

21 November 2014

LGPS Governance Regulations 2014  
Department for Communities and Local Government  
Workforce Pay & Pensions  
2nd Floor  
South East Quarter  
Fry Building  
2 Marsham Street  
LONDON SW1P 4DF

Dear Robert

**Local Government Pension Scheme Regulations 2014: better governance and improved accountability – Consultation**

Further to the consultation paper and revised draft regulations issued by DCLG on 10 October 2014.

Thank you for the opportunity to comment further on the revised governance proposals for the Local Government Pension Scheme (LGPS).

We note and welcome the fact that the revised draft regulations have taken on board a number of the comments raised by CIPFA, the Shadow LGPS Advisory Board and others. However there remain some issues that we would ask that DCLG reconsider before finalising these Regulations, particularly the restriction to the number of advisors on the Scheme Advisory Board, where CIPFA has played a significant role as an advisor whilst the board has been operating in shadow form. These comments are summarised at Annex A. I have also attached at Annex B a copy of our response to the earlier consultation (June 2014) for ease of reference.

I hope these comments are a useful contribution to the development of the Regulations. As ever, if you would like to discuss further any of the points raised, please do not hesitate to contact CIPFA via the Pensions Panel Secretary, Nigel Keogh, at [nigel.keogh@cipfa.org](mailto:nigel.keogh@cipfa.org).

Yours sincerely

**Bob Summers**  
**Chair, CIPFA Pensions Panel**



INVESTOR IN PEOPLE

## **Annex A**

**Regulation 106(7) provides that the costs of local pension boards are to be regarded as administration costs charged to the fund.**

Pensions funds will face significant additional cost in implementing these regulations and we welcome the express recognition that the costs of this activity are to be met from the pension fund. However we would like to see a stronger steer on the need to ensure the *adequacy* of funding for the local pensions board and the necessary ancillary support, either by way of regulation or other communication from DCLG.

**Regulations 107(2)(a) and (b) requires an administering authority to be satisfied that employer and member representatives appointed to a local pension board have the relevant experience and the capacity to perform their respective roles.**

We recognise that there is a risk that without such pre-conditions, appointees to the board may not have capacity to undertake the duties and responsibilities required of pension board members, and that this in turn may impact upon the effectiveness of the board. However the terms "experience" and "capacity" are imprecise and in the absence of further definition could possibly lead to varying interpretations of their precise meaning in this context by both scheme managers setting up the board and potential board members. Given that the regulations will be supported by extensive implementation guidance, we feel that ensuring that those appointed to boards are capable of the task could be left to local flexibility, supported by the guidance.

**Regulation 111 sets out the membership requirements of the scheme advisory board. The Chair of the scheme advisory board is to be appointed by the Secretary of State and the Department will work closely with the Shadow scheme advisory board in formulating and organising the nomination and appointment process. Membership of the board must comprise at least 2 and no more than 12 persons appointed by the Chair with the approval of the Secretary of State. Regulation 111 (4) permits the Chair of the Advisory Board (in agreement with Board members) to appoint up to a maximum of 3 non-voting advisory members to the Board.**

We welcome the fact that the revised Regulations now make specific reference to use of advisors. However we are concerned that by restricting the maximum number to three, the Board may be unnecessarily limiting itself with the regard to the knowledge and skills it can draw upon through the use of non-voting advisors. The Shadow Scheme Advisory Board has made extensive use of advisors, sitting alongside Board members, which we believe has been beneficial in establishing the Shadow Board as a key part of the LGPS governance structure. These have included representatives from professional bodies (such as CIPFA), the LGPS practitioner community, actuarial firms, legal firms, the NAPF and the Pensions Regulator, each of whom have had a significant contribution to make to the work of the Shadow Board.

We would therefore urge DCLG to reconsider placing a limit on the number of advisors that might be appointed to the Board. Alternatively the Regulations might be amended to allow the Chair of the Board to invite observers to the Board, although this would not allow the advisors to contribute to proceedings as actively as they might.

### ***Funding of the Scheme Advisory Board (Regulation 113)***

We believe the draft regulations are adequate for the purpose of establishing the funding for the Scheme Advisory Board, and that the safeguards to ensure value for money are appropriate. However we note that Regulation 113 (2)(a):

- does not stipulate the timetable for the submission of the budget by the Board to the Secretary of State
- does not stipulate the date by which the budget must be agreed by the Secretary of State
- does not provide for a mechanism for the resolution of disputes where the Board and Secretary of State are unable to agree a budget by a certain date

Given that both the Board and the funds, on which a levy will be made to meet these costs, will both need to budget accordingly, some certainty around the timetable etc. for the budgetary process would be welcome.

We would also note that Regulation 113 makes no reference to pension fund administering authorities forming part of the budgetary approval process. Given that it is pension funds that will bear the costs of the Board, funds should have some part in that approval process, perhaps through a Board budgetary sub-committee where funds are represented.

## **Annex B**

14 August 2014

LGPS Governance Regulations 2014  
Department for Communities and Local Government  
Zone 5/F5  
Eland House  
Bressenden Place  
London  
SW1E 5DU

Dear Sandra

### **The Local Government Pension Scheme (Amendment) Regulations 2014 - Draft Regulations on Scheme Governance – Consultation**

Further to the consultation paper and draft regulations issued by DCLG on 23 June 2014.

As you know, CIPFA, via the Pensions Panel, has long had an interest in the governance arrangements in the LGPS and has over the years provided guidance to LGPS practitioners on various aspects of the governance framework, including knowledge and skills, risk management and investment decision-making. Consequently we have a strong professional interest in how the requirements of the Public Service Pensions Act 2013 will impact upon LGPS governance.

Our overall conclusion is that we are pleased to see that the regulations have been framed in such a way as to allow funds the maximum possible flexibility to implement the requirements of the Public Service Pensions Act in such a way that suits their own local circumstances. This follows the well-established and successful model for pension fund decision-making bodies in the LGPS, where individual funds can structure their governance arrangements according to local determinants. To complement the regulations, a group consisting of CIPFA, the LGA, practitioners and other stakeholders is currently involved in the development of substantive supporting guidance to assist practitioners in implementing these regulations.

However we do have a number of observations on the draft regulations, and these are set out in the attached Annex.

I hope these comments are a useful contribution to the development of the Regulations. As ever, if you would like to discuss further any of the points raised, please do not hesitate to contact CIPFA via the Pensions Panel Secretary, Nigel Keogh, at [nigel.keogh@cipfa.org](mailto:nigel.keogh@cipfa.org).

Yours sincerely

**Bob Summers**  
**Chair, CIPFA Pensions Panel**

## **Annex A**

### **Chapter 2 – Proposals for consultation**

**Regulation 106(2) carries forward into the Principal 2013 Regulations, section 5(7) of the Public Service Pensions Act 2013. This provides that where the scheme manager of a Scheme under section 1 of the Act is a committee of a local authority, the scheme regulations may provide for that committee also to be the board for the purposes of this section.**

In discussion with practitioners across the LGPS regarding the desirability of establishing a single committee to encompass both the role of the local pension board and the Section 101/102 committee, it seems clear that this not an option being widely considered. The complexities of integrating the two roles in such a way as to satisfy the legal requirements of these regulations and the Local Government Act 1972 appears not to be something that funds are willing to contemplate. When added to the need to obtain Secretary of State approval for such an approach (and to continually demonstrate the effectiveness of that approach to the Secretary of State to retain that approval), it would seem unlikely that many, if any, funds would view this as a preferred option. We also note in paragraph 3.3 of the consultation paper that whilst “The Public Service Pensions Act 2013 does allow for this facility in scheme regulations”, DCLG is not compelled to introduce it.

However despite these reservations, we would suggest that DCLG retain this provision in the regulations as smaller funds in particular may value the flexibility that this option may offer. We would also note that not all LGPS administering authorities are governed by the requirements of section 101/102 of the Local Government Act 1972 and may therefore wish to explore the option of merging the local pensions board into their existing committee structure.

**Regulation 106(5) sets out the means by which an administering authority establishes its local pension board but the draft offers two different alternatives of the regulations as described later in Chapter 3 (Other connected policy issues). Consultees are specifically invited to indicate and comment on their preference.**

CIPFA would favour the second option. This allows the administering authority the necessary discretion to establish the procedures applicable to a local pension board such as voting rights, the establishment of sub-committees, the formation of joint committees and payment of expenses, and would give greater flexibility in setting up the Board.

**Regulation 106(6) provides that the costs of local pension boards are to be regarded as administration costs charged to the fund.**

Pensions funds will face significant additional cost in implementing these regulations and we welcome the express recognition that the costs of this activity are to be met

from the pension fund. However we would like to see a stronger steer on the need to ensure the *adequacy* of funding for the local pensions board and the necessary ancillary support, either by way of regulation or other communication from DCLG.

**Regulation 107(2)(a) prevents a councillor member of a local authority being included either as an employer or member representative, but this does not prevent an administering authority from appointing councillor members of a local authority (or any other person) to the local pension board over and above the required equal number of employer and member representatives.**

We would query why it is felt necessary to exclude councillors from acting as employer (or member) representatives. Whilst employers representatives may come from non-local authority bodies, in many instances, the employers represented on the local pensions board will be other local authorities (district, town and parish councils for example), where elected members are an integral part of the governance of those employers.

**Regulation 107(2)(b) requires an administering authority to be satisfied that employer and member representatives appointed to a local pension board have the relevant experience and the capacity to perform their respective roles.**

We recognise that there is a risk that without such pre-conditions, appointees to the board may not have capacity to undertake the duties and responsibilities required of pension board members, and that this in turn may impact upon the effectiveness of the board. However the terms "experience" and "capacity" are imprecise and in the absence of further definition could possibly lead to varying interpretations of their precise meaning in this context by both scheme managers setting up the board and potential board members. Given that the regulations will be supported by extensive implementation guidance, we feel that ensuring that those appointed to boards are capable of the task could be left to local flexibility, supported by the guidance.

**Regulation 111(1) sets out the membership requirements of the scheme advisory board. The Chair of the scheme advisory board is to be appointed by the Secretary of State and the Department will work closely with the Shadow scheme advisory board in formulating and organising the nomination and appointment process. Membership of the board must comprise at least 2 and no more than 12 persons appointed by the Chair with the approval of the Secretary of State.**

We note that the draft regulations concerning board membership make no mention of the role or the use of advisors. The Shadow Scheme Advisory Board has made extensive use of advisors, sitting alongside Board members, which we believe has been beneficial in establishing the Shadow Board as a key part of the LGPS governance structure. We believe that DCG should consider making specific reference to the role of advisors in relation to the Board in the regulations

## **Chapter 3 - Other connected policy issues**

### ***Combined Section 101 committee and local pension board (Regulation 106(2))***

Please see our earlier comments above.

### ***Establishment of local pension boards (Regulation 106(5))***

Please see our earlier comments above. Our preference would be for option 2, which would allow greater flexibility and choice at local level in the way that local pension boards are established.

### ***Funding of the Scheme Advisory Board (Regulation 113)***

We believe the draft regulations are adequate for the purpose of establishing the funding for the Scheme Advisory Board, and that the safeguards to ensure value for money are appropriate. However we note that Regulation 113 (2)(a):

- does not stipulate the timetable for the submission of the budget by the Board to the Secretary of State
- does not stipulate the date by which the budget must be agreed by the Secretary of State
- does not provide for a mechanism for the resolution of disputes where the Board and Secretary of State are unable to agree a budget by a certain date

Given that both the Board and the funds, on which a levy will be made to meet these costs, will both need to budget accordingly, some certainty around the timetable etc. for the budgetary process would be welcome.

We would also note that Regulation 113 makes no reference to pension fund administering authorities forming part of the budgetary approval process. Given that it is pension funds that will bear the costs of the Board, funds should have some part in that approval process, perhaps through a Board budgetary sub-committee where funds are represented.

### ***Joint pension boards***

Given the increasing degree of collaboration across the LGPS, we firmly believe that the Regulations should specifically permit funds to establish joint boards. The insertion of a provision where by funds that share and/or collaborate on administrative and/or management functions may establish a single local pensions board would mirror these developments, and contribute significantly to the cost effective operation of the funds. We do not believe that pre-approval should be necessary (pre-approval is not required in other areas where funds are working collaboratively). However the Scheme Advisory

Board should be in position to review the effectiveness of joint boards post-hoc against if necessary.

### ***Annual general meetings, Employer forums, etc***

The consultation paper poses the question whether the Regulations should require administering authorities to facilitate a forum for both employers and employees on at least an annual basis.

It is our view that the manner and timing of the way funds communicate with stakeholders is best left to local discretion on a comply or explain basis. Given the breadth in terms of geographical area covered by funds, membership size and composition, and employer structure, it would be difficult to find a single approach that strikes an equitable balance across all funds in an imposed regulatory requirement. There is also the danger that other good communications practices may be abandoned by funds if are compelled to meet the specific of a regulatory requirements.

### ***Public Sector Equality Duty***

The consultation paper raises the question of whether the Regulations should extend the role of the scheme advisory board to have regard to the Equality Duty in making recommendations to the Secretary of State on the desirability of making scheme changes and extending the scrutiny/compliance role of local pension boards to include the Equality Duty.

CIPFA would support the extension of duties for both the Scheme Advisory Board and local pension boards to have regard to the Public Sector Equality Duty.

### ***Knowledge and Understanding***

The consultation raises the question as to whether provision should be made in the Regulations (or at some stage in the future, provision should be made in the Principal 2013 Regulations) to require members of committees established by the administering authority to discharge its pension functions to comply with the Knowledge and Understanding Framework and other relevant training.

CIPFA would support the inclusion of such a provision at the earliest opportunity. The CIPFA Code of Practice on Knowledge and Skills and its associated Knowledge and Skills Frameworks have firmly placed acquisition, retention and development of knowledge and skills at the forefront of a pension funds responsibilities with regard to the management of the LGPS. To have this receive statutory backing can only improve upon the high levels of compliance we have witnessed since the Code of Practice was launched and we would be happy to discuss further with DCLG how the existing knowledge and skills requirements could be adopted as a statutory requirement and its implementation managed in such a way as to recognise any recruitment and retention issues that elevation to a statutory basis may create.