



Department for
Communities and
Local Government

Local Government Pension Scheme (Amendment) (Governance) Regulations 2015

Local government pensions – improving
governance and accountability

Government response to the consultation



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Introduction

At the June 2010 Budget, the Government invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission. The purpose of the Commission was to carry out a fundamental structural review of public service pension provision, and to make recommendations on pension arrangements that are “sustainable and affordable in the long term, fair to both the public sector workforce and the taxpayer, and consistent with the fiscal challenges ahead, while protecting accrued rights”.

In November 2011, the Government set out their preferred design for the new NHS, civil service, teachers and local government pension schemes. For the new Local Government Pension Scheme, the Government invited the Local Government Association and main local government trade unions (UNISON, GMB and Unite) to come forward with a specific set of proposals based on the Government’s preferred design within an agreed cost ceiling of 19.5 per cent of future service costs.

In this context, the Local Government Pension Scheme 2014 Project Group was established by the Local Government Association, UNISON, GMB and Unite, with the aim of establishing the main principles and fundamental elements on which the new Scheme would be based. The main Regulations were made on 12 September 2013, laid before Parliament on 19 September and came into effect on 1 April 2014.

The Public Service Pensions Act 2013 (“the 2013 Act”) imposed various requirements on schemes made under section 1 of that Act. Sections 5 to 7 imposed requirements in respect of local pension boards and a scheme advisory board and sections 11 to 12 in relation to valuations and employers’ costs. Those provisions were not commenced initially in relation to the 2013 Regulations but no significant practical consequences arise out of the initial absence of such provisions from regulations. This is because all significant functions of the boards, in particular in relation to cost control, will arise only after the first triennial valuation of the Scheme which is due to take place in 2016.

Two consultation exercises on draft regulations to introduce a new Part 3 to the 2013 Regulations on governance arrangements, including cost control, were held between 23 June to 15 August 2014 and 10 October to 21 November 2014.

A third consultation on the methodology and assumptions underlying the proposed employer cost cap of 14.6% in draft regulation 115(1) was also held between 12 December 2014 and 2 January 2015. Four responses were received, none of which raised any objection to the Scheme’s employer cost cap of 14.6%.

During all consultation exercises, views from all scheme interested parties were invited on the draft regulations. Details of the consultation and related documents can be found at <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>.

The comments received and the Government’s response to the main consultation are summarised beneath the table below.

Summary of main consultation responses

Background

In June 2014 the first of two consultations on Local Government Pension Scheme governance were issued. The views of respondents to the first paper were incorporated into the second consultation paper, which was issued in October 2014. The draft regulations that were included in the October consultation exercise incorporated suggestions made by respondents

The respondents to the June and October consultations were as follows;

June 2014 - Type of Respondent	Total Number	% of Total
Local Government bodies	70	75 %
Companies (eg actuarial, legal or software)	12	13 %
Professional associations	7	8 %
Trades unions	1	1 %
Public Body	1	1 %
Individual	2	2 %
TOTAL	93	100%

October 2014 - Type of Respondent	Total Number	% of Total
Local Government bodies	33	64%
Companies (eg actuarial, legal or software)	9	17%
Professional associations	5	9%
Trades unions	4	8%
Public Body	1	2%
TOTAL	52	100%

In addition to the draft regulations issued for consultation in June, comment was also invited on seven connected policy questions. These are summarised at **Part 1** below. The government's response to the draft regulations is set out at **Part 2** below.

Part 1 - Connected Policy Questions

1. Combined Section 101 Committee and Local Pensions Board

Comments

43 respondents opposed the inclusion of provisions supported by section 5(7) of the 2013 Act that would allow the formation of such a board on the basis that it would effectively be scrutinising itself. Of the 26 respondents who supported the provisions, several suggested that the section 101 committee should become the new local pensions board.

Government Response

New Regulation 106(2) allows a committee constituted under section 101 of the Local Government Act 1972 which discharges an administering authority's pension functions and the local pensions board to act as a combined body. It is clear from discussions with administering authorities that many of them wish to explore the potential to form such a combined board. We would not be forcing any authority into that course of action, but it will be subject to approval by the Secretary of State.

2. Establishment of Local Pension Boards

Comments

61 out of 69 respondents favoured procedures and arrangements to be determined by the administering authority rather than arrangements conforming to section 101 of the Local Government Act 1972. Respondents to the October exercise welcomed the new draft regulation that deleted the reference to section 101 type arrangements.

Government Response

New Regulation 106(6) provides for an administering authority to determine the procedure applicable to their Local Pensions Board.

3. Funding of the Scheme Advisory Board

Comments

The majority of respondents (39 out of 56) supported the proposal of administering authorities paying a pro rata levy to fund the Board. 10 respondents expressed a wish for more information on the budget setting process, and 5 suggested that DCLG should pay the Boards' costs.

Government Response

The government's policy that scheme employers should fund the Scheme Advisory Board has been retained, but to provide safeguards for the taxpayer new Regulation 113 has been expanded to require that the Board must seek the Secretary of States approval for their annual budget before any levy can be set.

4. Joint Pension Boards

Comments

The overwhelming majority of respondents to the June consultation supported the provision for joint pension boards where administration and management functions were wholly or mainly shared across a number of administering authorities. Respondents to the October consultation also welcomed the inclusion of these provisions.

Government Response

New Regulation 106(3) provides for the establishment of joint boards where administration and management is shared across a number of administering authorities subject to approval by the Secretary of State.

5. Annual General Meetings and Employers Forums

Comments

Only 17 out of 66 respondents favoured regulatory requirement for an annual meeting and forum. It was pointed out that many funds already organise annual general meetings and other forums. In addition, internet based technology may be useful methods of engaging members and employers.

Government Response

There will be no mandatory requirements which may hinder administering authorities in developing innovative engagement methods. Local Pension Boards may of course assist administering authorities in this area.

6. Public Sector Equality Duty

Comments

33 responses out 51 supported the proposal to extend the role of the Scheme Advisory Board to have regard to the Public Sector Equality Duty. Respondents expressed the belief that the duty already applies and it was unnecessary to make regulations on the issue.

Government Response

Guidance will be issued reminding administering authorities, Local Pensions Boards, and the Scheme Advisory Board of their responsibilities under the Equality Duty.

7. Knowledge and Understanding

Comments

34 respondents supported the proposal that members of section 101 committees and members of local pension boards should be subject to a knowledge and understanding requirement whilst 20 were against. There was considerable uncertainty as to how knowledge and understanding could be defined.

Government Response

Although there is clear support for councillors sitting on section 101 committees to be in the same position as members of local pension boards, the government takes the view that further discussions with scheme interested parties about how this can best be achieved would be helpful before any final decision is made. The regulations do not therefore impose any requirement on members of section 101 committees to acquire knowledge and understanding but reserves its position pending the outcome of future discussions.

Part 2 - Main comments on the proposed new regulations.

Reg. 1

Comments

In general, respondents agreed that the regulations should provide for local pension boards to be in place by 1 April 2015. However, concerns were raised as to the short time scale for their establishment and implementation.

Government response

The requirement in the regulations for administering authorities to establish local pension boards by 1 April 2015 follows from section 5 of the 2013 Act and no change in the regulations can affect that. .

New Reg. 106

Comments

Several respondents suggested that the Regulations should include a process to resolve conflict between a Scheme Manager and a local board.

Government response

Administering authorities will have the flexibility to determine procedures locally for their local pension boards. DCLG officials will work with the Scheme Advisory Board on any guidance that either the Secretary of State or the Scheme Advisory Board may publish. This will encourage a range of different solutions to be developed, and shared between administering authorities and local pensions boards.

Comments

Some respondents favoured a more clearly defined role and powers for local pension Board but others welcomed the flexibilities and local discretion afforded by the regulations.

Government response

Administering authorities will have the flexibility to determine procedures locally for their local pension board. DCLG will continue to work with the Scheme Advisory Board on associated guidance. This will encourage a range of different solutions to be developed and shared between all the administering authorities and local pension boards.

Comments

Several respondents observed that local pensions boards and the section 101 committee should not be the same body, since the role of the board will be to assist the scheme manager fulfil its function.

Government response

Combining the local pension board and the section 101 committee will be subject to approval by the Secretary of State. An application to combine the board and the committee will need to demonstrate that it provides appropriate governance arrangements.

New Reg. 107

Comments

Several respondents suggested that there should be no pre-condition of capacity and experience to be a member of a local pension board, as this may prove to be a significant barrier to finding a sufficient number of quality board members.

Government response

The regulations have been amended to remove the pre-condition requirement of experience but it remains essential that potential members can display the capacity to undertake the full role of being a local pension board member.

Comments

Many respondents commented on the size of the local pension board, or expressed concerns as to the potential influence of board members who are not employer or member representatives. Some also suggested that any guidance should include details of who should be eligible for membership.

Government response

The minimum requirement for membership of a local pension board is two employer representatives and two member representatives. If an administering authority wishes to have more members, they may do so, either by increasing the number of employer and member representatives in equal numbers, or by including other members for specific reasons. Regulation 106(7) limits voting rights to employer and member representatives. In addition, elected representatives of an administering authority may only sit on the board as an employer or member representative. This ensures that the main influence of the board resides with employer and member representatives but at the same time, has access to the knowledge and experience of independent specialists and others.

Comments

Several respondents suggested that a local pension board should have the right to confirm the appointment of the board's Chairman.

Government response

As part of the flexibilities of the establishment of the local boards, the administering authorities could confer power on the board to approve the appointment of the Chairman. It is likely that guidance to be issued by the Scheme Advisory Board will give further information on this matter.

Comments

One respondent suggested that the chairman of the board should alternate between employer and scheme member representatives.

Government response

The appointment of the Chair of the local pension board is a matter for the administering authority supported by any guidance issued either by the Secretary of State or the Scheme Advisory Board.

Comments

Many respondents questioned the wording of the draft regulations which appeared to prevent anybody with a job that involved Local Government Pension Scheme responsibilities from sitting on any local pension board in any capacity.

Government response

Regulation 107(3)(a) has been amended to clarify that the restriction only applies to councillors or officers of the same administering authority.

New Reg. 111

Comments

A number of respondents thought that the Scheme Advisory Board would benefit from the inclusion of pensions practitioners, but others suggested they must not be allowed to outnumber the employer and member representatives of the Scheme Advisory Board.

Government response

The Scheme Advisory Board members will be appointed by the Secretary of State who must have regard to the desirability of their being equal and effective representation of persons representing employers and scheme members. The regulations have been amended to allow administering authorities to appoint up to three non-voting advisory members.

New Reg. 114

Comments

Several respondents expressed concern that appointing the Government Actuary as the Scheme Actuary for the purposes of Treasury directions would create a conflict of interest as the Government Actuary advises both HM Treasury and DCLG.

Government response

There can be no legal conflict between DCLG and HM Treasury, because both are legally part of the Crown and serve the same Government. However different entities within Government have different roles. The Government Actuary's Department has policies in place to manage any potential conflicts of interest that may arise when it advises different entities within Government. Their advice to DCLG in respect of the Local Government Pension Scheme is provided by a team separate from the team that advises HM Treasury, and the advice to DCLG and HM Treasury is the responsibility of the two Chief Actuaries who lead the respective separate teams. DCLG is content that this arrangement appropriately manages and reconciles any potential conflict.

New Reg. 115

Comments

One respondent suggested that the Scheme Advisory Board should have 6, rather than 3 months to agree methods to achieve the target cost cap before the Secretary of State intervenes.

Government response

A discussion period of longer than 3 months would not lead to the timely development of methods to achieve the target cost cap.

Comments

Several respondents suggested that the Secretary of State should have a full range of options to maintain the costs of the scheme within the cost cap, and not rely solely on changes to the scheme's accrual rate.

Government response

The Scheme Advisory Board may consider a range of options in recommending scheme changes necessary to remedy any breach of the cost control arrangement. A prescribed default position within a clear timeframe will instil a discipline on the Scheme Advisory Board to reach an agreed position.