

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Pension Fund Panel
Decision:	26 September 2014
Title:	Implementation of the Pension Board - update
Reference:	6076
Report From:	Director of Corporate Resources – Corporate Services

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1. Executive Summary

- 1.1. This report provides an update for the Panel following the submission of the response to the Government's consultation on draft amendments to the Local Government Pension Scheme (LGPS) Regulations, including the introduction from 1 April 2015 of Pension Boards.
- 1.2. The work to produce Hampshire County Council's response to the Government's consultation has identified a number of issues with the draft regulations which are described in this report along with the timeline of meetings for decisions that may be required to implement the Pension Board. These issues have been highlighted to the Government in the consultation response along with the challenges that they present given the proposed implementation date of 1 April 2015.

2. Background

- 2.1. The Government published its consultation on draft amendments to the Local Government Pension Scheme (LGPS) Regulations on 23 June 2014 with responses to be made by 15 August 2014. As agreed by the Panel at its last meeting in July 2014 Hampshire County Council's consultation response was agreed by the Chairman and submitted by the Government's deadline. For information the consultation response is included as Appendix 1.

3. Implementation of the Hampshire Pension Board

- 3.1. The key implication of new regulations in their draft form is the requirement to create a local Pension Board by 1 April 2015. The analysis that took place in order to respond to the consultation highlighted a number of issues with the draft regulations. The clarification of these issues, which will hopefully come in the Government's final regulations, is critical before the work to finalising the composition of the Hampshire Pension Board, and finding and appointing Board members. Further consultation and guidance has been promised by the Shadow Scheme Advisory Board in early October 2014, but this will be based on the Government's draft regulations, not the final regulations.
- 3.2. **Legislative establishment of the local Pension Board** – The Government's draft regulations provide two options for the establishment of Pension Boards:
- as a committee under Section 101 (S101) of the Local Government Act 1972, or
 - at the discretion of the administering authority to establish the procedures for the Board's operation.
- 3.3. As a S101 committee the Pension Board would have a number of restrictions imposed upon it by the existing legislation, such as:
- having to be proportionally constituted with the political group with the majority of council seats having a majority of Board seats
 - preventing officers of Hampshire County Council and other linked authorities where the County Council can make member appointments, from serving on the Board.
- 3.4. These restrictions appear to make it impossible for a Pension Board created as a S101 committee to comply with the draft regulations of having an equal number of employer and scheme member representatives on the Pension Board, unless a number of amendments are made to the S101 requirements.
- 3.5. **Role of elected members** – The Government's draft regulations specifically exclude elected members from being either employer or scheme member representatives but they can be a minority group on the Pension Board. For example the draft regulations state there must be a minimum total of four employer and scheme member representatives, therefore in this example there could be up to three elected members also on the Pension Board. This would appear to create a number of issues such as making it difficult for local Pension Boards to engage with the largest employers in the scheme, which are political organisations with elected members; and creating a perceived imbalance on the Board if elected members are seen to be another form of employer representative.
- 3.6. **Definition of scheme member** – According to the Government's draft regulations the Pension Board must have an equal number of employer

and scheme member representatives, which must number at least four in total. The draft regulations do not define what is meant by scheme member e.g. does it include pensioners, deferred members and active employee members?

4. Timeline for next steps

- 4.1. The creation of the Hampshire Pension Board requires the approval of the full County Council as the administering authority of the Hampshire Pension Fund. To facilitate the establishment of the Board by April 2015 it is proposed to take a report to Cabinet on the proposals for the establishment of the Board as soon as practically possible so that Cabinet can make a recommendation to the full County Council. The Pension Fund Panel will also be kept informed of the reports being taken to Cabinet and the County Council.
- 4.2. Depending on whether the Pension Board is a S101 committee there may need to be a two stage approval process by the full County Council; firstly to create the Board and secondly to approve the members appointed to it. The dates of the remaining Cabinet meetings and County Council meetings for the remainder of 2014/15 are shown in the table below.

Cabinet	Next County Council meeting
27 October 2014	27 November 2014
15 December 2014, 26 January 2015, or 6 February 2015	19 February 2015
23 February 2015, or 23 March 2015	Dates after April 2015 have not been finalised

- 4.3. The timings of the meetings above show that it is critical that the Government produces its final regulations along with any necessary guidance as soon as possible otherwise there is the risk an implementation date of 1 April 2015 cannot be met. As highlighted in the previous section the Government's final regulations are needed before final decisions can be made as to how the membership of the Pension Board will be made up and the significant task of finding and appointing Board members takes place.
- 4.4. Whilst the Government is producing the final regulations the Director of Corporate Resources' staff, officers from Legal Services and the Monitoring Officer will continue work in drafting the terms of reference for Pension Board and other necessary governance documents.

5. Recommendation

- 5.1. That the Panel note the contents of this report.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision by the Pension Fund Panel to approve the annual report on Pension Fund cash for 2012/13.
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Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Direct links to specific legislation or Government Directives		
<u>Title</u>		<u>Date</u>

Section 100 D - Local Government Act 1972 – background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

1.3. At this stage in the creation of the Hampshire Pension Board there are not considered to be any Equality Impacts. Equality considerations will need to be taken into account at the point that the County Council considers how to find representatives to be members of the Pension Board.

2. Impact on Crime and Disorder:

2.1. The proposals in this report are not considered to have any direct impact on the prevention of crime.

3. Climate Change:

a) How does what is being proposed impact on our carbon footprint / energy consumption?

No specific impact.

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No specific impact.

Hampshire County Council as administering authority of the Hampshire Pension Fund

Response to the Government consultation on Draft Regulations on Scheme Governance

Overview

The Hampshire Pension Fund is the ninth largest of the 89 Local Government Pension Schemes ('LGPS') funds in England and Wales, with a value of £4,600 million, over 136,000 contributors, pensioners and deferred members, and 303 employers with active members. The Hampshire Pension Fund is a well governed and administered fund. Responsibility for the management of the fund by the County Council is discharged through the Pension Fund Panel, which is a committee of the County Council and includes broad representation from the Fund. Within the County Council's own governance structure the Pension Fund Panel is subject to oversight by the Audit Committee. The Pension Fund Panel is made up of the following members, all with voting rights:

- 9 County Councillors
- 2 Councillors, 1 from each of the Unitary Authorities in Hampshire
- 2 Councillors, nominated from the 11 District Councils in Hampshire
- 1 pensioner representative
- 1 employee representative.

The Panel is advised by the officers of the County Council, plus an Independent Advisor. The Panel considers its own knowledge and skills very seriously. Panel members carry out their own training needs analysis, taken from CIPFA's Knowledge and Skills Framework, and attend a variety of internal and external training events.

The County Council as the administering authority for the Hampshire Pension Fund welcomes the opportunity to comment on the Government's consultation paper.

Responses to invitations to comment in the Government's consultation are included in the following paragraphs.

1. General feedback on Pension Boards

- 1.1. As demonstrated by the composition of its Pension Fund Panel above, Hampshire County Council believes that it has already achieved a good mix of representation on the committee responsible for managing the LGPS in Hampshire and has a sufficient oversight function built into its Constitution. It is therefore not clear what the benefit is to the Hampshire Pension Fund of a Pension Board, which will undoubtedly add an additional layer of cost and bureaucracy to the Fund, at a time when significant efforts are being made to make efficiencies and streamline processes.
- 1.2. If the Government does proceed with the implementation of local Pension Boards as outlined in the draft regulations it is suggested that the role of

elected members is reconsidered. In particular the Government should reconsider the draft regulations that provide that elected members cannot represent employers and consider the implications that this may have for local government organisations in creating a body that may include officers of organisation scrutinising the decisions of elected members in the management of the pension fund.

2. Whether the Regulations should include a provision to allow a single, dual function body to carry out the functions of both a section 101 committee established by the administering authority to manage and administer the Scheme and those of a local pension board.

2.1. The preamble to this question in the consultation document highlights the difficulties that may be encountered by a fund trying to combine in a single body its management of the fund and the role of a Pension Board, such as composition and member training, to which should also be added managing conflicts of interest. It seems reasonable to expect that most, if not all administering authorities, would establish a separate Pension Board, which is the approach that Hampshire County Council plans to take.

2.2. However in line with encouraging local decision making, individual funds should be given as much flexibility as possible in how they implement Pension Boards, which should include combining the management of the fund and Pension Board. The Government should consider if there is a less bureaucratic way, other than Secretary of State approval, that funds can demonstrate that they have a robust plan in place to overcome the challenges of combining the management of the fund and role of the Pension Board.

3. Establishment of Pension Boards as either:

- a) **Option 1 - as if it was a committee under section 101 of the Local Government Act 1972, or**
- b) **Option 2 - discretion on administering authorities to establish the procedures applicable to a local pension board.**

3.2. Establishing local Boards as committees of Local authorities under S101 of the Local Government Act 1972 would not be a viable option without a number of amendments to the S101 regime for the following reasons.

3.3. Sections 80 and 104 (1) of the Local Government Act 1972 provide that officers of the County Council cannot be members of County Council committees and also restrict the possibility of officers of other councils being members of County Council Committees where the County Council appoints members of those councils e.g. The New Forest National Park Authority or where the County Council operates joint committees with other authorities. As the regulations provide that elected members can't be employer or member representative on the Board unless they are amended these provisions would therefore restrict the pool of available employer and member representatives still further particularly given the requirement for members of the local Board to have relevant experience.

- 3.4. Section 101 Committees have to be proportionally constituted. Section 15 (5) (b) of the Local Government and Housing Act 1989 provides that the majority of seats on any council committee must be allocated to the political group that has a majority of that authority's membership. This directly contradicts the provisions of Regulation 107 (3) which provide that the non elected member employer and member representative must exceed the number of other members otherwise appointed to the Board.
- 3.5. Section 13 (4) (fb) of the Local Government and Housing Act 1989 attempts to address the issue of voting rights for co-opted members. However it only provides that co-opted members of a scheme management committee or a joint scheme management committee/local Board have voting rights. It does not give voting rights to co-opted members of stand alone local Boards.
- 3.6. Giving administering authorities the discretion to establish local Pension Boards as they see fit (option 2), would therefore seem a better option as for example a local authority could choose to adopt the majority of the S101 governance regime excluding only those elements that have been highlighted above. This may allow enough flexibility for Councils to find appropriately qualified Board members within the proposed restrictions. The Government does however need to give clear guidance as soon as possible on whether or not Pension Boards are to be set up under S101 powers or not, as this is a significant determining factor for administering authorities and needs to be understood before large elements of the work to implement Pension Boards can be undertaken before the 1 April 2015 deadline.
- 3.7. On the subject of the timing of the introduction of Pension Boards given that the Government has not published the final regulations, we urge that the implementation date of 1 April 2015 is reconsidered, and pushed back to allow a reasonable amount of time following the publication of the new regulations for implementation. The Government should also ensure that the eventual regulations provide the necessary clarity for administering authorities. As an example of the current ambiguity does the proposed requirement for 'scheme member' sitting on Pension Boards include current contributing members, deferred members and pensioners, if so do all three groups need to be represented?

4. What additional provision needs to be made to Regulation 113 for the Scheme Advisory Board's funding

- 4.1. As the purpose of the national Scheme Advisory Board is to advise the Secretary of State on changes to the scheme it would be more appropriate for Central Government to fund its operation, rather than making this an administering expense of the LGPS as the draft amendment to regulation 113(1) suggests.
- 4.2. Layering additional costs onto the LGPS would not appear to be consistent with the Government's, and individual funds', efforts to reduce costs and make efficiencies that contribute to improving funding ratios within the LGPS, particularly given that individual funds will have to bear the cost of their Pension Board with no clear cut benefits.

5. Whether the Regulations need to provide for shared local pension boards and, if so, what test, if any, should be applied.

- 5.1. In line with the Government's recent decision as part of the proposals on opportunities for collaboration, costs savings and efficiencies in the LGPS, not to merge local pension funds, the default position that there should be one Pension Board for each fund is correct. It is the intention of Hampshire County Council in its plans to implement a Pension Board that its Board would only serve the Hampshire Pension Fund.
- 5.2. However, again in line with encouraging local decision making, individual funds should be given as much flexibility as possible in how they implement Pension Boards, including sharing Pension Boards with other authorities. The onus must be with the authorities involved to demonstrate that any shared arrangements had the capacity and accountability to manage with the number of funds that they covered. This should be demonstrated to each organisation's internal and external auditors. It seems unnecessary for there to be any additional oversight by the Scheme Advisory Board or Secretary of State on this matter.

6. Whether the Regulations should require administering authorities to facilitate a forum for both employers and employees on at least an annual basis.

- 6.1. The Hampshire Pension Fund has held an Annual Employer Meeting (AEM) since 1999, to which all of the Fund's employers (currently 303) are invited. This is an important forum for the Fund to pass key messages to employers and for employers to ask questions of those governing and administering the Fund. Hampshire can confirm that it is one of the funds that receives positive feedback from the employers attending its AEM.
- 6.2. Hampshire uses a number of different means and opportunities to communicate with scheme members, which are outlined in its Communication Policy Statement, and focus where possible on electronic means. For a Fund of Hampshire's size communicating with over 136,000 members is a significant task.
- 6.3. The Government should consider communication with all scheme members (active, deferred and pensioners), rather than 'employees' and should ensure that legislation or guidance is proportionate to the scale involved, i.e. even if the take-up was very low, arranging face-to-face forums for scheme members is simply not practical.
- 6.4. The existing statutory guidance should be sufficient direction for LGPS funds, with any not following the guidance being able to explain why not.

7. The appropriateness and practicality of the Scheme Advisory Board having regard to the Equality Duty in making recommendations to the Secretary of State on the desirability of making scheme changes and extending the scrutiny/compliance role of local pension boards to include the Equality Duty.

7.1. The existing provisions of the Equality Act 2010, including the Public Sector Equality Duty, would appear to already extend to Pension Boards, as a function of local government. If the legislation is not sufficiently clear to accommodate new bodies such as the Scheme Advisory Board, presumably as either a Regulator or part of Central Government, it would seem a simpler solution to add the necessary functions to Schedule 19 of the Equality Act 2010, rather than further complicating and adding to regulations relating to the Scheme Advisory Board and Pension Boards.

8. Whether either in these Regulations or at some stage in the future, provision should be made in the Principal 2013 Regulations to require members of committees established by the administering authority to discharge its pension functions to comply with the Knowledge and Understanding Framework and other relevant training

8.1. The Government should carefully consider how it balances regulating to ensure the knowledge and capacity of members of the Pension Board with the need to create positions on the Pension Board that people actually want to fill. As it currently stands these proposals may be too heavily weighted to ensuring Pension Board members' knowledge and capacity, whilst overlooking the practical difficulties for administering authorities in attracting potential candidates for their new Pension Boards.

8.2. The current guidance for the committees managing pension funds that recommends the use of CIPFA's Knowledge and Skills framework is sufficient for administering authorities. Funds should publish their committee's approach to training and justify any differences from the recommended practice. Further regulation is unnecessary.

8.3. The Hampshire Pension Fund Panel considers its own knowledge and skills very seriously and publishes a training report as part of the Fund's Annual Report. Panel members carry out their own training needs analysis, taken from CIPFA's Knowledge and Skills Framework, and attend a variety of internal and external training events, the outcome of which is evaluated to identify if further training requirements still exist.