

The Local Government Pension Scheme (Amendment) Regulations 2014

Draft Regulations on Scheme Governance Response by the Environment Agency Pension Fund

Important notice

The document is a response to the Department of Communities and Local Government (DCLG) consultation and has been approved by the Pension Committee and in consultation with the administering authority Environment Agency. Any questions should be sent to dawn.turner@environment-agency.gov.uk.

FAO: Sandra Layne

Sandra.layne@communities.gsi.gov.uk

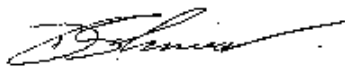
Dear Ms Layne,

On 23 June 2014 the DCLG issued its consultation The Local Government Pension Scheme (Amendment) Regulations 2014: draft regulations on scheme governance. Please find below the response from the Environment Agency Pension Fund (EAPF) to this consultation that was approved by its Committee chair on 13 August 2014.

We welcome the opportunity to provide input to the consultation as we recognise the benefits to the LGPS from the focus on improved governance, greater emphasis on training and the willingness to learn from the best private sector experience.

In light of the timeframe for implementation and the wider reform agenda within the LGPS we recommend that guidance, however informal, to support Administering authorities in implementing the regulations is communicated as soon as possible. Similarly, we support the flexibility contained in the draft regulations to reflect the diverse nature of the LGPS funds, including non-local authorities such the Environment Agency Pension Fund. We have provided our detailed response to the draft regulations in the attached document. We welcome the opportunity to work with DCLG in making progress to deliver a well governed, sustainable and affordable LGPS.

Yours sincerely



Dawn Turner

Head of Pension Fund Management

Environment Agency Pension Fund

dawn.turner@environment-agency.gov.uk

14 August 2014

Annex A – Feedback on draft regulations.

Local pension boards: establishment (draft regulation 106)

As a general comment, the draft regulations add little to the provisions in section 5 of the 2013 Act. While this means that the statutory guidance will be able to cover the establishment of pension boards in a flexible manner, given the shortness of the timetable up to 1 April 2015 it is essential that administering authorities have sight of the draft guidance as soon as possible.

Combining committees with pension boards

Draft regulation 106(2) closely follows section 5(7) of the 2013 Act by stating that a committee of a local authority acting as the scheme manager can also act as a pension board. The term local authority is narrowly defined in the 2013 Act and, critically, does not include non-local authority bodies, including the Environment Agency.

The Environment Agency is strongly in favour of the flexibility of combining its Pensions Committee with a new pension board, and can see no reason in principle why it should be denied this flexibility. This would be consistent with statements made when what is now section 5(7) of the 2013 Act was considered on 8 November 2012 by the House of Commons Public Bill Committee. When discussing how the Bill would accommodate the local requirements of the various LGPS funds and their administering authorities, the Treasury Minister supporting the Bill made it very clear that the intention was that scheme regulations for a locally administered pension scheme (like the LGPS) could provide that a committee may also be the pension board for the purposes of the legislation. No distinction was drawn between local authority and non-local authority administering authorities. Indeed, the Minister stated that the purpose behind the provision "is simply to ensure the option for a committee that is the scheme manager also to be the pension board. The decision is rightly left for scheme-level decision following discussion and consultation."

As drafted, and on a straight-forward interpretation of the words used, it is apparent that section 5(7) is specific to local authority bodies. It does not, therefore, expressly preclude a non-local authority body from combining their pension committee with a new pension board. We interpret draft regulation 106(2) similarly. With that in mind, and given the clear statements made when these provisions were considered by Parliament at the Committee stage, our view is that the Environment Agency has the power to decide that the existing Pensions Committee may also act as the new pension board (subject to complying with the

membership and other requirements). It is our intention to proceed on that basis, and we ask that DCLG ensures that the new statutory guidance is drafted in a manner which allows for this approach.

In adopting this approach, we wish to be clear that the Environment Agency will ensure that our long-term focus on governance best practice will be continued. On matters such as the level of knowledge, skill and experience of members, and the management of conflicts of interest, we will aim to maintain the highest standards. We view the proposed combination of our Pensions Committee with the new pension board as being entirely supportive of that aim, not the reverse.

Constitution of local pension boards

Two different versions of draft regulation 106(5) have been provided, and respondents are asked to express a preference. Bearing in mind that the Environment Agency is not a local authority, references in the first alternative wording to a local pension board established under the Local Government Act 1972 and a committee established under section 101 of that Act are of no relevance to the Environment Agency. Therefore, the second alternative wording is preferred by the Environment Agency. Indeed, if that wording is not adopted, the Environment Agency would have to address the constitutional issues referred to (voting rights, establishment of sub-committees, formation of joint committees and payments of expenses) in a regulatory vacuum.

This point also arises for any other non-local authority administering authorities.

Joint pension boards

While not covered in draft regulation 106, the consultation seeks views on the possibility of joint pension boards (i.e. serving more than one administering authority). The Environment Agency does not currently envisage wanting to adopt this approach. However, we do wish to note that, somewhat unusually, the Environment Agency is administering authority to two separate LGPS funds – the Active Pension Fund, and the Closed Pension Fund.

As this is the case, it should be noted that, from 1st April 2015, the Environment Agency's combined Pensions Committee and new pension board will be responsible for administering two separate LGPS funds. It would be helpful if the statutory guidance could allow for this approach.

Local pension boards: membership (draft regulation 107)

We agree that the each administering authority shall have discretion to determine matters relating to the membership, appointment and removal of pension board members. We strongly suggest that any guidance around these matters should be non-prescriptive where possible.

We support and are in general agreement with the provisions about the number of members of a pension board. Please note, however, that the Environment Agency does not have elected members, and accordingly provisions precluding elected members are not relevant for the Environment Agency.

The references to "relevant experience" and "capacity" have attracted some comment. There already exists a "knowledge and understanding" requirement under the Pensions Act 2004. It is not clear what "relevant experience" adds to that requirement, nor is it clear what is meant by "capacity". It is important that these effective qualification thresholds are not interpreted too narrowly, for example in a manner which might exclude the equivalent of a member nominated trustee in the private sector context. The best member-representative candidate may not have a huge amount of relevant specific experience, for example.

It is not clear why the experience and capacity requirement does not extend to members of a pension board other than employer/member representatives (e.g. those appointed under sub-paragraph (3) of draft regulation 107). To be consistent, we suggest that the same requirements extend to all members of the board.

Local pension boards: conflicts of interest (draft regulation 108)

For the conflict of provisions to be workable in practice, there must be scope for administering authorities and pension boards to identify and manage conflicts in the normal way. If these provisions are interpreted very narrowly, so that for example any individual in senior management at the administrative authority is ruled out owing to their closeness to their employer, then by definition constituting the membership of a pension board will prove difficult.

It is now well-established best practice that what matters is how conflicts are managed, which will usually be by means of a process of regular disclosure of interests and the implementation of a carefully drafted conflicts of interest policy. It would prove unworkable in practice if an individual's membership of a pension board must be instantly suspended if a conflict arises, or that all individuals with conflicts can never be considered for such membership.

We suggest that a distinction is drawn in the statutory guidance between (i) a potential conflict of interest or a conflict of interest that, having been disclosed, has been managed satisfactorily, and (ii) an actual conflict of interest which either has not been disclosed, or having been disclosed has proved irresolvable. The former should not preclude appointment or continued membership, whereas the latter should.

For clarity, we suggest that "conflict of interest" be defined by reference to the definition contained in section 5(5) of the 2013 Act. The current footnote will not, we presume, be evident when draft regulation 108 is inserted into the LGPS Regulations 2013.

Local pension boards: guidance (draft regulation 109)

We welcome the flexibility in the draft regulations to include the details of local pension board operations as Secretary of State Guidance, as it will be easier to adapt to the needs of the scheme over time.

We believe that the flexibility in the regulations should be extended in the guidance such that each fund should be able to implement the local pension boards to meet local needs. However, to ensure that intended governance benefits for the LGPS are delivered we recommend that the guidance should set minimum requirements on meeting frequency, reporting requirements and compliance with the Pension Regulator's code of practice as it should apply to an LGPS fund. We also recommend that best practice examples are used extensively in the guidance to assist with speed and effectiveness of implementation.

We are concerned in the overall timeframe for delivery of local pension boards by April 2015 and it will be necessary to start work on structure before final guidance is issued, so would kindly request that DCLG and or the Shadow Scheme Advisory Board communicate principal requirements as soon as possible.

Scheme advisory board: establishment (draft regulation 110)

We welcome and support the establishment of a Scheme advisory board and in general agreement with the provisions of the draft regulations. We also strongly agree with the proposal that the advice for the Secretary of State can be initiated by the Scheme Advisory Board and that the interaction is open and transparent.

To enable the governance dividend to be delivered from the proposed regulatory changes we recommend that the Scheme Advisory Board be given the power to require information from administering authorities where there is clear benefit in doing so..

Scheme advisory board: membership (draft regulation 111)

Whilst we support the objectives of equality amongst the employer and member representatives, it is essential that Board and its sub-groups have necessary resources to deliver outputs and realise the financial benefits from operating on behalf of the scheme as a whole. To this end we believe the final provisions incorporate the necessary flexibility to draw on a wider pool of professional input including greater use of administering authority practitioners.

Scheme advisory board: conflicts of interest (draft regulation 112)

We support and are in general agreement with the draft provisions in section 112.

Scheme advisory board: funding (draft regulation 113)

We support the requirement for the Scheme Advisory Board to be funded by the Administering Authorities in proportion to the number of persons for which the Administering authority is the appropriate Administering authority.