

## **Local Government Pension Scheme England and Wales**

### **Scheme Advisory Board (SAB)**

## **Local Government Pensions Team, Ministry of Housing, Communities and Local Government (MHCLG)**

Response via email to [lgpensions@communities.gov.uk](mailto:lgpensions@communities.gov.uk).

23 December 2025

### **Local Government Pension Scheme in England and Wales: Fit for the Future - technical consultation**

This response is submitted on behalf of the Local Government Pension Scheme (LGPS) Advisory Board (England and Wales) which is a body set up under Section 7 of the Public Service Pensions Act 2013 and the LGPS Regulations 110-113.

The Board's purpose is to:

- Provide advice to the Secretary of State and to administering authorities on "the desirability of changes to the scheme" and "in relation to the effective and efficient administration and management" of the LGPS
- Provide a framework to encourage best practice, increase transparency and coordinate technical and standards issues across the sector

Membership of the Board includes equal number of voting members representing employers and employees. Non-voting members and advisors also support the Board. There are around 18,000 employers participating in the Scheme and therefore on the Board and its sub-committees there are representatives of some of the larger employer groups (further/higher education institutions and academy schools). Secretariat services are provided by the Local Government Association and separate Advisory Boards have been established for the LGPS in Scotland and in Northern Ireland.

The Board would also like to endorse the response provided by the Local Government Pensions Committee (LGPC) on the technical drafting of the regulations.

Yours sincerely,

**Councillor Roger Phillips**  
**Chair of the Board**

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## **Local Government Pension Scheme in England and Wales: Fit for the Future - technical consultation**

### **Local Government Pension Scheme (Pooling, Management and Investment of Funds) Regulations**

#### **Question 1 Do you have any comments on the drafting of regulations 1 and 2?**

Regulation 2 contains a definition of “strategic authority”, but we believe that there also needs to be a definition of the equivalent in Wales, the Corporate Joint Committees (unless there is no intention for Welsh LGPS funds or the Welsh LGPS pool to work with these bodies on local growth).

#### **Question 2 Are there any further types of investment that should be included in Regulation 3, or any that are no longer considered relevant?**

No comments.

#### **Question 3 Is there any scenario where an authority would still need to borrow to meet the type of commitment outlined in Regulation 5(2)(b) once all assets are pooled?**

No comments.

#### **Question 4 Do you have any other comments on Regulations 3-6?**

No comments.

#### **Question 5 Are the activities listed in the schedule ones that all LGPS asset pools would reasonably be expected to need in order to carry out the activities expected of them?**

No comments.

#### **Question 6 Do you have any other comments on Regulations 7-9?**

##### **Regulation 8**

It seems reasonable that funds as shareholders will take steps to ensure that the pool retains the necessary permissions from FCA, but the Board would suggest that consideration is given to what happens if permissions are withdrawn. Such events might not be very likely but if the impact were to be very severe, for example if it meant that no-one could manage the funds’ assets, then from a risk point of view it may be worth considering what alternative process kicks in.

##### **Regulation 9**

In relation to the Direction making power at Regulation 9, the Board has two objections: one on process and one on substance. In terms of substance, Regulation 9(1)(c) seems to be intended to deal with the situation where the SoS wishes a fund to join a particular pool, but the other shareholder funds do not agree to it. Our understanding is that this regulation will allow the SoS to require those funds to comply with the direction and accept the new fund, even where they do not believe that it is in the best interests of their beneficiaries, or where the pool company documentation is clear that new shareholders can only be admitted with the agreement of the existing shareholders.. This cuts across their fiduciary responsibility which is something that MHCLG and Ministers have consistently said

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that they do not intend to do. Pools also require close partnership working between the funds to be effective, and we have concerns that a partnership that is not arrived at by consensus could potentially have negative consequences for all the parties.

The Board believes that the admission of a new fund into an existing partnership should require the agreement of the other funds participating in the pool, and that securing this agreement should be achievable if the Secretary State is acting in the best interests of the scheme.

In terms of the procedural point, the Board would like to see the Regulation amended to be clear that the consultation will include:

1. A detailed statement from the Minister as to why they believe that the fund should be admitted to that particular pool
2. How they have arrived at that decision, including consideration of other options; and
3. A reasonable time for the other funds and the pool to carry out any necessary due diligence before responding.

**Question 7 Do you agree that the requirements in Regulation 11(2), for the financial objectives in the investment strategy statement to be consistent with the funding strategy statement and to have regard to the requirement to maintain consistent primary employer contribution rates, are helpful?**

The Board agrees that it is important that the Investment Strategy Statement (ISS) is consistent with the Funding Strategy Statement (FSS). The further reference to primary employer contribution rates is perhaps not really necessary as this is covered in the FSS guidance, along with other key considerations – such as solvency. The below extract from the FSS guidance shows what should already be included in an FSS:

*“8. The purpose of a FSS is to:*

- establish a clear and transparent fund-specific strategy that will identify how employers’ pension liabilities will be met going forward.*
- support the desirability of maintaining as constant and stable primary contribution rate as possible, as defined in Regulation 62(5) of the Local Government Pension Scheme (England and Wales) Regulations 2013 and Regulation 60 of the Local Government Pension Scheme (Scotland) Regulations 2018*
- ensure that the regulatory requirements to set contributions to ensure the solvency and long-term cost efficiency of the fund.*
- explain how the fund balances the interests of different employers.*
- explain how the fund deals with conflicts of interest and references other policies/strategies.”*

As it is the fund actuary which advises on the FSS and the pool which provides advice on the ISS, then duplicating consideration of things that are already included in the FSS risks the AA being presented with conflicting advice on the same issue.

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#### **Question 8 In relation to regulation 12, does a deadline of 30th September 2026 allow sufficient time to allow AAs to publish an investment strategy in line with the new requirements?**

Yes, assuming that the guidance will be finalised and published in good time (ideally before 1 April 2026). The Board notes that there are significant changes to the previous requirements and so compliance with the new guidance will be more challenging for those AAs which will be making the most significant changes to their existing strategies. The deadline may also be challenging for any AAs which have a significant change in Pension Committee composition following the local elections in May of next year.

Agreeing a new Investment Strategy is a key responsibility and new pension committee members may require intensive training before they feel confident to sign off on a new strategy. In addition, AAs will be in the process of recruiting their Independent Person for the Committee and appointing the Senior LGPS officer in this period. We would hope that MHCLG would be understanding of any delays in finalising strategies that are due to these transitional issues. It is clearly more important that the strategy is well thought through and appropriate than that it is issued by a particular deadline.

#### **Question 9 Are there any other persons (including organisations) in addition to those currently listed in Regulation 12(3) that all AAs should always be required to consult on the contents of their investment strategy?**

The Board believes that local pension boards should always be consulted as part of formulating the investment strategy. To note there is a typo in the consultation document, the question should refer to regulation 12(4), moreover we also believe that the provisions on consultation are attached to the wrong regulation. Regulation 10 deals with the formulation of the strategy while Regulation 12 deals with the publication of the strategy. Having the consultation process starting after the strategy has been formulated and just as part of the publication process, may suggest that the key decisions have already been taken and the consultation process is merely presentational.

#### **Question 10 Is the wording of Regulation 13(1) sufficiently clear that the responsibility for implementing the investment strategy is fully on the asset pool company, while giving sufficient scope for flexibility where market conditions or other factors make it impracticable to fully realise all the aims of the investment strategy?**

The Board believes that it would be helpful for this regulation to be clarified with guidance on issues such as

- How to you define the 'reasonable steps' which a pool company has to take
- What action does the pool need to take if it does not believe it can implement a partner fund's ISS? In the Board's view, there should be guidance around that. Such guidance should be clear on the need for a dialogue between the fund and the pool as to next steps, in this circumstance, with agreement being reached on a mutually acceptable resolution rather than the pool responding unilaterally
- What constitutes 'proper consideration' of local investment opportunities

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**Question 11** In relation to Regulation 14, do you agree it is appropriate to link the three-yearly review of the investment strategy to the triennial valuation?

Yes.

**Question 12** Is 18 months from the valuation date an appropriate timescale for AAs to review, revise, and publish their investment strategy?

Yes.

**Question 13** Do you have any other comments on Regulations 10-15?

#### **Regulation 10**

Regulation 10(1) requires that asset pool companies provide proper advice to AAs on the content of their investment strategy, the Board has previously taken advice on whether this creates any conflicts to be managed with regards to the pools role in actively managing the assets. The [Borges Salmon advice](#) reflects in paragraph 4.5 on two areas where conflict might arise and that should be managed, it is noted that the draft pooling guidance being separately consulted on comments in chapter 6 on holding pools to account and managing any conflicts of interest.

Regulation 10(3) confers a power on funds to take advice from an adviser other than the pool in exceptional circumstances. Does that actually preclude an AA from taking advice in other circumstances? The Board understands that AA's have the General Power of Competence and so can do anything that they aren't specifically told that they cannot.

#### **Regulation 11**

The Board does not agree with the change in language from the 2016 Regulations in relation to responsible investment and ESG considerations. The 2016 Regulations and guidance require funds to set out their policy on this, which is part of their fiduciary duty and something that the [Nigel Giffin KC advice](#) says that they need to turn their mind to (see in particular paragraphs 32-37 of this updated opinion). The revised draft regulations refer to ESG considerations as "priorities and preferences" which, as is clear in the draft pooling guidance which is separately being consulted on in a closed consultation, can be over-ridden by the pool on financial grounds. That means that it is ultimately pools and not funds who determine the acceptable balance between the financial and non-financial considerations on RI investments. This seems to directly usurp the fiduciary duty which sits, rightly due to the greater accountability, with funds.

Furthermore, in relation to draft Regulation 11(1) the Board notes the repeated use of "high-level" in relation to investment objectives, local investment objectives, and strategic asset allocation. This term is not defined, and we do not find this a particularly meaningful or helpful qualification.

Finally, as previously stated, in relation to draft Regulation 11(7), we think that the bodies listed, and their definitions need to include a reference to their Welsh equivalents.

#### **Regulation 15**

The Board believes that there needs to be significant extra procedural protections in

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place around the use of the direction making power in draft Regulation 15.

The Regulation should make explicit that:

1. The SoS will set out to the relevant fund the basis on which they have reached their view (including evidence relied on and advice taken by the SoS)
2. The fund should be given time to “comply or explain” with the alleged breach, as guidance is a means to achieving an objective and funds may be able to achieve the underlying objective set in the regulations in new or innovative ways
3. Before issuing a direction, the asset pool, other funds in that pool and member representatives (in whose best interests’ investments should be made) should be consulted too
4. In the event that there is on-going disagreement between a fund and the SoS over whether the guidance is being complied with, presumably it will be for a competent court to decide whether to grant a Mandatory Order applying usual public administration legal principles. The Board believes that the Court should look at whether the relevant guidance has been complied with rather than whether the direction issued has been complied with.

Guidance should also be issued to give further clarifications around the timescale and process for the SoS’s application of the direction-making power.

Perhaps more fundamentally, the Board has concerns about the regulations granting the SoS a power to issue a legally binding direction to a fund requiring it to comply with guidance that has not been approved either by Parliament or, as in the case of the current draft guidance, even the subject of public consultation. That seems to confer upon this and all future SoS’s the power effectively to write and rewrite these regulations at will and with no proper scrutiny.

#### **Question 14 Is 21 days an appropriate time period for an asset pool company to be managing AA assets?**

We are aware that some funds and pools have concerns about this timescale and queries what evidence the Department has relied on in arriving at this as a reasonable timescale.

#### **Question 15 Do you have any other comments on Regulation 16?**

The Board queries the use of “with a view to” in Regulation 16(1)(b), which seems an unnecessary qualification as pools should simply implement their partner funds’ investment strategies. If this is intended to give “wriggle room” so that pools only need to “have a view to” implementing them, and can depart from them when it suits them, then that is not appropriate.

#### **Question 16 Do you have any comments on Regulation 17?**

This regulation is very clear in direction, but guidance needs to help funds navigate these roles. Also, there is again possibly a need to reference the different devolution structures in Wales.

#### **Question 17 Do you agree with the list of issues that the Secretary of State can issue guidance about in Regulation 18?**

There is not anything in the list, which is obviously inappropriate, but the issues are very broadly worded. One item which is potentially missing is managing performance

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and addressing underperformance (although that could potentially be covered under some other headings if interpreted very broadly). It also isn't clear to whom this guidance is directed – funds and pools, or just pools?

Given the breadth afforded by the wording of this draft regulation, the Board would like to see greater clarity on what guidance might be issued, for what purpose guidance would be issued and whether there were any limits to what the guidance might cover. For example, the Minister has repeatedly said that nothing in the regulations or guidance should detract from the fiduciary duty, and we would welcome that commitment being captured in the regulations explicitly. There is a risk that when considered alongside the direction making power at draft Regulation 19, the SoS could require a pool to do pretty much anything they wished.

#### **Question 18 Do you have any other comments about Regulations 18 or 19?**

As with the direction making power in relation to funds in Regulation 15, the Board believes that Regulation 19 should make explicit that:

1. The SoS will set out to the relevant pool the basis on which they have reached their view (including evidence relied on and advice taken by the SoS)
2. The pool should be given timescale in which to “comply or explain” as guidance is a means to achieving an objective and funds may be able to do things in new or innovative ways
3. Before issuing a direction, the asset pool, other funds in that pool and member representatives (in whose best interests' investments should be made) ought to be consulted too
4. In the event that there is on-going disagreement over whether the guidance is being complied with, presumably it will be for a competent court to decide (which should be on the basis of whether the guidance has been complied with rather than whether the direction issued has been complied with).

Guidance should also be issued to give further clarifications around timescale and process for this.

One difference with the direction making for funds is that draft Regulation 19(3) gives more detail on a direction which may be given (which is welcome) but we believe that this level of detail should be replicated in relation to the fund directions too.

#### **Question 19 Is there anything in the 2016 regulations that needs to be replicated here in some form to allow the scheme to operate as intended?**

The Board believes that some important procedural points at sub-paras 4-6 of Regulation 8 in the existing 2016 Regulations, on SoS directions, should be replicated in these new regulations.

#### **Question 20 Is 28 days an appropriate length of time to allow an AA to participate in both its 'old' and 'new' pool to allow transitional processes to take place?**

The Board is aware that some funds and pools have expressed concern at this deadline, so we would again ask MHCLG to explain how it has arrived at this deadline and what evidence they have for believing it is reasonable to impose it. We understand that the pools themselves are looking for a time period of at least 3 months for this to be done properly.

It would also be helpful to say that if the two are incompatible, then meeting the

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fiduciary duty would take precedence over meeting this deadline.

### **Question 21 Do you have any other comments about Regulations 20-22?**

None

### **Question 22 Is there anything else that should be included in these Regulations to allow them to deliver their intended impact? Are there any additional provisions in the 2016 Regulations that need to be replicated here in some way?**

The Board had been following with interest the progress of amendment NC17 to the Pension Schemes Bill, which was being proposed by Liam Byrne MP. The Board was sympathetic with the aims of clarifying the ability of pension committees to consider “systemic risks” such as climate change and the highlighting the need to engage members in establishing the responsible investment strategy of an LGPS fund. The amendment fitted very well with the further legal advice that was obtained from Nigel Giffin KC on these very questions.

The Board is open to discussion as to whether these specific requirements are best dealt with via legislation or statutory guidance, but we welcome that the Minister for Pensions has at least endorsed the sentiment of the amendment and has committed to seeking to achieve the main aims of the amendment in statutory guidance.

Obviously, in LGPS we are in the process of revising both the regulations and new statutory guidance on the investment strategy statements and hope that it should be possible for the Minister’s commitment to be reflected in one of those.

### **Question 23 The government collected views on whether the reforms would benefit or disadvantage protected groups when consulting on the Fit for the Future policy proposals in autumn 2024. Is there anything in these regulations that you think will disproportionately impact groups with protected characteristics relative to other groups?**

No.

## **Local Government Pension Scheme (Amendment) Regulations 2026**

### **Question 24 Do you agree that new Regulation 55A delivers the government’s intent for the governance strategy, training strategy and conflict of interest policy, in line with the Fit for the Future consultation and response?**

We do generally agree with the wording but would like to make these following points:

- The Board welcomes that the revised regulations will now require AAs to set out how the views of members and employers are considered.
- We believe though that could be clearer, for example, if there are no representatives on the pension committee – how should this be dealt with and the decision for this approach suitably recorded? The regulations are also unclear where functions are not delegated to a committee or sub-committee, where this is the case there is still a need for the AA to explain how representatives of scheme members are included in governance. In the current draft
- It seems that 55A(2)(b)(iii) (bb) applies if member representatives are on the

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committee but do not have voting rights. Is this correct or should it also apply if there are no member representatives on the committee at all.

- Similarly, is it intended that Regulation 55A(2)(b)(iv) - which concerns the appointment of an independent person only applies if the authority has delegated some of its functions?
- Regulation 55A (3) is clear that the knowledge and understanding requirements only apply to officers to whom functions are delegated. It would be helpful if the extent of this were clarified, either in the regulations themselves or in the associated MHCLG guidance (which is not being publicly consulted on).
- The Board believes that the guidance needs to address the practicalities of what needs to be outlined in the training strategy
- The draft regulations give examples of conflicts of interest but none of these refer to the local pension board (LPB). It would be helpful to clarify if this is an oversight or because there is already a regulation that relates to conflicts of interest for LPBs.
- Conflicts – the Board recommends that MHCLG covers in guidance or clarifies the wording in regulation 55A (5)(b) *'conflicts between the authority's role as administering authority and its role in any other capacity'* and whether this would also cover the relationship with the strategic authority, particularly when Councillors may also have roles within the strategic authority organisation.

#### **Question 25 Do you agree that new Regulation 53A delivers the government's intent for the senior LGPS officer in line with the Fit for the Future consultation and response?**

- The Board suggests additional drafting is needed to cover the unique structure within single purpose authorities. The Board expects that in those particular circumstances, the LGPS Senior Officer will be the Head of Paid Service.
- The Board believe that MHCLG should be clear that there will be no sanctions for AA's who have started but been unable to complete a recruitment process within six months (i.e. are waiting for the appointed person to complete their notice period/recruitment checks et). Senior officers in local government can have quite lengthy notice periods and there may well be delays in making appointments for funds where there are elections in May 2026, and where they experience a change in administration.
- The Board would also welcome greater clarity on whether delays in appointing to this role would require an AA to consider this a breach for which they should report themselves to The Pensions Regulator (TPR)?

#### **Question 26 Do you agree that new Regulation 53A delivers the government's intent for the independent person in line with the Fit for the Future consultation and response?**

- The Board believes that MHCLG should be clear that there will be no sanctions for AA's who have started but have been unable to complete the appointment process within the deadline. There may also be delays in making appointments in funds where there are elections in May 2026, where they experience a change in administration and therefore many other competing

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demands on committee agendas.

- The Board would also welcome greater clarity on whether delays in appointing to this role would require an AA to consider this a material breach for which they should report themselves to The Pensions Regulator (TPR). The Board strongly suggests that if the AA can demonstrate the appointment process has started then this should not be considered a material breach of regulations.
- The Board welcomes the confirmation from MHCLG in correspondence that there will be flexibility over whether the Independent Person is a “natural person” appointed to the committee on an individual basis, or a corporate body in which case the service will be procured, with a named individual being responsible for discharging the function.
- The Board notes that the proposed timeline for appointing an IP concurrently with the LGPS Senior Officer does not allow the Senior Officer to lead the appointment process for the IP. This could result in a lack of alignment and accountability. Additionally, clarity is needed on who will take responsibility for appointments if suitable candidates are not identified.

#### **Question 27 Do you agree that new Regulation 55B delivers the government’s intent for the knowledge and understanding requirements in line with the Fit for the Future consultation and response?**

- The Board agrees that the current wording delivers the intent but would like to raise whether 55B (1) should include a lay/substitute member too.
- While the Board welcome the application of regulation 55B to the LGPS senior officer, as well as officer and committee members, the Board notes that Regulation 55B (3) only requires a Senior LGPS Officer to be conversant with LGPS rules after a “reasonable period” but that should be a day one requirement for them. The Board would recommend that separate minimum requirements for the Senior LGPS officer should be covered.

#### **Question 28 Do you agree that Regulation 59 delivers the government’s intent for the administration strategy in line with the Fit for the Future consultation and response?**

- Yes. However, we understand from MHCLG officials that the Government’s intent may be for the administration strategy to go wider than the administering authority/scheme employer relationship and also deal with scheme member experience. If that is the intention, then Regulation 59(2) probably needs a new sub-paragraph to explicitly include this. Regulation 59(2)(g) could be interpreted as giving some cover, but this also references consultation with scheme employers, and the context suggests it should be interpreted as being a matter related to the preceding paragraphs.

#### **Question 29 Do you agree that new Regulation 117 delivers the government’s intent for the independent governance reviews in line with the Fit for the Future consultation and response?**

The Board would like to make the following comments on this regulation:

- The wording of this regulation is extremely complex to follow.
- There is a requirement for the AA to publish the IGR report but not any response to it or action plan to address weaknesses identified. The

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regulations should require that too.

- There is nothing in this regulation about what SoS will do with the IGR report nor any reference to the TPR. The Board thinks it should be clearer as to what happens next if SoS believes that some intervention is needed. Under what powers are interventions to be undertaken?
- The Board has concerns on the drafting of regulation 117 (10) (a) and whether additional wording should be included to be specific that the independence for the administering authority should be in its role within the LGPS (i.e. not any other Council function).

The Board wishes to make an additional comment regarding regulation 57. The proposed amendment could lead to unintended consequences, as it suggests that links to the accounts and other annual report information could be included in the fund annual report, rather than just for policy documents.

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