

# Shadow Advisory Board

## Introduction

This paper provides an overview of the draft regulations issued for consultation by DCLG on 10<sup>th</sup> October 2014, stating in respect of the matters relating to local pension boards (LPBs) and the scheme advisory board (SAB):

- What the draft regulations issued for consultation in June 2014 originally stated,
- What the Shadow Scheme Advisory Board (SSAB) stated in their response, and
- What the draft regulations issued for consultation in October 2014 now state.

In addition, this paper considers the connected policy issues raised by DCLG in the June 2014 consultation, what the SSAB said in response to those issues, and the extent to which these have been addressed in the October 2014 consultation document.

Please note that this paper does not primarily compare all provisions of the regulations issued for consultation in both June 2014 and October 2014, only those specifically addressed by the SSAB in its August 2014 response as matters that may need clarifying, amending or including in regulation. However, the other matters that have changed in the draft regulations issued for consultation in October 2014 from the draft regulations issued in June 2014 which are not covered further in the remainder of this document are as follows:

- New regulation 110(5) states that the SAB "shall have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions." These powers have been granted so that the SAB isn't unduly restricted in the way it chooses to discharge its functions.
- Regulation 110(3) now extends the responsibility of the SAB to include 'connected schemes' (ie. to formally include those provisions relating to members who receive benefits under the LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014).

## Scheme advisory board

<b>Draft regulation as per October 2014 consultation</b>	<b>June 2014 consultation</b>	<b>August 2014 SSAB response</b>	<b>October 2014 consultation</b>

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111(1) [formerly 111(1)(b)]	Draft regulation 111(1)(b) provided that SAB members would be appointed by the Chair with the approval of the Secretary of State.	The SSAB responded that it wished to see regulation providing that SAB members be appointed by the Secretary of State directly to aid independence and accountability.	This has been taken on board by DCLG in the amended draft regulation 111(1) which states that "[The SAB] is to consist of a Chairman and at least 2, and no more than 12 members appointed by the Secretary of State."
111(6) [formerly 111(4)]	Draft regulation 111(4) stated that the Chair of the SAB may appoint "...persons who are not members of [the SAB] to be members of sub-committees of that Board".	The SSAB's response stated that it supported the SAB having control over appointments to its sub-committees, but wished to see regulation provide that sub-committee appointments are made with the agreement of the SAB to ensure accountability and balance.	This has been taken on board by DCLG in the amended draft regulation 111(6) which states that such sub-committee appointments may be made by the Chairman "with the agreement of the Board".
111(4). No corresponding paragraph in June 2014 version.	No corresponding content.	The SSAB's response asked that provision be made in regulation that a maximum of 3 other persons be allowed to sit on the SAB in a non-voting, advisory capacity.	This has been taken on board by DCLG in the new regulation 111(4) which allows for the Chair, with the agreement of the SAB, to appoint up to 3 "non-voting advisory members of the Board".

## Local pension boards

<b>Draft regulation as per October 2014 consultation</b>	<b>June 2014 consultation</b>	<b>August 2014 SSAB response</b>	<b>October 2014 consultation</b>
105(2)	Set out that administering authorities may delegate any functions under the	The SSAB raised concerns as to the potential for the section 101 committee [with responsibility for	Draft regulation 105 is unchanged.

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	regulations, including the power to delegate.	<p>the LGPS] or section 151 officer to have full delegated authority over the establishment and control of LPBs.</p> <p>The SSAB felt this would not be demonstrative of best practice in governance and suggested that 105(2) be extended to state "...except to the committee or officer who has delegated authority for the administering authority function."</p>	
106(5)	Provided for two possible options for how an LPB could be established, broadly either a) as a section 101 committee under the Local Government Act 1972, or b) with procedures as determined by the administered authority.	<p>The SSAB stated its preference for the latter option on the basis that this would confer a wide discretion on administering authorities to establish the procedures for their own LPBs.</p> <p>It would also allow for administering authorities to set their LPBs up in line with the provisions of the former option if they so chose.</p>	DCLG have adopted the latter option in respect of draft regulation 105(5) to allow for local discretion in establishing the voting rights, payment of expenses, etc, as recommended by the SSAB.
106(7) [formerly 106(6)]	Provided that expenses of LPBs are to be regarded as costs of the administration of the pension fund.	In its response, the SSAB stated that the term <i>expenses</i> as referred to in 106(6) could be narrowly interpreted and that it could be clarified that this includes all associated costs, fees, etc, of an LPB.	Draft regulation 106(7) is unchanged. However, new regulation 106(6) has been included to ensure LPBs aren't unduly restricted in undertaking their role. This states that LPBs "shall have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions."
107	References to 'member' in regulation 107 sometimes refer to a member of a pension scheme, and other times to an elected member of a local	The SSAB recommended that references to 'member' be clarified in the regulations.	These have been clarified. References to 'member' (as meaning a councillor of a local authority) in regulation 107 now

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	authority.		refer to 'elected member'.
107(2)(a) of June 2014 version. No corresponding paragraph in October 2014 version.	Stated that members of local authorities could not act as employer or member representatives on LPBs.	The SSAB set out its view that councillors should be allowed to sit on LPBs as employer representatives as this would ensure stronger accountability and good governance, particularly given the relationship between the LPB and the section 101 committee with responsibility for the LGPS.	This paragraph of draft regulation 107 has been removed, allowing for elected members to sit on LPBs as employer representatives.  Instead, an additional paragraph has been inserted at 107(3) stating that, "No officer or elected member of an administering authority who is responsible for the discharge of any function under the regulations... may be a member of a local pension board."
107(2)(b) [formerly 107(2)(b)(ii)]	Stated that a person to be appointed as a member representative should have "...relevant experience and the capacity to represent members..."	In its response, the SSAB raised concerns that the requirement for "experience and capacity" from people seeking to sit on an LPB as member representatives may prove too restrictive.  The SSAB suggested that paragraph 107(2)(b) would be more inclusively expressed as requesting that a member representative is "...a scheme member or having relevant experience and capacity".	Draft regulation 107(2)(b) is unchanged.
107(3) of June 2014 version. No corresponding paragraph in October 2014	Provided that the total number of LPB members appointed as employer or member representatives must exceed the number of members 'otherwise appointed' to a LPB.	The SSAB's response raised concerns that the inclusion of other members could create an imbalance in the requirement for equal representation of employer and member representatives (primarily because elected members could only sit on LPBs as 'otherwise	This paragraph of draft regulation 107 has been removed and there is no reference to members 'otherwise appointed' to LPBs within the draft regulations.

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version.		appointed' representatives). The SSAB's response suggested that one approach to this issue would be for regulations to limit the number of 'otherwise appointed' representatives so that these would not exceed the number of member or employer representatives (and would therefore only form a maximum of one third of an LPB's membership).	
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## Other connected policy issues

The connected policy issues raised in the June 2014 consultation covering joint pension boards, the public sector equality duty, etc, haven't been addressed in the October 2014 consultation. However, we understand from DCLG officials that the responses submitted in respect of these issues are under consideration and, where applicable, regulations arising from these issues will be issued in due course.