

## **PENSION FUND COMMITTEE – 5 SEPTEMBER 2014**

### **DRAFT REGULATIONS ON SCHEME GOVERNANCE**

#### **Report by the Chief Finance Officer**

#### **Introduction**

1. The Public Service Pensions Act 2013 includes a requirement for the Department of Communities and Local Government (DCLG) as the responsible authority for the Local Government Pension Scheme to make regulations establishing a national scheme advisory board, and to enable each Administering authority to establish a local pension board. DCLG published these draft regulations in mid-June with an 8 week consultation period, closing on 15 August 2014. This report details the key elements of the draft regulations, and includes at Annex 1 a copy of the consultation response submitted by the officers.

#### **Draft Regulations**

2. The key elements within the draft regulations are:
  - The role of the local Pension Board is to assist the Administering Authority to secure compliance with the LGPS regulations, and other legal and regulatory requirements, and generally to ensure the efficient and effective governance and administration of the LGPS
  - Boards must be in place by 1 April 2015
  - Boards must comprise an equal number of employer and employee representatives, with a minimum of 2 each.
  - Elected members of local authorities cannot be either employer or employee representatives
  - The employer and employee representatives must form the majority of the Board. Elected members can sit on the Board as other members, as long as other members remain the minority of total Board membership.
  - The Administering Authority must satisfy itself that the employer and employee representatives have relevant experience and capacity to represent employers/employees as appropriate. Board members must also acquire appropriate knowledge and understanding of pension matters.
  - The Administering Authority can seek Secretary of State approval to allow the Pension Fund Committee (the scheme manager as defined under the 2013 Act), and the local Pension Board to act as a single, dual function body.
  - The Administering Authority must make arrangements to satisfy itself that the members of the Pension Board do not have a conflict of interests as defined by the 2013 Act, and to then monitor conflicts of interest over time.

- The costs of the establishment of the Local Pension Boards are to be treated as an administrative cost and be charged to the Pension Fund and be recovered through employer contributions.
  - In fulfilling their responsibilities, the Administering Authority must have regard to guidance to be issued by the Secretary of State.
  - The draft consultation offers two legal avenues for the establishment of the Pension Boards. They can be established as if they were a committee under Section 101 of the Local Government Act 1972, or they can be established directly under these Regulations which would provide the Administering Authority greater flexibility in determining voting rights, the establishment of sub-committees, formation of joint committees, substitution arrangements and remuneration/payment of expenses for Board members.
  - The role of the Scheme Advisory Board is to provide advice to the Secretary of State on the desirability of making changes to the scheme, and to provide advice and assistance to administering authorities and local pension boards.
  - The Chair of the scheme advisory board will be appointed by the Secretary of State, with further members (minimum of 2 maximum of 12) to be appointed by the Chair with the approval of the Secretary of State, who is required to ensure fairness in appointing employer and scheme member representatives.
  - The costs of the scheme advisory board will be re-charged across the administering authorities.
3. Not covered specifically in the draft regulations, but raised as an issue in the Consultation document is the concept of administering authorities sharing a Pension Board. This is likely to be seen as the exception, requiring Secretary of State approval, based on the sharing of the administration and management of the funds e.g. through the establishment of a Joint Committee.

### **Key issues for consideration:**

4. Given the different legal basis of the Pension Fund Committee and the Pension Boards, it is difficult to envisage how these could reasonably act as a single entity (Committee to reflect the political balance of Council, the Board to have a majority of non-elected members acting as employer/employee representatives, inability of County Council staff to act as an employee representative as cannot be a member of the Pension Committee of the Council). This point has been included in the consultation response, alongside a preference for option two for the legal basis for the establishment of the Pension Board. Option two provides greater flexibility in dealing with the different requirements of Board membership etc.
5. Does the current Constitution delegate responsibility for the establishment of the Pension Board to the Pension Fund Committee or does it sit with full Council? N.B. Pension Fund issues are specifically excluded from the remit of Cabinet).

6. Whilst the Administering Authority is responsible for the processes for the selection and removal of Board members, what role if any should be given to the remaining employers in the Fund?
7. Is it reasonable for membership of the Board to be drawn exclusively from employers outside the County Council, and is there a requirement to review the current membership of the Pension Fund Committee (9 County Councillors, 2 District Councillor representatives plus 1 non-voting beneficiary's representative).
8. What role (if any) should the unions have in establishing the process for selecting employee representatives?
9. The business case for potential future collaborative operating models with Buckinghamshire and Berkshire Pension Funds (see agenda item 14) includes the option to establish a single Joint Committee to which each of the three administering authorities would delegate their responsibilities in respect of the LGPS. If this was to become the preferred option, should we be looking to establish a joint Pension Board with Buckinghamshire and Berkshire, and seeking Secretary of State approval early enough to avoid the need to create 3 Pension Boards by the 1 April 2015 deadline? This point has also been included in the consultation response, along with the need to relax the timescales if the Joint committee cannot be in place until later in 2015/16.
10. Once established, what resources will be required to support the operation of the Board, both in terms of secretariat support and professional advice? Is there a need to ensure that such support is independent from that support and advice provided to the Pension Fund Committee?

## **Consultation Response**

11. As the consultation period ended before this Committee meeting, the consultation response was drafted by officers following a short briefing with the Chairman of the Committee. Officer comments included those from legal and democratic services as well as finance.
12. Apart from the two points noted in paragraphs 4 and 9 above in respect of the separation of the Pension Committee and the Pension Board, and the option to establish Joint Pension Board where a Joint Committee is established other points raised were:
  - We could see no reason for the blanket exclusion of elected members from representing either employers or employees, and invited DCLG to re-consider this point, whilst ensuring independence from the members of the Pension Fund Committee itself
  - Whilst welcoming the requirement that Board members should be properly qualified to undertake the role, early publication of the guidance defining relevant experience, capacity, knowledge and understanding is vital in ensuring sufficient time is available to identify the initial set of members.

- We would support the view that Members of the Pension Committee should be subject to the same requirements in respect of knowledge and understanding as members of the Board. Currently there are no requirements in respect of members of the Pension Committee.
13. At this stage, this Committee needs to offer any views on the issues raised above, so that planning for the Pension Board can be undertaken as soon as the final Regulations are published.

## **RECOMMENDATIONS**

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

- (a) note the details of the consultation document and the response at Annex 1; and**
- (b) offer any comments on the key issues raised in this report to support the initial planning work for the creation of the new Pension Board.**

Lorna Baxter  
Chief Finance Officer

Background papers: None  
Contact Officer: Sean Collins, Service Manager, Pensions Tel: (01865) 797190

August 2014

## Annex 1 – Consultation Response

LGPS Governance Regulations 2014  
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My Ref: SJC/September 13

Your Ref:

26 August 2014

Dear Sandra

### **Draft Regulations on Scheme Governance - Consultation**

The following are the views and comments of the officers of Oxfordshire County Council on the consultation on the Draft Regulations on Scheme Governance. Due to the short consultation period falling between the regular quarterly meetings of the Oxfordshire Pension Fund Committee, it was not possible to have this response endorsed by the Committee, but it will be shared with them when they meet on 5 September 2014.

We note in Regulation 106(1) the requirement to establish a Pension Board by 1 April 2015. At their meeting on 6 September 2014, the Committee will be considering a paper on the potential to create a Joint Committee with the Pension Funds of Buckinghamshire and Berkshire. If it is agreed to consult on such a proposal, and following such consultation, to take forward the creation of a Joint Committee, it is unlikely that the Joint Committee will be in place by 1 April 2015, but could follow soon afterwards. In such circumstances, the three Administering Authorities of Buckinghamshire, Berkshire and Oxfordshire would be looking for some flexibility under Regulation 106 (1) to delay the establishment of a pension board, so a single Joint Pension Board could be established to assist the Joint Committee in meeting its responsibilities. In the absence of any flexibility under Regulation 106 (1), the three Administering Authorities would be required to establish individual Pension Boards which may only be required to meet once before being closed down.

In respect of Regulation 106(2), we note the comments contained in paragraphs 3.1 and 3.2 of the consultation letter, and agree that there are serious practical issues in establishing the functions of the Pension Board to be undertaken by the Pension Fund Committee. We also believe that such an arrangement would provide a clear

conflict of interest, and fail to ensure sufficient scrutiny and challenge of the decisions made by the Pension Fund Committee. We therefore do not believe the Regulations need to make such provision.

Of the two options offered under Regulation 106(5), we would support the second alternative. Given the membership requirements of the Pension Board, there are a number of issues in respect of voting rights and compliance with Local Government Law on political composition of Committees which the flexibility of option 2 would overcome. We would leave the Regulation as drafted, rather than seek to over-complicate the regulation by including too many specific exclusions or inclusions.

We are unclear on the basis of the decision under Regulation 107 (2) (a) not to allow a member of a local authority to be appointed as an employer or employee representative on the Board. We understand the need to avoid the conflict of interest which could arise where a member of the Pension Committee also sat on the Board. However we see no reason why other members of a local authority, whether members of the administering authority or one of the other local authority employers within the Fund, should not sit as representatives on the Board. Indeed, members of the Council sit on the Oxfordshire Joint Consultative Committee representing the Council as an employer, alongside Union nominees as representatives of the employees, and may be best placed to act as an employer representative. We would like to see an amendment to Regulation 107 (2) (a) to enable members of a local authority, independent of the members of the Pension Fund Committee, to act as employer or employee representatives on the Pension Board.

We welcome the requirement that members of the Board should be properly qualified to undertake the role. We would welcome early publication of the guidance setting out the definitions of relevant experience and capacity to undertake the duties and responsibilities. Similarly we would welcome early publication of the definitions of the knowledge and understanding required to undertake the role. Delay in publication of the guidance will hamper the process to establish the Pension Board in accordance with the timescales set in the Regulations. In respect of paragraphs 3.18 and 3.19 we would support a change in the current Regulations to ensure that the Members of the Pension Fund Committee are subject to the same requirements in respect of knowledge and understanding.

In terms of the other connected policy issues, we would comment as follows. As noted above, Oxfordshire is in discussions with Buckinghamshire and Berkshire Pension Funds about the benefits of setting up a Joint Committee to which each of the three Administering Authorities would delegate their full responsibilities under the LGPS Regulations. We would argue strongly that in such circumstances, the three Administering Authorities can also establish a single Joint Pension Board. We would accept that the majority of responsibilities under the Pension Regulations must be delegated to a Joint Committee in order to seek to establish a Joint Pension Board. In line with the draft regulation 106 (2) we would suggest any proposal for a Joint Pension Board must be approved by the Secretary of State, after taking advice from the Scheme Advisory Board and/or Pension Regulator as appropriate.

We have no strong opinion on any additional provision required in respect of Regulation 113 and the funding of the Scheme Advisory Board. We would though

look for complete transparency over the costs and expenses of the Scheme Advisory Board so that each Administering Authority can satisfy itself of the appropriateness of the costs it is being asked to meet.

Oxfordshire Pension Fund does hold an annual forum to which all employers are invited. We see this as a matter of good practice. We do not have a strong view as to whether there needs to be a regulatory requirement to ensure all funds offer the same opportunity to their employers.

We hope this comments are helpful in developing the final Regulations and we look forward to early publication of these and the associated guidance.

Yours sincerely

Sean Collins  
Services Manager (Pensions)