

PENSION FUND COMMITTEE – 5 DECEMBER 2014

BETTER GOVERNANCE AND IMPROVED ACCOUNTABILITY IN THE LOCAL GOVERNMENT PENSION SCHEME

Report by the Chief Finance Officer

Introduction

1. In October 2014, the Department for Communities and Local Government (DCLG) published its second consultation paper on the future governance arrangements for the LGPS. Responses were required within a 6 week period which closed on 21 November 2014. This paper sets out the key issues arising from this consultation document.
2. Under the same timescale, the Local Government Pension Scheme (LGPS) Shadow Scheme Advisory Board issued a consultation document providing guidance on the implementation of the new governance arrangements. Where appropriate, key elements of this guidance are discussed below.

Key Issues within the Consultation Documents

3. The consultation document from DCLG has re-confirmed many aspects of the initial consultation on the establishment of Local Pension Boards. It will be a statutory requirement under the Public Services Pension Act 2013 for each Administering Authority to establish a Local Pension Board by 1 April 2015. The guidance clarifies that by 1 April 2015, each Administering Authority must have approved the establishment of the Board, its constitution and terms of reference. However, the appointment of the members of the Board, can follow, with an expectation that the Board holds its first meeting within a period of 4 months of establishment i.e. by the end of July 2015.
4. The role of the Board is re-confirmed as to assist the Administering Authority:
 - (a) To secure compliance with:
 - i. LGPS Regulations
 - ii. Other relevant legislation
 - iii. The requirements of the Pensions Regulator
 - (b) To ensure the effective and efficient governance and administration of the Scheme.
5. The latest Regulations have determined that the Administering Authority will not be bound by the terms of the Local Government Act 1972 when

establishing the Board. Instead it will have greater flexibility in determining the constitution and terms of reference to suit the purpose of the Board.

6. DCLG have removed from the latest draft the restriction on elected members being appointed as employer representatives on the Board. Instead, they have introduced a new restriction to ensure that no elected Member or Officer responsible for the discharge of any function under the LGPS Regulations can be a member of the Board. The current wording is unclear on whether this restriction is limited to serving on the Board for the Administering Authority for whom you are responsible for the discharge of any function, or to serving on any Board. If the latter, this would restrict elected Members and Officers of one Fund sitting on the Board of a neighbouring Fund to ensure provision of the appropriate levels of knowledge and understanding. Several responses to the consultation have sought clarification on this point.
7. The consultation retains the requirement for equality of membership between employer representatives and scheme member representatives (re-stated from the initial employee representatives which could have been seen to exclude deferred and pensioner members). Minimum numbers are 4, comprising 2 representatives of both employers and scheme members. The latest draft has removed the explicit provision to appoint other members, and again, a number of consultation responses have sought clarification on this point. The guidance consultation does make the point that the latest draft regulations do not prohibit the appointment of other members.
8. The only other key point in respect of the latest draft is that it is silent on the issue of seeking approval for a Joint Local Pension Board where the functions of multiple Administering Authorities have been delegated to a Joint Committee. Advice from DCLG and the Local Government Association (LGA) has indicated that this will form part of the final Regulations.
9. The latest draft regulations also introduce the arrangements for capping the future costs of the LGPS. Two separate models are introduced. Under the draft regulations for the Treasury's Employer Cost Cap, the Secretary of State will have to intervene if the future costs of the scheme move by more than 2% either side of the employer cap (which itself is yet to be determined). If the Employer Cost Cap is breached, the Secretary of State will need to consult the LGPS Scheme Advisory Board on any proposals for restoring the financial position. If after a 3 month period following such consultation no agreement has been reached, the draft regulations require the Secretary of State to restore the financial position by making adjustments to the scheme accrual rate.
10. The second cost mechanism is the Internal Cost Management Arrangement, which seeks to maintain an overall future scheme cost of 19.5%, funded in the ratio 2:1 by the employer and employee contribution rates. The LGPS Scheme Advisory Board will need to determine its policy as to what leeway it allows before it seeks to intervene, and the process by which it will make recommendations to the Secretary of State.

11. The draft Regulations make it clear, that the Treasury Employer Cost Cap mechanism takes precedence over the Internal Cost Management Arrangement in the event that both mechanisms trigger a review.

Next Steps

12. It will be the role of this Committee to determine the constitution and terms of reference for the new Local Pension Board (except in the event of an early decision to establish a Joint Committee to undertake the responsibilities of this Committee).
13. The draft guidance documentation includes the following issues to be included in the constitution and terms of reference:
 - (a) Membership. In determining size, the Committee will need to consider the size of the fund and the wish to ensure adequate representation across the various employer and scheme member groups, the costs of establishing and operating the Board, and issues associated with substitution arrangements, quorum and the need to ensure appropriate knowledge and understanding.
 - (b) Appointment Process. This will need to ensure equality of opportunity to be nominated as a representative, as well as truly representative Board. Unison's Regional Manager has written to express Unisons view that fund member representatives will be nominated by local trade unions, who will be able to provide the training and support to the nominees to undertake their role.
 - (c) Appointment of Other Members, including the merits of the appointment of an independent chairperson.
 - (d) Terms of Office, the option for renewal for further terms, and the wish to stagger terms so that the Board retains some experience, knowledge and understanding during a period of new appointments.
 - (e) Code of Conduct and Conflict of Interest Policies and the arrangements for the termination of a term of office outside the normal arrangements.
 - (f) Functions of the Board. The guidance has indicated that the role to assist the Administering Authority can be seen as a much wider role than a simple scrutiny function, and the Board could take on specific roles to assist the Committee in undertaking its responsibilities, although final decisions would always lie with the Committee.
 - (g) Voting arrangements.
 - (h) Appointment of a Chair or Vice Chair if not covered by the nomination of an independent member.
 - (i) Role of Advisors and Officers, including any requirement for separate independent advice.
 - (j) Frequency of meetings, process for the publication of papers etc
 - (k) Quorum for meetings, and whether that is set as a single number or in terms of minimum numbers of representatives from both employers and scheme members.
 - (l) Whether the Board will allow attendance of Substitutes, and if so, how they would be selected, and how they would indicate their ability to

meet the knowledge and understanding requirements of Board Members.

- (m) Budget for the Board, including any arrangements for the payment of Allowances and Expenses.
- (n) Reporting requirements – to the Administering Authority, Pensions Regulator and wider stakeholders, and whether there will be a requirement for an annual report of the work of the Board.

14. The Committee need to consider whether they have any views on the issues identified in points (a) to (n) above, and subject to these, whether they are happy for Officers to prepare a draft constitution and terms of reference for approval at their next meeting, or to what extent they wish to be involved either as a full Committee or a smaller working group in preparing such drafts.

RECOMMENDATIONS

15. **The Committee is RECOMMENDED to:**

(a) note the key issues set out in the latest consultation documents; and

(b) determine the process for preparing the draft constitution and terms of reference for the new Local Pension Board, to be considered and agreed at the March meeting of this Committee.

Lorna Baxter
Chief Finance Officer

Background papers: Better Governance and Improved Accountability in the Local Government Pension Scheme - Consultation Document published by the Department for Communities and Local Government October 2014

The Local Government Pension Scheme - Governance Guidance Consultation Document published by the LGPS Shadow Scheme Advisory Board October 2014.

Contact Officer: Sean Collins, Service Manager (Pensions), Environment & Economy
Tel: (01865) 797190

November 2014