

LGPS Governance Structures – Public Service Pensions Bill

With the Bill now most of the way through parliament and no further significant changes expected, this may be a good time to reflect on its provisions with regard to scheme governance for the LGPS. In particular, there appears to be a level of understandable confusion surrounding the role and structure of local pension boards.

The Bill sets out 4 distinct roles to be performed within each scheme, these are:

- The Responsible Authority (Clause 2)
- The Scheme Manager (Clause 4)
- The Pension Board (Clauses 5 and 6)
- The national Scheme Advisory Board (Clause 7)

These clauses are included at the end of this note.

Under the Bill, the **Responsible Authority** is the person who makes regulations for the scheme, in the case of the LGPS this is the Secretary of State for Communities and Local Government. Although not mentioned in the Bill, the Secretary of State will continue to be responsible for policy. Clause 3(5) of the Bill provides that the consent of HM Treasury is required before any regulations can be made.

The **Scheme Manager** is ‘to be the person responsible for managing or administering’ the scheme and any other statutory scheme connected with it. The Bill allows for this to be the Responsible Authority (sub section 3 - as it will be for the unfunded schemes) however it has been confirmed in both Hansard and correspondence that for the LGPS the Scheme Manager is the administering authority as currently defined by LGPS regulations.

The **Pension Board** is a board with responsibility for assisting the scheme manager (or each scheme manager) in securing compliance with scheme regulations, other legislation covering governance and administration and the requirements of the Pensions Regulator. The addition of the phrase in brackets was to confirm that such boards would operate at the fund level in the LGPS.

The national **Scheme Advisory Board** has a responsibility for providing advice to the Responsible Authority and the Pension Boards.

Therefore the structure of governance of locally administered schemes like the LGPS under the requirements of the Bill looks something like the following:

Scheme Level

At scheme level, the **Responsible Authority** is responsible for policy and for making regulations. The **Scheme Advisory Board** will have a clear remit to advise the **Responsible Authority** on regulatory changes it considers to be appropriate. The remit and membership of this board will be set out in regulations which have yet to be drafted or consulted upon. In order to assist that process a shadow board is in the process of being set up in order to put this structure to the test before setting it out in regulation.

PSP Bill and LGPS Funds

At the Fund level, the **Scheme Manager** manages and administers the scheme assisted by the **Pension Board**.

Under the Bill these are two distinct roles for the administering authority one of which (the **Scheme Manager**) is very much a hands on, decision making, management and investment function with the added task of ensuring there are no conflicts of interest for any pension board members. The other (the **Pension Board**) would appear to be much more of a compliance and scrutiny role with a responsibility to ensure that the former is complying with its statutory responsibilities.

Clause 5(7) of the Bill deliberately provides that scheme regulations may allow for the **Pension Board** to be either the same as the existing statutory pensions committee or a separate body.

Each administering authority will currently have in place a local section 101 statutory committee that reflects its own situation under the scheme regulations that already performs many of the functions set out in the Bill. Nevertheless, those authorities will need to consider as part of a forthcoming consultation exercise, whether the two distinct roles described in the Bill can best be fulfilled either within existing or separate structures

LGPS Governance Consultation

As currently envisaged, it will not be a Fund discretion on how to meet the PSP Bill requirements in relation to the above, but set nationally for the LGPS as a whole.

Therefore careful thought will need to go into the drafting and consultation process, to ensure that scheme stakeholders have the opportunity to consider the merits of either using the existing statutory pensions committee or an additional separate body at Fund level.

At first glance, it would seem administratively expedient to allow the same committee to fulfil both roles (scheme manager and pensions board) if only in terms of available time and resources. However, there are some significant issues to consider:

1. The roles are very different and may require different resources, for example, investment skills in one role and audit skills in the other,
2. A single committee constitution may not be able to effectively encompass the decision making requirement of the scheme manager role and the 'assistance' role of the pensions board
3. The cross scrutiny functions will prove difficult to apply and demonstrate within one committee
4. Clause 5(4)(c) requires regulations to provide that the pension board should have equal numbers of employer and member representatives. Combining the two roles would include applying that requirement to the committee responsible for both roles.

In summary, any decision over whether the **Pension Board** and **Scheme Manager** roles can be delegated to separate committees or the same committee has yet to be made. Funds should consider carefully how they may wish regulations to reflect their situation in order to be able to respond effectively to the draft regulations when they appear later this year.

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Bill clauses

2 Responsible authority for schemes

- (1) The persons who may make scheme regulations are set out in Schedule 2.
- (2) In this Act, the person who may make scheme regulations for any description of persons specified in section 1(2) is called the “responsible authority” for the scheme for those persons

4 Scheme manager

- (1) Scheme regulations for a scheme under section 1 must provide for a person to be responsible for managing or administering
 - (a) the scheme, and
 - (b) any statutory pension scheme that is connected with it.
- (2) In this Act, that person is called the “scheme manager” for the scheme (or schemes).
- (3) The scheme manager may in particular be the responsible authority.
- (4) Subsection (1) does not apply to a scheme under section 1 which is an injury or compensation scheme.
- (5) Scheme regulations may comply with the requirement in subsection (1)(a) or (b) by providing for different persons to be responsible for managing or administering different parts of a scheme (and references in this Act to the “scheme manager”, in such a case, are to be construed accordingly).
- (6) For the purposes of this Act, a scheme under section 1 and another statutory pension scheme are connected if and to the extent that the schemes make provision in relation to persons of the same description.
- (7) Scheme regulations may specify exceptions to subsection (6).

5 Pension board

- (1) Scheme regulations for a scheme under section 1 must provide for the establishment of a board with responsibility for assisting the scheme manager (or each scheme manager) in relation to the following matters.
- (2) Those matters are—
 - (a) securing compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme and any statutory pension scheme that is connected with it;
 - (b) securing compliance with requirements imposed in relation to the scheme and any connected scheme by the Pensions Regulator;
 - (c) such other matters as the scheme regulations may specify.
- (3) In making the regulations the responsible authority must have regard to the desirability of securing the effective and efficient governance and administration of the scheme and any connected scheme.
- (4) The regulations must include provision—

- (a) requiring the scheme manager—
 - (i) to be satisfied that a person to be appointed as a member of the board does not have a conflict of interest, and
 - (ii) to be satisfied from time to time that none of the members of the board has a conflict of interest;
 - (b) requiring a member of the board, or a person proposed to be appointed as a member of the board, to provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of provision under paragraph (a);
 - (c) requiring the board to include employer representatives and member representatives in equal numbers.
- (5) In subsection (4)(a) “conflict of interest”, in relation to a person, means a 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 membership of the scheme or any connected scheme).
- (6) In subsection (4)(c)—
- (a) “employer representatives” means persons appointed to the board for the purpose of representing employers for the scheme and any connected scheme;
 - (b) “member representatives” means persons appointed to the board for the purpose of representing members of the scheme and any connected scheme.
- (7) Where the scheme manager of a scheme under section 1 is a committee of a local authority, the scheme regulations may provide for that committee also to be the board for the purposes of this section.
- (8) In this Act, a board established under this section is called a “pension board”.
- (9) This section does not apply to a scheme under section 1 which is an injury or compensation scheme.

6 Pension board: information

- (1) The scheme manager for a scheme under section 1 and any statutory pension scheme that is connected with it must publish information about the pension board for the scheme or schemes (and keep that information up-to-date).
- (2) That information must include information about—
 - (a) who the members of the board are,
 - (b) representation on the board of members of the scheme or schemes, and
 - (c) the matters falling within the board’s responsibility.
- (3) This section does not apply to a scheme under section 1 which is an injury or compensation scheme.

7 Scheme advisory board

- (1) Scheme regulations for a scheme under section 1 which is a defined benefits scheme must provide for the establishment of a board with responsibility for providing advice to the responsible authority, at the authority's request, on the desirability of changes to the scheme.
- (2) Where, by virtue of section 4(5), there is more than one scheme manager for a scheme mentioned in subsection (1) (and accordingly there is more than one pension board for the scheme), the 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—
 - (a) the scheme and any statutory pension scheme that is connected with it, or
 - (b) any pension fund of the scheme and any connected scheme.
- (3) A person to whom advice is given by virtue of subsection (1) or (2) must have regard to the advice.
- (4) The regulations must include provision—
 - (a) requiring the responsible authority—
 - (i) to be satisfied that a person to be appointed as a member of the board does not have a conflict of interest, and
 - (ii) to be satisfied from time to time that none of the members of the board has a conflict of interest;
 - (b) requiring a member of the board, or a person proposed to be appointed as a member of the board, to provide the responsible authority with such information as the authority reasonably requires for the purposes of provision under paragraph (a)
- (5) In subsection (4)(a) "conflict of interest", in relation to a person, means a 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 membership of the scheme or any connected scheme).
- (6) In this Act, a board established under this section is called a "scheme advisory board".