

**FALKIRK COUNCIL**

**Subject:** LOCAL GOVERNMENT PENSION SCHEME – GOVERNANCE ISSUES  
**Meeting:** PENSIONS COMMITTEE  
**Date:** 25 SEPTEMBER 2014  
**Author:** CHIEF FINANCE OFFICER

**1. INTRODUCTION**

- 1.1 This report provides the Pensions Committee with information regarding the governance arrangements that require to be put in place as a result of the Public Service Pensions Act 2013.

**2. CURRENT DEVELOPMENTS**

- 2.1 The Committee will be aware that the current round of pension reform began in 2011 with the publication of the Hutton report. This set out proposals for the establishment of a common UK-wide framework for public sector pensions in a bid to ensure that going forward the schemes were affordable, sustainable, fair and transparent. These proposals were carried forward in the Public Service Pensions Act 2013 (“the 2013 Act”).

- 2.2 The governance framework set out in the 2013 Act introduces some new concepts and terminology. For example,

- the Administering Authority (or its Pensions Committee) becomes the “Scheme Manager”
- there is an expanded role for the Pensions Regulator
- there will be a national Scheme Advisory Board for LGPS (Scotland) and a Pension Board for each Fund.

- 2.3 A Heads of Agreement on governance matters has been reached during the summer between COSLA and the Trade Unions. However, the statutory regulations underpinning the governance rules will not be available until early 2015. The key milestones in the production of regulations by the Scottish Public Pensions Agency (SPPA) are as follows:

<b>Key Event</b>	<b>From</b>	<b>To</b>
Consultation on Draft Regulations	16 October 2014	27 November 2014
SPPA review consultation comments	28 November 2014	19 December 2014
Final Drafting	5 January 2015	16 January 2015
Ministerial Sign off		27 January 2015

- 2.4 Given the regulatory timetable above, it is apparent that any consultation on the new arrangements will have to be undertaken in advance of final regulations being made. Whilst it is not ideal to undertake a governance review in advance of the statutory guidance, the strong expectation is that the final regulations will closely follow the terms of the Heads of Agreement.

2.5 A copy of the Heads of Agreement is attached at Appendix A.

### **3. ROLE AND REQUIREMENTS OF THE PENSION BOARD**

3.1 Under the terms of the 2013 Act, the role of the Pension Board is to assist the Scheme Manager to:

- secure compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme;
- secure compliance with requirements imposed by the Pensions Regulator; and
- undertake any such other matters as the scheme regulations may specify.

3.2 The 2013 Act also requires that:

- the Board has an equal number of employer and member representatives;
- the scheme manager is satisfied that a person to be appointed to the board does not have a conflict of interest; and that
- the scheme manager is satisfied from time to time that none of the members of the board has a conflict of interest.

3.3 The Heads of Agreement provides that the Pension Board will:

- have a minimum of 4 trade union and 4 employer representatives;
- meet concurrently with the Pensions Committee;
- have a constituency that reflects broad scheme membership numbers; and
- rotate the Chair of the Board annually between Union and Employer (which implies that the Board may choose to meet separately on occasion).

3.4 The fact that the Pension Board has a specific statutory role means that it is unlikely individuals will be able to be members of both the Pension Board and Pensions Committee. This has implications for the three co-opted members who currently sit on both the Panel and the Committee.

### **4. CONSULTATION PROPOSAL**

4.1 The key governance objective for the Fund in the coming months will be to establish its new pension board. This is a major undertaking for the Fund and will affect how Fund business is conducted in future. It is proposed, therefore, subject to the approval of the Pensions Committee, to consult Fund Employers and Trade Unions for their views as to how the new arrangements could best operate.

4.2 Whilst further questions may emerge, it would seem that any consultation should cover the following points:

- How many employer and trade union representatives should sit on the Board?
- How will employer and union representatives be selected
- What will the term of appointment be for Board members?

- How will the Board Chair be appointed (if there are equal member numbers)
- Should substitute Board members be permitted?
- Should non-Falkirk Council elected members continue to sit on the Pensions Committee? If so, is the current configuration of one employer, one union and one pensioner representative appropriate?
- Should an independent specialist be formally invited to sit on the Committee (such persons can only have observer status on the Board)

4.3 According to the Heads of Agreement, a model constitution setting out the administrative arrangements for Pension Boards is being drafted and is expected to be agreed during September, 2014.

## 5. PROPOSED CONSULTATION ACTION PLAN

5.1 It is proposed that the Fund's own consultation exercise should proceed broadly as follows:

Step	Activity	Lead	Provisional Target Dates
1	Await Pension Board model constitution	COSLA/ Unions	15 September 2014
2	Await first draft of governance regulations	SPPA	15 October 2014
3	Prepare and circulate consultation paper with draft Pension Board constitution	Falkirk	31 October 2014
4	Consultation period	Fund Employer/ Unions	1 November 2014 to 30 November 2014
5	Consultation comments to be considered and governance arrangements provisionally agreed at Joint meeting of Panel and Committee	Falkirk	11 December 2014
6	Await final governance regulations and check if provisional governance proposals meet regulatory requirements	SPPA	27 January 2015
7	Conduct selection process for Pension Board members	Falkirk/ Unions	1 February 2015 to 28 February 2015
8	Final ratification of arrangements at Pensions Committee	Falkirk	12 March 2015
9	Pension Boards formally set up	Falkirk	31 March 2015
10	First Board/Committee meeting	Falkirk	4 June 2015

## 6. SCHEME ADVISORY BOARD

6.1 A résumé of the new governance landscape would not be complete without mention of the national Scheme Advisory Board whose statutory role under the 2013 Act is to provide advice to the Scottish Ministers on the desirability of changes to the LGPS.

- 6.2 The Board may also be called upon to provide advice to the scheme managers or the pension boards in relation to the effective and efficient administration and management of the Scheme or its Funds.
- 6.3. In Scotland, the Scheme Advisory Board is expected to be based on the existing Scottish Local Government Pensions Advisory Group (SLOGPAG), except that, unlike SLOGPAG, which has Scottish Government representation, the Scheme Advisory Board will be a bipartite entity with representation from local government and trade unions only. The Scottish Government will however have observer status.
- 6.4 The Advisory Board is expected to have a key role in shaping the cost management arrangements to apply to the Scheme in Scotland.

## **7. CONCLUSION**

- 7.1 The Public Sector Pensions Act 2013 requires the pension fund to adopt new governance arrangements from 1<sup>st</sup> April, 2015. These have been expanded upon in a COSLA/Trade Union Heads of Agreement and will be incorporated within LGPS governance regulations to be made in January, 2015.
- 7.2 Consent is being sought from the Pensions Committee to conduct a consultation exercise with fund stakeholders in the coming months to ensure that a pensions board is established for 1<sup>st</sup> April, 2015 and that the fund is compliant with the relevant legislation.

## **8. RECOMMENDATION**

### **8.1 The Pensions Committee is invited:**

- i) to note the revised governance arrangements that require to be established by 1 April 2015;
- ii) to agree to the proposed consultation arrangements; and
- iii) to comment on any other matters raised in the report.

**Chief Finance Officer**

**Date: 12 September 2014**

**Contact Officer: Alastair McGirr**

### **LIST OF BACKGROUND PAPERS**

NIL

**HEADS OF AGREEMENT**

**Introduction**

The UK Public Service Pensions Act sets out new governance requirements for pension funds across the UK, implementing the Hutton recommendations. The SPPA has recently consulted on new arrangements and SLOGPAG has considered the responses and the views of key stakeholders. This paper sets out the Heads of Agreement for a new governance structure in Scotland.

It is recognised that governance arrangements will be subject to on-going review to reflect changes in, or interpretation of, legislation and best practice. For example, interpretation of the current legal requirements of the Institutions for Occupational Retirement Provision (IORP) Directive and any changes as a result of the new proposed IORP Directive. The Heads of Agreement for the new scheme (agreed in December 2013) also sets out the process for a wider review of structures which could impact future governance arrangements.

It is also recognised that these arrangements will be subject to the views and agreement of Scottish Ministers.

**Scheme Advisory Board**

The Scheme Advisory Board is the body responsible for providing advice to the Responsible Authority (Scottish Ministers), on the desirability of changes to the scheme. The Scheme Advisory Board also provides advice to the Scheme Managers and Pension Boards in relation to the effective and efficient administration and management of the scheme.

The new scheme advisory board is not a big change in Scotland as we have had a similar body in SLOGPAG for many years. The main elements of the Scheme Advisory Board should be as follows:

- It will be a bipartite body with representatives from local government employers and trade unions. The Scottish Government will be present as observers.
- There will be 7 employer and 7 trade union representatives. Substitute representatives will be available and will have undergone the requisite training and development to inform their role.
- The Chair will be rotated on an annual basis or an independent Chair may be appointed by Scottish Ministers.
- The secretariat will be provided by two Joint Secretaries, appointed from COSLA and the Trade Unions.
- Advisors e.g. Directors of Finance will also attend the Board but will not have membership status.
- Observers e.g. Scottish Government will also attend the Board but will not have membership status.

## Pension Boards

Pension Boards will be established covering each fund in Scotland and will be the body responsible for assisting the Scheme Manager in relation to compliance with scheme regulations and the requirements of the Pensions Regulator.

The consultation process indicated a difference between the employer and trade union views on having pension boards in addition to the current structure or merging them into one board. A hybrid solution has therefore been agreed that would retain the pension committee of the administering authority with membership appointed under current arrangements and responsibility for fund management.

While the roles and function of pension committees and pensions boards will be set out in the regulations, the normal practice would be that both bodies would meet at the same time to consider the same agenda, with the Chair of the pension committee chairing the concurrent meeting. This innovation will result in a positive and proactive partnership culture where in practice the two bodies act as one.

New pension boards would also be established as follows:

- Membership would consist of equal numbers of trade union representatives and employers drawn from other councils and scheduled or admitted bodies in membership of that fund.
- As a minimum there will be 4 trade union and 4 employer representatives with the expectation that larger funds will require greater numbers. Numbers from organisations on either side will broadly reflect respective membership in the scheme.
- The Chair will be rotated on an annual basis.
- The secretariat will be provided jointly from the pension fund and the local trade union representatives.
- Advisors and observers will also attend the Board but will not have membership status

There will be a model constitution setting out the administrative arrangements for pension boards. Representatives of employers and trade unions will define the local parameters in addition to the model constitution. If there is difficulty in agreeing those local parameters, the Scheme Advisory Board can act as a point of resolution.

The pension board will determine the areas they wish to consider including, amongst others:

- Reports produced for the pensions committee
- Requisition reports from the scheme managers on any aspect of the fund
- Monitor investments and the investment principles/strategy/guidance
- The fund annual report
- External voting and engagement provisions
- Fund administrative performance
- Actuarial reports and valuations
- Funding policy
- Any other matters that the pensions board deem appropriate

If the pension committee and pension board cannot reach joint agreement on any matter the process for resolving any differences between the two bodies will be as follows. Whilst this process is undertaken the decision of the pension committee is still competent.

In the first instance, if at least half of the members agree, then the pension board can refer back a decision of the pensions committee for further consideration if any of the following grounds are met:

- That there is evidence or information which it is considered needs re-evaluating or new evidence or data which the pensions Committee did not access or was not aware of at the point of decision making and which is considered material to the decision taken;
- That the decision of the pensions Committee could be considered illegal or contrary to regulations;
- That the decision of the pensions Committee is contrary to a relevant Code of Practice published by the Pensions Regulator; or
- That the decision is not in the interest of the continued financial viability of the Scheme or is against the principles of proper and responsible administration of the Scheme

If there is no agreement after the matter has been referred back to the pensions Committee, then the difference in view between the Pension Board and the Pension Committee should be published in the form of a joint secretarial report on the fund website and included in the fund annual report.

It may then be appropriate for the Scheme Advisory Board to consider and take a view on the matter and, if considered appropriate, to provide advice to the Scheme Manager or the pension board in relation to the matter.

There will be an agreed training programme for all members of pension committees and pension boards. All administration costs will be met by the relevant fund.

The structure is shown diagrammatically below.

