

Shadow Advisory Board

Draft Governance Guidance Creation & operation of Local Pension Boards

Introduction

A five week consultation on draft governance guidance commenced 17 October 2014. The draft guidance has been developed by the Governance and Standards sub-committee ('the sub-committee') in conjunction with the Governance Working Group ('the working group') and through the work of Eversheds LLP we possess a 66 page document covering the creation and operation of Local Pension Boards (LPBs) from April 2015.

To assist Shadow Scheme Advisory Board (SSAB) members the following summary highlights the main points within the guidance being mindful that the guidance has been created in line with the current draft regulations issued 10 October 2014 from the Department for Communities and Local Government (DCLG) and the content has been framed to align with the spirit of scheme regulations providing administering authority with local discretion when establishing these LPBs.

Summary of Content

The guidance is split into 11 sections including:

1. Introduction
2. Background
3. Legislative background and structure of governance arrangements
4. The Pensions Regulator
5. Constitution and Membership of a Local Pension Board
6. Board Knowledge and Understanding
7. Conduct of members and conflicts of interest
8. Reporting
9. Resourcing and Funding
10. Other Possible Structures
11. Other Guidance
 - Schedule A
 - Schedule B

Sections 1 - 4

Early chapters provide an overview of the Local Government Pension Scheme (LGPS), a recap on the road to governance reform as well as an overview of the current LGPS Governance structure. It indicates the legislative background to the new governance structure in the LGPS and in doing so explicitly states the role of all key players including the responsible authority, administering authority (scheme manager), LPBs, the scheme advisory board as well as the extension of regulatory powers of the Pensions Regulator to cover some aspects of public service pension schemes.

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One of the biggest areas of debate amongst the working group tasked with developing the structure of this guidance was identifying what the role of a LPB is. To help identify the role of a LPB first it was necessary to reiterate the role of the administering authority and how this role is not changing (paragraph 3.20 to 3.25). Whilst the role of a LPB does not extend to allow it to be a decision making body the guidance has been written to ensure that the enabling power within draft legislation is fully represented see paragraph 3.28 for more details.

Section 5

This chapter covers much of the practical concerns relating to the establishment of a LPB including the minimum required information for inclusion in its terms of reference.

One key area of debate was the difference between the requirements to establish a LPB by 1 April 2015 and whether that means that a LPB would also need to be operational by this date. Having sought DCLG's view the guidance now reflects the requirement for a LPB to be established by 1 April 2015 (terms of reference and composition through full council (or equivalent)) however this does mean that a LPB does not need to be fully operational by this date. It should be operational (i.e. representatives in place and have held its first meeting) within a reasonably practical period after 1 April, and no later than 4 months from this date (this is seen by DCLG and the sub-committee as a reasonably practical period after 1 April).

Other areas include the appointment of members to LPBs and puts forward considerations to be taken into account when ensuring a transparent process of appointment and selection of representatives. Other important considerations including term of office, termination and what might happen should an administering authority fail to establish a local pension board by 1 April 2015.

Sections 6 & 7

Content for these sections on Knowledge and Understanding and Conflict of Interest take on board much of the content of the Pensions Regulators draft code of practice number 14. More detail for an LGPS audience is considered including some more specific examples of potential conflicts of interest for LPB members within the LGPS. Actions points including the need to adopt a knowledge and understanding policy and framework, providing board members with high-quality induction and ongoing training as well preparing a code of conduct and conflicts policy for the LPB.

Section 8

This covers the reporting requirements of the LPB including internal reporting, external reporting options as well as the options for escalation of more serious issues. The agreed reporting lines from and to a local pension board are for local determination but guidance sets out the possible routes and frequency of how the board should communicate and be communicated with.

The question, 'what legal entity is a local pension board' is fundamental to much of the information in this chapter. The inference from wording in section 5(7) of the

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Public Service Pensions Act 2013 is that a LPB is a part of the same legal entity as the administering authority (rather than a legal entity in its own right), i.e. that it is considered a committee of and part of the administering authority. Therefore for Freedom of Information purposes a local pension board will already be part of a Freedom of Information public authority (the administering authority). In addition this interpretation of the legal status of the LPB means that for data protection purposes the administering authority remains the data controller responsible for compliance with the Data Protection Act 1998. Board members are asked to note that as yet HM Treasury has not confirmed their interpretation of what legal entity a LPB is.

Section 9

This details the resourcing and funding provisions that should be in place for a LPB, it notes the minimum resource requirements as well as options for how a LPB agrees its budget.

Section 10 & 11

At present this section of guidance covers the option of combined local pension boards and pension committees. It identifies the difficulties in place if an administering authority were to try ensure that both the provisions of the Local Government Act 1972 and the Public Service Pensions Act 2013. In addition this chapter should be read in conjunction with Schedule B which summaries the legal provisions of both these pieces of primary legislation.

Section 11 provides links to other guidance.

What's next?

Comments have been invited from all interested parties by 21 November. These will be collated by the Secretariat and where amendments are required the necessary work will be undertaken to review the existing content of guidance. In addition before final publication the guidance will need to be checked to ensure it matches with final laid regulations and also the tPR code of practice.

In addition to responses on the draft guidance the consultation document includes an invitation to responders to include any additional questions they may have relating to the introduction of LPBs. These may be questions on areas included in the guidance or additional areas where interested parties feel further information or clarity is required. The intention is that relevant questions would then be used in a 'questions and answers' style document to be issued from the SSAB later this year (in addition to the governance guidance).

Full copy of the draft governance guidance and the covering note issued by the SSAB can be found at <http://www.lgpsboard.org/index.php/about-the-board/board-consultations>.

Board Secretariat
21 October 2014