers and the Advisory Board as to whether the Scottish Ministers should make regulations without first discussing these with the Board.

Please use this space for additional comments

Q18. What would be your preference be for establishing membership of the scheme advisory board?

Comments:

SLOGPAG to make recommendations regarding the structure of the Board.

Members will need to have significant knowledge and understanding of local authority pension matters or of the broader pensions industry to enable them to perform their role on the Scheme Advisory Board. For example, Board members may have to contend with matters such as scheme benefits, investments, governance, funding, and accounting.

Please use this space for additional comments

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

Comments:

As a demonstration of its independence, the Board should be free to choose its own Chair. However, this should be subject to endorsement from Scottish Ministers.

Please use this space for additional comments

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?

Comments:

This matter should be addressed in the constitution of the Scheme Advisory Board and should be determined as part of its development rather than incorporated into regulation.

The length of tenure of the first tranche of Board members should be staggered to avoid all members exiting the Board simultaneously with a consequential loss of knowledge and understanding.

Please use this space for additional comments

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?

Comments:

There should such a facility, but this should be included in the constitution of the Scheme Advisory Board rather than being incorporated into regulation.

Please use this space for additional comments

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

Comments:

There should be the minimum of one annual meeting and this should be stated in the constitution together with other operational aspects.

Please use this space for additional comments

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?

Comments:

Again, this should be specified in the constitution. However, given the important nature of the work being undertaken (advice to Ministers, etc), it is considered that the Board should have attendance of at least 1/2 membership to be quorate.

Please use this space for additional comments

Q24. Rather than make specific provision in Scheme regulations, should the matters discussed at Q16 to Q23 be left as matters for the scheme advisory board itself to consider and determine?

Comments:

In general terms, the shape and working arrangements of the Scheme Advisory Board should be for the Board to determine within its budget. The initial establishment of the Board structure should be undertaken by SLOGPAG following stakeholder engagement. .

Please use this space for additional comments

Shadow Advisory Board

1.29 The Scheme Advisory Board will be established from 1 April 2015 and the establishment of a Shadow Scheme Advisory Board will be kept under review, but such a Shadow Scheme Advisory Board is anticipated to be beneficial from Autumn 2014 onwards.

1.30 In the period until the Board (or Shadow Board) is established, SLOGPAG will review the governance arrangements within its agreed remit of developing a new Scottish LGPS. Topics for consideration will include, but are not limited to:

- a. The structure of the 4 governance related roles identified by the Public Service Pensions Act 2013
- b. The membership and constitution of the Scheme Advisory Board
- c. Operation of the cost control mechanism
- d. The requirements of the Pensions Regulator
- e. Publication of scheme information
- f. Relevant provisions in the Institutions of Occupational Retirement Provision (IORP)

g. Data collection

Q25. What other specific issues should SLOGPAG consider prior to the Board being established?

Comments:

To avoid unnecessary duplication of work, the shadow board should be established in such a way, that it can morph to be the actual Board without change of personnel etc on 1st April, 2015.

Please use this space for additional comments

Q26. Under what circumstances should a Shadow Board be established prior to April 2015?

Comments:

In terms of governance, the priority for the Scottish LGPS community in the coming months will be to clarify the role of the Pension Boards and implement the local governance changes. Furthermore, it will be necessary to develop the constitution of and role of the Scheme Advisory Board.

Whilst such matters are in gestation, it would seem sensible to continue with the SLOGPAG, rather than convene a completely new group in haste.

Continuation of SLOGPAG does not preclude the preparatory work required to make the Board fully functional for 1/4/2015.

Please use this space for additional comments

Resourcing of the Advisory Board

1.31 If the scheme advisory board is to undertake its full range of duties effectively, it will need to have access to finance for example to pay for secretarial services and the necessary advice or analysis on which to base its decisions.

1.32 It is proposed this is regarded as an administration cost and therefore payable by the individual pension funds.

Q27. Do you agree that the scheme advisory board should be funded by a mandatory levy on all Scheme pension fund authorities? If not, what alternative approach would you propose?

Comments:

Funding the Scheme Advisory Board for the LGPS (Scotland) should be consistent with the method funding the other Scottish Public Sector Pension Scheme Advisory Boards.

A mandatory levy would seem appropriate, however the Board is providing a service to not only the Funds but also to the Scottish Ministers and accordingly part of the costs should be borne by the Scottish Ministers

The Scheme Advisory Board must ensure the funding provided from various sources is being utilised in a transparent and value for money manner.

Please use this space for additional comments

Q28. How should the subscription vary by fund? Should it be a fixed fee for all funds or proportional to their membership?

Comments:

A flat rate fee payable by all Funds and the Responsible Authority, and then a top up payment based on relative Fund membership sizes.

Please use this space for additional comments

Constitution

1.33 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.

Q29. 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?

Comments:

It is anticipated that the Board would be constituted as a body corporate.

This is a matter on which the Board should take its own advice. It is accepted that prior to appointments being made some preparatory work, especially in the area of Personal Liability Protection, may need to be undertaken by SLOGPAG.

Please use this space for additional comments

Part 4 – “Review of the Structure of the Scottish LGPS”

1.34 The Heads of Agreement includes the commitment for SLOGPAG or the Shadow Scheme Advisory Board, as appropriate, to establish a process, commencing April 2014, to consult on, and collate data relevant to, a review of the structure of the Scottish LGPS, in order for the Scheme Advisory Board to be in a position to complete such a review.

Q.30 What factors should be taken into account in a review of the structure of the Scottish LGPS?

Comments:

- The objectives of the review should be determined at the outset
- Recognise that there are potentially a range of options beyond status quo and full scal amalgamation – e.g. closer working (as evidenced by the Lothian and Falkirk Funds) and investment pooling.
- The outcome to be measured not simply on cost grounds, but in terms of effectiveness and taking into account of qualitative factors such as the desirability of funds to be close to their employer and membership bases.
- Timescales for the review (and for implementation of any agreed re-structuring) should be realistic and reflect the significant burdens and delivery requirements that are currently impacting on the Scheme Managers.
- In order to ensure a sound basis for informed decision making, there should be clarity over the nature of data being requested and consistency over any data collected.
- There should be clarity as to the ownership of the review (SPPA, SLOGPAG)
- Take cognisance of the Pathfinder outcome.

Please use this space for additional comments

General

1.35 The current LGPS (Scotland) Regulations have a 'light touch' on governance, instead they refer to the Governance Compliance Statement. This allows for changes in governance arrangements to be made without having to amend existing regulations.

Q31. Would it be preferable to retain a 'light touch' to governance in the Scheme regulations, with reference instead to a Governance Compliance Document which would contain the detailed governance requirements?

Comments:

Not sure that a “light touch” is really possible considering the 2013 Act requires the scheme regulations in a number of places to make reference to governance matters. However, that aside, it would seem reasonable for the regulations to refer to a Governance Compliance Document with the detailed content being contained in guidance.

Please use this space for additional comments

Conclusion

1.36 Scheme governance has a critical role in supporting the delivery of excellent LGPS performance and open and transparent governance arrangements have long been encouraged and supported in Scotland. 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.

List of Questions

Q1. What “other matters”, if any, should we include in Scheme regulations to add to the role of local pension boards?

Q2. 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?

Q3. Should Scheme regulations prescribe the type of information that may be “reasonably required”?

Q4. Should Scheme regulations prescribe the requirement for managers/administering authorities to undertake regular checks to ensure board members do not have any conflicts of interest?

Q5. Although not required by the Act, should Scheme regulations prescribe a minimum number of employer and employee representatives?

Q6. How should the governance of the local government pension scheme in Scotland change to incorporate the changes required by the Act?

Q7. 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? It would be helpful if you could provide the reasons which support your answer.

Q8. To what extent should the new Scheme regulations specify the types of members of the pension boards?

Q9. How should the Pension Boards be chaired?

Q10. What should happen in the event of a tied vote at a Pensions Board?

Q11. To what extent should the new Scheme regulations specify the manner in which members of the pensions boards are selected?

Q12. Should the introduction of the pension board affect employer and member representation in other parts of funds’ governance? If yes, how?

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?

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?

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

Q16. Should Scheme regulations include a general provision enabling the scheme advisory board to advise Scottish Ministers 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?

Q18. What would be your preference be for establishing membership of the scheme advisory board?

Q19. Should Scheme regulations require the Scottish Ministers 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 Q16 to Q23 be left as matters for the scheme advisory board itself to consider and determine?

Q25. What other specific issues should SLOGPAG consider prior to the Board being established?

Q26. Under what circumstances should a Shadow Board be established prior to April 2015?

Q27. Do you agree that the scheme advisory board should be funded by a mandatory levy on all Scheme pension fund authorities? If not, what alternative approach would you propose?

Q28. How should the subscription vary by fund? Should it be a fixed fee for all funds or proportional to their membership?

Q29. 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?

Q30. What factors should be taken into account in a review of the structure of the Scottish LGPS?

Q31. Would it be preferable to retain a 'light touch' to governance in the Scheme regulations, with reference instead to a Governance Compliance Document which would contain the detailed governance requirements?

Please e-mail your response to logovpensionsreform@scotland.gsi.gov.uk or send via mail to:

LGPS Governance Consultation
SPPA Policy
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

The closing date for receipt of comments is **3 February 2014**.

Heads of Agreement - Scheme Governance proposals

The following details the governance proposals in the Heads of Agreement agreed by the Scottish Local Government Pension Scheme Advisory Group.

- The Public Service Pensions Act 2013 identifies 4 core governance related roles which must be established from 1 April 2015:
 - a. Responsible Authority – the Scottish Ministers who make the regulations for the LGPS (Scotland)
 - b. Scheme Manager – the function of managing and administering the scheme
 - c. Pension Board – the body responsible for assisting the Scheme Manager in relation to compliance with scheme regulations and the requirements of the Pensions Regulator
 - d. Scheme Advisory Board – the body responsible for providing advice to the Responsible Authority, at the authority's request, on the desirability of changes to the scheme. The Scheme Advisory Board also provides advice to the Scheme Manager and Pension Board in relation to the effective and efficient administration and management of the scheme.
- SLOGPAG recognises the critical role governance has in supporting the delivery of excellent LGPS performance and therefore encourages and supports good practice through open and transparent governance arrangements.
- SLOGPAG will review the governance arrangements within its agreed remit of developing a new Scottish LGPS. Topics for consideration will include, but are not limited to:
 - a. The structure of the 4 governance related roles identified by the Public Service Pensions Act 2013
 - b. The membership and constitution of the Scheme Advisory Board
 - c. Operation of the cost control mechanism
 - d. The requirements of the Pensions Regulator
 - e. Publication of scheme information
 - f. Relevant provisions in the Institutions of Occupational Retirement Provision (IORP)
 - g. Data collection
- SLOGPAG will discharge its duties, as defined in the 'Role of SLOGPAG' document agreed by SLOGPAG members in December 2012, and will then cease to operate.
- The Scheme Advisory Board will be established from 1 April 2015 and the establishment of a Shadow Scheme Advisory Board will be kept under review, but such a Shadow Scheme Advisory Board is anticipated to be beneficial from Autumn 2014 onwards.
- It is anticipated that the Scheme Advisory Board will be bilateral with an equal number of employer and employee representatives. There will be an independent chair and the size of the Board will be around 15 people. In addition, advisors and observers will also attend the Board but will not have membership status.
- SLOGPAG or the Shadow Scheme Advisory Board, as appropriate, will establish a process, commencing April 2014, to consult on, and collate data relevant to, a review

of the structure of the Scottish LGPS, in order for the Scheme Advisory Board to be in a position to complete such a review.