

Results of Governance Discussion Paper – Consultation Feedback

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Date Created		



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2. Purpose

The purpose of this paper is to provide an insight into the results of the recent LGPS (Scotland) New Governance Arrangements Discussion Paper Consultation.

3. Background

The SLOGPAG sub-group has been considering the question of the future governance framework for LGPS in Scotland for some time. (The [Public Service Pensions Act 2013](#) includes several key provisions relating to the administration and governance of the new public service pension schemes established under Section 1 of the Act. In the case of the Local Government Pension Scheme in Scotland, these arrangements will apply to the new Scheme which comes into effect on 1 April 2015). Whilst the SLOGPAG sub-group discussions are in progress, it was felt by the sub-group that it would be useful for a consultation exercise to take place on the options for future governance arrangements.

4. Approach

The Governance Discussion paper¹, circulated to stakeholders on the 23 December 2013, explored four specific sections of the Act which impact on the governance arrangements in the new Scheme:-

- **Scheme manager**
- **Pension board**
- **Pension board information, and**
- **Scheme advisory board**

The questions in the consultation focus on the level of details which should be included in the regulations and invite comments and views on the remit of the different mandatory roles.

¹ The questions for inclusion in the consultation were agreed at the SLOGPAG sub-group on the 12th December 2013.

5. Results

The consultation ran from 23 December 2013 to 3 February 2014.

SPPA received 16 written responses² from the following bodies: seven funds; COSLA, SEPA, IGG, CIPFA, Scottish Water, Audit Scotland, Hymans-Robertson, LGPS (Scotland) Conveners Group and Unison.

It is clear that there are wide-ranging and diverse views on the shape of future governance arrangements for LGPS in Scotland. To enable interested parties to acquire a comprehensive view of responses, a 'read out' of these are presented in Annex A with a colour-coded bar indicating: the total number of responses per question and whether these were positive or negative (where applicable). However, the main messages which can be drawn from the consultation responses are as follows:

- the majority view is that the regulations should not be prescriptive and should be phrased to allow maximum flexibility for the different regulatory boards to evolve. This view supports the idea of a 'Governance Compliance Document' in support of the regulations
- views, both on the composition of the Scheme Advisory Board and who should determine this, are diverse. Although, where it is raised, there is a general consensus that the chair should be independent. There are many suggestions raised for what role the SAB might play
- the importance of clarity around the role of the Pension Board is stressed with a need to set clear boundaries around what powers it does/does not have. In addition, there is a trend in the feedback noting the importance of strong processes around recruitment, training and managing conflict of interest. There is not a consensual view on whether the Chair should be independent or not
- there are divergent views on how the governance framework itself should look: some see the separation of Pension Board and the Scheme Manager (Statutory Committee) as essential to ensure good governance (how can one body scrutinise itself?), avoid conflict with powers conferred by LG Act with reference to committee composition, others see the Pension Board and Scheme Manager operating as one entity- strengthening the voice of the membership in the spirit of Hutton recommendations on governance. The majority favour separation as the preferred structure

² Consultation responses were invited in two ways: in writing and via Survey Monkey. Unfortunately, Survey Monkey did not prove to be the best medium for this type of survey and the few responses returned were incomplete. The results reported here are, therefore, on the basis of the written responses received.

- There was considerable interest in the suggestion of a review of the structure of the Scottish LGPS with many comments on how this might be approached.

Local Government Pension Scheme (Scotland) New Governance Arrangements Discussion paper – read out of consultation responses

Q1. What “other matters”, if any, should we include in Scheme regulations to add to the role of local pension boards?



Responses: 16

No additional matters: 7

Additional matters: 7

No comment: 2

Comments:

- Any additional matters specified in the Scheme regulations should be consistent with the Pension Board’s statutory role to assist the Scheme Manager in order to secure compliance with Scheme Regulations and the Pension Regulator’s Codes of Practice.
- The regulations could simply say “such other matters as the Scheme Manager and Pension Board consider appropriate.”
- It is important that the regulations provide clarity on the role of the Pensions Board, and how that would be distinct from the Scheme Manager. At present the Act contains little detail on this point. In particular the respective roles and responsibilities, and including decision making powers versus scrutiny role.
- The regulations need to recognise the importance of accountability, transparency and appropriate levels of active representation of employers and members.
- The Pensions Board could have a role/responsibility to raise any material and persistent non-compliance directly with the Pensions Regulator, an obligation which might make it a more effective body, should regulation seek to impose a meaningful obligation on its compliance role. This would be less appropriate where the regulations do not seek to impose obligations on the members of the Pensions Board in relation to its compliance role beyond that of simply assisting the Scheme Manager.
- Local pension boards could also be asked to monitor the effectiveness of the scheme manager in meeting the fiduciary duty associated with the administration of the LGPS.
- Ministers may wish to include in the scheme regulations powers for it to add to the role of the pensions board should any gaps in the scrutiny framework become apparent that the pensions board may be in a position to fill.
- Consideration should be given to specifying sub-committees of the Pension Board such as an audit panel and/or investment strategy panel.
- The Board itself may also be concerned with matters of ethical and responsible

investment, clarity of fiduciary responsibility and scheme manager customer service levels in respect of members and employers.

- The Board may also be concerned with risk identification and management (other than investment risk) ranging from security of employer covenants to the skills and resourcing levels of the Scheme Manager.
- Perhaps it would be useful to specify what course of action boards should take if they come across any issues of non-compliance – a clear pathway of governance to ensure that any issues are resolved in full. For example, are there instances where matters should be reported to the SPPA?
- Regulations should include explicit reference to the role of the Pensions Board being extended to provide assistance to administering authorities in securing compliance with matters associated with funding and investment, but not the development of the actual funding strategy or investment principles.
- It would seem appropriate that the Pensions Board should have an oversight role modelled on those investment and funding issues of interest to the Pensions Regulator (TPR) with regard to private sector pension schemes. For example, the requirement should ensure that there is evidence of and compliance with:
 - rigorous processes in place for decision making;
 - rigorous decision making itself; with both the above covering establishment of:
 - funding (including deficit management) and investment strategies;
 - funding bases;
 - efficient implementation of investment strategies in particular in regard to choice of investment vehicle, manager structures/selection and asset transfer activity;
 - rigorous reporting in line with all relevant guidance/regulations;
 - due diligence on participating employer covenants.
- Discharging of the investment activity, including investment allocation and management by the board.
- There should be a model constitution and an AGM for each fund.
- Equality proofing should be applied to all current and proposed changes to committee and governance arrangements. A mechanism for carrying out equality impact assessments should be agreed with the TU Side.
- For effective governance the board needs to have its fiduciary obligations qualified and this is best done by the adoption of the Occupational Pension Scheme Investment Regulations 2005 amended 2007.

Please use this space for additional comments

1.11 There is a requirement for scheme managers/administering authorities to check that no person appointed to the board has any conflict of interest as defined in the Act and also to undertake regular checks;

Q2. Should Scheme regulations make it clear that nobody with a conflict of interest, as defined, may be appointed to or sit on a pension board?

Responses: 16

Yes: 11

No: 4

Other: 1

No comment: 0

Additional comments from yes responses:

- Given that “conflict of interest” guidance is likely to be forthcoming from various sources (Regulator, CIPFA, NAPF, etc), then in order to avoid a confusion of mixed messages, it should be made clear which guidance is to be pre-eminent (e.g. the Regulator’s guidance would seem the obvious choice). This would help deliver a consistency of approach across funds.
- An additional requirement in the regulations could be the imposition of a duty on Pension Board members to self-declare any conflicts of interest as and when they occur.
- It would be useful for Scheme Managers, and avoid any doubt, if Scottish Ministerial guidance was issued to inform the determination and interpretation of what constitutes a conflict of interest in relation to membership of a Pension Board. It may be appropriate to provide a document similar to that of the Councillors’ Code of Conduct.
- Guidance is required, in particular, as to whether a councillor from an administering authority is allowed to sit on a Pensions Board or is this deemed a conflict of interest? If this is the case, then there is an issue with regards to the membership of the board.
- There should be a mechanism to remove them from post if they acquire a conflict of interest.
- Regulations should exclude from Board membership those with fixed and ongoing conflicts of interest, but should allow for those with temporary conflicts (as may arise from time to time) to excuse themselves from discussion of the particular subject. The most difficult conflicts may arise where political views, local or national, could influence perceptions about investment decisions.

Additional comments from no responses:

- Our preference would be that administering authorities are required instead to establish a “conflicts policy”, in line with published supporting guidance. The policy would set out how conflicts would be managed when they are identified and help determine whether they are prejudicial or not. This approach has the key advantage of mitigating the unnecessary exclusion of people with relevant skills from pension boards.
- Should be left to local discretion.

Additional comments from no responses:

- The purpose of the separation is to ensure that pension board members have

less potential for conflicts of interest. For instance, currently councillors have a clear conflict of interest when making investment decisions, as they are legally required to prefer the interests of council tax payers and their local electorate rather than scheme members.

Please use this space for additional comments

1.12 There is a provision requiring a member of the board or person proposed to be a board member to provide whatever information about conflict of interest that the scheme manager/administering authority reasonably require.

Q3. Should Scheme regulations prescribe the type of information that may be “reasonably required”?



Responses: 16

Yes: 3

No: 12

No comment: 1

Most of the no responses (8) said this is something that should be covered in guidance. Source of guidance could be Scottish Ministers and/or the Pensions Regulator, and/or could be based on the current Code of Conduct for Councillors in Scotland.

Comments:

- Matters relating to the management of potential conflicts of interest will be adequately covered in the Pensions Regulator’s Code of Practice on Governance and Administration of Public Service Pension Schemes.
- Point raised that while there are statutory provisions relating to Pension Board.
- Members not being conflicted, there are no similar provisions relating to the persons who will actually be making the Fund decisions – namely the various members of Pensions Committees, and that this omission should be addressed through the Scheme regulations.
- Suggestion that a prescriptive list should be supplied made by a yes response. A no response suggested that a non-exhaustive list of examples be provided for guidance.
- This information should be placed on a public register like other public sector disclosure requirements (yes response).
- Yes. Those who may put themselves forward for Pension Board membership must be fully aware of their liability status and legal position, including such personal information as will need to be provided and which may then appear in the public domain.

- Any prescription of required information by definition means exclusion of certain information and risks the scheme regulations missing something of relevance.
- It might need to be in the regulations that the Scheme Manager should be able to demonstrate why the request for information is 'reasonable'.

Please use this space for additional comments

Q4. Should Scheme regulations prescribe the requirement for managers/administering authorities to undertake regular checks to ensure board members do not have any conflicts of interest?



Responses: 16

Yes: 3

No: 12

No comment: 1

Three of the no responses also specifically mentioned guidance.

Comments:

- An appropriate mechanism could be the requirement for members to provide an annual return confirming no anticipated conflict of interests, and have declarations of interest as a standing part of any meeting agenda.
- The Act itself would sufficiently cover this in conjunction with a provision in the regulations requiring Pension Board members to declare any interests at meetings of the Pension Board and fully report the matters under consideration/outcomes from such meetings (including any declared conflicts) to the Scheme Manager.
- It may be useful to have a consistent approach within the regulations to define what 'time to time' means in practice.
- A review of conflicts of interest could be prescribed as a requirement to be contained within the conflicts policy (suggested re Question 2).

Please use this space for additional comments

1.13 There is a requirement that each pension board must include employer representatives and member representatives in equal numbers.

Q5. Although not required by the Act, should Scheme regulations prescribe a minimum number of employer and employee representatives?

Responses: 16

Yes: 1

No: 12

Maybe: 3

No comment: 0

Comments:

- Suggestion that should be left to local discretion made by 10 respondents.
- PB membership should be as small as is practically possible.
- One of the maybe responses stated key is to maintain local flexibility, and there may be benefit in specifying a minimum number of total members.
- Yes. For practical reasons a total number and a quorate number should be prescribed for the Pension Board and its meetings.
- If there is to be a Pension Board for each Scheme Manager and fund, the regulations should ensure they are constituted and operated in similar manner.
- It could be useful to ensure adequate representation and experience across the board when / if key decisions are being taken. However, we believe there are a number of considerations here which could influence this:
 - are decisions actually being taken by the board;
 - the specific responsibilities and role of the board; and
 - the interaction with existing arrangements in place within schemes.”
[classed as a maybe]
- We do not generally support the idea that scheme Regulations prescribe the minimum number of member and employer representatives. We do, however, believe scheme Regulations should prescribe the minimum number of individuals sitting on any local Pension Board [designated this as a maybe response].

Please use this space for additional comments

1.14 Section 5(7) of the Act would allow the new Scheme regulations to permit a committee of a local authority to also be the local pension board. This option was deliberately left open in the Act to ensure that a proper discussion of the issues with all interested parties could be undertaken.

1.15 The argument for and against separate bodies is finely balanced. Those who support the committee and pension board being one and the same body argue that local government cannot afford to spend more time and money setting up new bodies, particularly when the function could easily be undertaken by existing pension or investment committees. Others argue that a statutory decision making committee is in no position to fulfil the clear scrutiny role set out in the Act. It cannot, in effect,

scrutinise itself and be in a position to assure the scheme manager that it is complying with all relevant legislation and Pension Regulator's codes of practice.

1.16 Whilst we are seeking your views on the status of local pension boards and statutory committees, it is likely that Scheme Regulations will require that the final outcome must be applied consistently across the Scheme as a whole, i.e. all pension boards will either be combined or separated from statutory committees.

Q6. How should the governance of the local government pension scheme in Scotland change to incorporate the changes required by the Act?

Responses: 16
Comments: 16
No comment: 0

Three different governance models were suggested to incorporate the changes required by the Act:

1. A single Scottish Pension Board to assist the eleven Scheme Managers in ensuring compliance across all funds with regulations and The Pension Regulator code of Practice. It is envisaged that this would ensure a high standard of skills and knowledge, because expertise would be pooled, whilst ensuring consistent and effective governance.
2. Make the current Pension Committees [Scheme Managers] into the Pension Boards [this would cause an issue with Local Government Scotland Act 1973 and would require an amendment to the Act – where the statutory Pension Committee needs to have a two thirds' voting rule for administering authorities which is at odds with the Public Service Pension Act's requirement for fifty percent representation from members and pensioners]. The Pension Boards should be legally separated from the administering authorities [which overcomes the difficulty with the LG Act] and investment assets should be registered with it. It is envisaged that this separation would remove potential conflicts of interest between the board member local authority duties and their duties to scheme members.
3. The Pension Committee and the Pension Board exist as separate entities for each fund, facilitating the integrity of the governance structure by separating decision-making and scrutiny roles.

One respondent felt that the role of the Board was not clear enough to determine where and how it would operate within the governance structure.

Please use this space for additional comments

Q7. Should the new Scheme regulations require local pension boards to be a body separate from the statutory committee or for it to be combined as a single body?

It would be helpful if you could provide the reasons which support your answer.

Responses: 16

Separate: 12

Local discretion: 2

Combined: 2

No comment: 0

12 respondents felt that there should be separation between the local pension board and the statutory committee (Scheme Manager) 2 respondents thought that they could be combined or separated depending on local arrangements (size of fund etc.) 2 thought that they would prefer to keep the existing arrangements with additional regulation to ensure compliance with the Act.

Most respondents do not think that the regulations should be prescriptive and that decisions should be taken locally as long as they comply with the regulations.

Additional comments for separate bodies:

- The Pension Board is charged with securing statutory compliance. A combined Committee and Board would be both making the decisions and then policing the decisions. To be credible, the policing process needs to have some separation from the decision making process. The board will require to include members with increased levels of technical knowledge and expertise (e.g. applicable law, regulation and codes of practice) in order to properly fulfil its function.
- In order for such roles to be both effective and transparent it is difficult to see how one committee could be reasonably expected to perform the executive function and provide support of the same function. Good governance principles would suggest that as the Pension Board and the committee have separate roles then they should be kept separate.
- There are important differences in the roles of the Scheme Manager and the Pension Board. Combined boards/ committees would see a clash of the two sets of primary legislation; the former being concerned with the mechanics of local authority decision making in Scotland and the latter being focussed on the scrutiny of those mechanisms in relation to the management and administration of the LGPS.
- The Scheme Manager performs an executive function which it may choose to delegate to a statutory committee using the Local Government Act 1972. The Pension Board has a supporting role under the Public service Pension Act 2013. In principle and in practice those roles are most likely to be effectively performed by separate bodies.

- Differences in the primary legislation could also lead to confusion and/or conflict if the roles were combined. A combined solution would require a change to overriding legislation to enable the two functions to operate within the one body.
- Having a combined Pension Board and Scheme Advisory board would require there to be equality of member and employer representatives. Under the proposed scheme funding mechanism, it is fund employers not members who will continue to bear the risk arising from poor investment decisions. Legal responsibility for an LGPS Fund rests solely with its Administering Authority.
- The impact of the decisions made by a scheme manager will fall upon scheme employers (e.g. financial implications impacting on employer contribution rates). It is essential that ultimate accountability and decision making powers sits with those employers (through the Scheme Manager Committee). It would not be appropriate for the Pensions Board to take decisions which will have implications for employers, but where they may not have control over decision making through the 50:50 representation on the Pension Board. To allow member representatives equal access to the decision making process would be inappropriate as it would give power without the responsibility.
- It would be preferable for a consistent approach to be adopted across Scottish funds. The detailed arrangements for discharging the responsibilities of the pensions board as set out in the Public Service Pensions Act would most effectively be determined at local level. Many funds have existing scrutiny arrangements and should have the latitude to amend these to meet the requirements of the Public Service Pensions Act.
- A single, permanent Pension Board for Scotland that scrutinises operation of the dozen or so Scheme Managers and Pension Committees is possible. This would also allow the Pension Board to compare and promote best practice and consistency across multiple Scheme Managers, as well as keeping down cost and bureaucracy. Any additional costs of running Pension Boards will ultimately have to be met by employers and therefore taxpayers, via fund contributions.

Additional comments for Separate / Combined:

- There are arguments for and against “separate” or “combined” Pension Boards and statutory committees set up with devolved decision making powers. Providing the necessary regulation and guidance is in place to mitigate the behaviours of those charged with governance responsibilities, both “combined” and “separate” approaches can work effectively.
- When considering a “combined” approach parallels could be drawn with existing practice in the private sector where pension trustees do this. They can do so effectively because of the accountabilities and sanctions placed upon them and anybody involved with a trust based pension scheme management, by primary and secondary legislation. Trustee bodies are also legally separate from their sponsoring employers bringing a degree of independence that does not exist in the same way in LGPS.
- There would be an additional burden on Scheme Managers resulting from requiring Pension Boards to be “separate” from devolved decision making committees. A “combined” solution might appear attractive to some such as sourcing suitably skilled individuals to sit on a separate Pension Board.

- A combined solution would appear to share decision making powers between existing Committee members and the member and other employer representatives introduced as a result of the Pension Board requirements, although the Administering Authority would still retain overall responsibility for the outcome of any decisions taken. This is the most practical to implement in the circumstances but has significant drawbacks therefore scheme Regulations should require local Pension Boards to be separate from any statutory committee.
- There should be local flexibility over how such arrangements should be implemented within the regulatory framework. It is important to ensure that the eventual solution does not result in the role of the local Pension Boards performing no more than a “tick box” exercise. We believe they need to have “teeth” and be able to act where they identify areas of weakness or non-compliance.

Additional comments for combined:


- Where the remit of the Pensions Board was limited to assisting the Scheme Manager with compliance without any material regulatory obligations of scrutiny/reporting, we would not view this as a body sufficiently incentivised by regulation to provide an enhanced compliance function and so would look to make adjustments to our existing structure to accommodate the Pensions Board, rather than committing further resource to operating a further body which may not improve our existing structure; may create more confusion and be a drain valuable resources.
- We believe that there should be a consistent solution for all of the LGPS funds. There should be no room for a choice of structures, this would cause confusion and make the monitoring of governance problematic. Rather than creating a second-tier of representation for scheme members, the regulations should state that there should be representatives of the scheme membership with voting rights on a single pension board at fund level. We therefore disagree with the suggestion pension committees can be a separate body from the pension boards.

Please use this space for additional comments

Membership of Pensions Boards

1.17 Apart from requiring equal numbers of employer and scheme member representatives and the restriction on conflicts of interest, the Act is silent on key issues of the pension board including, for example, membership, constitution, frequency of meetings, the nomination process and training.

Q8. To what extent should the new Scheme regulations specify the types of members of the pension boards?


Responses: 16 Not appropriate for regulations: 13 (7 state for local discretion, 6 state for guidance; 2 of these 6 say requires consultation) Include in Regulations: 3 No comment: 0
Additional comments re not appropriate for regulations: <ul style="list-style-type: none">• Importance of consistency across all local Pension Boards, both in the way in which they run and the outcomes they are seeking to achieve.• Consideration should be given to how consistency in practice across Pension Boards can be monitored and assessed and whether there is a place for some form of independent or arms' length inspection of practices or review of annual reports by the national Scheme Advisory Board for example.
Additional comments re include in regulations: <ul style="list-style-type: none">• Should ensure representation of all scheme stakeholders.• Should stipulate need for PB to have sufficient knowledge and expertise collectively with guidance specifying types of members.• Equal numbers of employer and trade union representatives.

Please use this space for additional comments

Q9. How should the Pension Boards be chaired?

Responses: 16

Should be part of PB's constitution &/or for local discretion &/or for PB to decide: 12

For guidance: 1

PB to appoint chair from among board members: 1

Via process run by Scheme manager, final approval from SAB: 1

No comment: 1

Comments:

- May be desirable to rotate the Chair.
- Constitution of PB requires consultation with employers and members.
- Cognisance should be taken of the public appointments policy.
- Chair would have the usual role in leading the meetings, considering conflicts of interest that are declared etc. Funds could opt to include an independent chairperson to reinforce the effectiveness/neutrality of the Pension Boards function.
- An independent and appropriately qualified individual should be appointed in a process run by the Scheme Manager, with final appointment requiring approval from the Scheme Advisory Board. Appropriate qualifications would include relevant pension experience, comparable previous positions, pension administration / legal / actuarial qualifications and/or demonstrable experience of working in a risk / governance / audit role and/or regulatory industry. The post would be remunerated by the Scheme Manager on a day rate basis, perhaps in line with Scottish Government public sector pay policy for non-executive posts.

Please use this space for additional comments

Q10. What should happen in the event of a tied vote at a Pensions Board?

Responses: 16

Chair has casting vote: 4

for constitution &/or local discretion: 5

both chair has casting vote and for constitution &/or local discretion: 3

for guidance: 1

report tied vote to statutory committee: 1

either chair has deciding vote or a tied vote counts as a vote for the status quo i.e. whatever was the arrangement before the vote remains the arrangement afterwards until such time as a majority agree to a change: 1

No comment: 1

Comments:

- It is not clear what the Pension Board would be voting on. Presumably, if separate from the Pension Committee (see question 7) they will not be second guessing decisions made by the Pension Committee and Scheme Manager; nor will they be ratifying or pushing back such decisions (like a House of Lords to the Committee's House of Commons). Alternatively, the ability to "vote" on actions or decisions relevant to the fund strongly implies an ability to change such decisions, in which case where does liability for running the fund actually rest?
- Re reporting tied vote to statutory committee – this is because the PB is not a decision making body.

Please use this space for additional comments

1.18 The appointment process should be clear and transparent to ensure accountability of the board.

Q11. To what extent should the new Scheme regulations specify the manner in which members of the pensions boards are selected?



Responses: 16

for constitution &/or local discretion: 11

for guidance: 2

need for an agreed & defined approach but not in regulations: 1

should be in regulations: 1

No comment: 1

Comments:

- In addition, cognisance should be taken of the public appointments policy.
- Should be a full consultation with employers and once the approach has been agreed, should be included in constitution.
- The guidance should set out the minimum standard of good practice and be appropriate to size and membership of fund.
- The regulations should ensure each Scheme Manager and Pension Committee provides information on Board positions, tenures, responsibilities, etc. to all scheme employers and all scheme members (active, retired or deferred). For those who express an interest in being on a Board, an interview and selection process should be undertaken with candidates made aware of selection criteria in advance (including any criteria that are about diversity of representation and perspective). We would suggest that the Pension Board chair is appointed as indicated in answer to Q9 so that they are able to participate in the selection process of other Board members (although the Pension Board Chair will have equal opinion to anyone from the Pension Committee or Scheme Manager when it comes to selecting appointees). Beyond this, the exact nature of the interview and selection process should be left to the Scheme Manager and

Pension Committee. [designated this as a local discretion response]

- In relation to filling vacancies for employer/member representatives, we believe Regulations should require the scheme manager to make reasonable efforts to recruit members or fill vacancies to the Pension Board and that the Pensions Regulator should be tasked with providing guidance on the matter in much the same way it does in relation to Member Nominated Trustees in the private sector. A consistent approach across all Pension Boards would be the preferred option and this could be achieved through guidance rather than prescribed by legislation. Guidance already exists in relation to Member Nominated Trustees within the private sector and this could be modified. [designated this as a guidance response]

Please use this space for additional comments

1.19 Guidance currently sets best practice for funds to include representatives of participating employers, admitted bodies and scheme members (including pensioner and deferred members) in their governance. However the pension board will compel member and employer representation.

Q12. Should the introduction of the pension board affect employer and member representation in other parts of funds' governance? If yes, how?



Responses: 16

Yes: 3

No: 3

Maybe: 6

For local discretion: 3

No comment: 1

Responses vary between agreeing and disagreeing and some thinking that it should be left to each fund's discretion.

Some respondees felt that it would depend on what governance model for the Pension Fund is chosen:

- A single Pension Board for LGPS Scotland would mean representation would not need to be reviewed elsewhere.
- Local pension boards (which might lead to the Representative Panel in some authorities becoming the Pension Board), would have ramifications for membership of the Board or, where there are other committee structures the current representation in decision-making and scrutiny of decision-making, may need to be reviewed. Some see including scheduled & admitted body representation as something they may explore.

Others felt that the question of employer/member representation is a completely


different one for Scheme Managers in their decision-making capacity & that, with separate Pension Boards, current governance structures in some authorities already ensure good representation through consultative panels.

Please use this space for additional comments

Accountability of the Board

1.20 Under Section 6(1) of the Act, Scheme regulations will require scheme managers / administering authorities to publish certain membership details of their local pension board. Given that the main function of the board will be to assure the scheme manager/administering authority that those to whom they have delegated the pensions function are complying with legislation and codes of practice, there is a case for the new Scheme regulations to also require each board to publish an annual report summarising its work.

Q13. Should the new Scheme regulations include a requirement for each local pension board to publish an annual statement of its work and for this to be sent to the relevant scheme manager, all scheme employers, the scheme advisory board and Pensions Regulator?



Responses: 16
Yes: 14
More appropriate for TPR code of practice: 1
No comment: 1

Comments:

- Guidance required for consistency.
- Could be part of Fund's annual report rather than a separate document/report.
- We would also suggest that local Pension Boards be given explicit whistleblowing or escalation responsibilities and this is something which we would recommend be included within the formal reporting requirement in addition to reporting on the Pension Board's work during the year. Clear roles and responsibilities should be set out for the local Pension Board. We suggest that the local Pension Board's statement should seek to assure the reader that such responsibilities have been carried out.


Please use this space for additional comments

Training and qualifications

1.21 Paragraph 14 of Schedule 4 of the Act amends Section 90 of The Pensions Act 2004 and requires the Pensions Regulator to issue various codes of practice, including one on the requirements for knowledge and understanding of members appointed to pension boards of public service pension schemes.

1.22 Scottish Ministers, together with other interested parties, are being consulted on the content of this and other codes of practice and this ought to be sufficient to ensure that the specific circumstances of the Local Government Pension Scheme in Scotland and the role of new local pension boards can be taken into account.

Q14. Apart from the training and qualification criteria that may be covered by the Pensions Regulator in a code of practice, are there any specific issues that we should aim to cover in the new Scheme regulations as well?



Responses: 16
Yes: 4
No: 9
Maybe: 1
No comment: 2

Comments:

- Guidance would be helpful.
- The question of Personal Liability Protection for Board members should be addressed.
- With the advent of the new Scheme in 2015, Scottish Ministers could take the opportunity to amend the Investment Regulations to provide certainty, as to whether Funds can legally pursue a policy which excludes certain investments on Environmental, Social or Governance.
- This will depend on the scope of the Pension regulators code. If it is restricted to general pensions criteria there may be a requirement to go beyond that code to include knowledge specific to the LGPS. [designated this as maybe]
- Code of conduct expected of members.
- Attendance at meetings.
- Personal liability of board members.
- A statement of the primary responsibility of the Pensions Board – i.e. to invest for maximum earnings or to invest ethically?
- Yes. If the Pension Board is to have a scrutiny role, its members need to have either suitable audit experience and or proper training in such scrutinizing roles. We also suggest that it is made clear that whilst the local Pensions Board may scrutinise pension committee (or equivalent) decisions e.g. to ensure due process has been followed, it cannot question those decisions unless it seriously believes not all relevant factors have been taken into

account and/or the decision(s) made is considered perverse i.e. one that a 'normal' person would not make.

- Member representatives should be afforded facility time, training and other resources necessary for their effective performance.

Please use this space for additional comments

Part 3 – “Scheme advisory board”

1.23 Section 7(1) of the Act will require Scheme regulations to provide for the establishment of a board with responsibility for providing advice to Scottish Ministers, at their request, on the desirability of changes to the Scheme.

1.24 For locally administered schemes, like the Local Government Pension Scheme in Scotland, where there is more than one scheme manager, Scheme regulations may also provide for the board to provide advice (on request or otherwise) to the Scheme managers or the Scheme’s pension boards, in relation to the effective and efficient administration and management of the Scheme or any pension fund of the Scheme.

1.25 Under Section 7(4), Scheme regulations will need to apply the same provisions relating to conflicts of interest to the scheme advisory board as described at paragraph 1.18 above, except that it will be for Scottish Ministers to consider and act on actual cases.

Membership

1.26 As Section 7 of the Act makes no provision for membership of the scheme advisory board, it will be for Scheme regulations to make such provision. This could be achieved in a number of different ways, for example:

- The Scottish Local Government Pensions Advisory Group (SLOGPAG), could consider and make recommendations to Scottish Ministers relating to the number of members, where those members should be drawn from and the balance of membership across the representative areas e.g. employer and employee representatives;
- Scottish Ministers could appoint a small membership panel whose remit would be to nominate and appoint initial members of the board, including the Chairperson;
- The membership profile of SLOGPAG could be carried forward.

Implementation

Scope/role

1.27 Section 7(1) of the Act defines the scope and role of the scheme advisory board in the widest possible terms (see paragraph 1.23 above). Replicating the wording of the Act in Scheme regulations would be advantageous in terms of allowing the work of the scheme advisory board to evolve without the need for regulatory amendments, but equally, there may be merit in clearly defining certain areas of work, for example, making recommendations to Scottish Ministers on cost management proposals.

Q15. Should Scheme regulations simply replicate the wording of the Act? If not, what specific areas of work should the new Scheme regulations prescribe?



Responses: 16

Yes: 8

No: 5

? : 2

No comment: 1

Comments:


- Power of SAB to be proactive/initiate provision of advice.
- “or otherwise” should be added as below:
Section 7(1) of the Act will require Scheme regulations to provide for the establishment of a board with responsibility for providing advice to Scottish Ministers, at their request, **or otherwise**, on the desirability of changes to the Scheme.
- Two no responses suggests referring to current version of the Act rather than replicating the wording.
- Scheme Advisory Board should continue to have a broad remit in overseeing the Funds collectively and reporting to the Scottish Ministers, provided that they are duty bound to take into account the advice of the Pensions Boards of the Scheme Managers and have appropriate membership to carry out this role. Members of the Scheme Advisory Board should also be required to have the requisite knowledge, skills and expertise to undertake their role.
- In addition to advising the Scottish Ministers, the Scheme Advisory Board could have a role in liaising with the Pensions Regulator. This could be built into the regulations, thereby placing a formal onus on this body to act in an effective and pro-active manner and be a meaningful conduit between the Scheme Managers and the Pensions Regulator (given the likely resource issues that the Pensions Regulator will face in actively regulating the LGPS in Scotland) and SPPA’s view that it does not wish to take on any regulatory function.
- Remit of the Scheme Advisory Board should be clearly delineated and should not extend to any involvement in the decision making role of the Scheme Manager.

- The Scheme Advisory Board will require some flexibility to develop its own remit and for this to evolve, in a controlled manner, over time in line with the changing pensions landscape.
- The Scheme Regulations should be drafted to allow for appropriate flexibility to allow some of the matters highlighted in subsequent questions to be discussed fully, rather than hurriedly including them in legislation. [designated this one as ?]
- Should also be able to provide advice to the responsible authority.
- The suggestion of cost management proposals seems sensible. No further comments. [designated as ?]
- We support the Act's effect in defining the Scheme Advisory Board's role in the widest terms and would not wish to constrain this through the regulations. However, as outlined above in Q13 we would support the inclusion of explicit whistleblowing and escalation responsibilities.
- We would also expect to see the national Scheme Advisory Board sourcing the necessary guidance that administering authorities would require as well as being the central repository of LGPS best practice standards, guidance and advice; encouraging LGPS funds to both raise standards and become more efficient. The Pensions Regulator could then use failure to comply with those standards as evidence of a Fund not being run effectively.
- In addition we also believe that the remit of the Scheme Advisory Board should extend to provide guidance and leadership to administering authorities in relation to the "management and investment of funds provisions" of the scheme. This would be with a view to ensuring the investment rules of the scheme are sufficiently flexible to enable funds to make best use of investment opportunities, while still retaining suitable controls and limits where appropriate.
- We also suggest that the Scheme Advisory Board should be charged with setting the standards that LGPS funds should adhere to. In order that those standards can be monitored and if need be changed etc. we believe the Scheme Advisory Board in conjunction with the Pensions Regulator should have the power to compel administering authorities to provide the data and information it needs provided that it can reasonably justify its purpose and demonstrate an efficiency in its collection and collation.
- It is also important that the Scheme Advisory Board is supported by an appropriate secretariat to enable it to carry out its duties. Consideration will be needed as to where responsibility for the provision of that secretariat support lie.
- Should include investment advice.

Please use this space for additional comments

1.28 Section 7(1) of the Act provides that the scheme advisory board is responsible for providing advice to Scottish Ministers, as the responsible authority, at their request. It has been suggested that Scheme regulations include a requirement the advisory board to advise Scottish Ministers on the desirability of changes to the Scheme.

Q16. Should Scheme regulations include a general provision enabling the scheme advisory board to advise Scottish Ministers on the desirability of changes to the Scheme as and when deemed necessary?




Responses: 16
Yes: 14
No comment: 2

Comments:

- Yes, providing the members of the Scheme Advisory Board are subject to the same rigorous knowledge and understanding requirements as the Pension Board Members
- Yes, provided that (i) the Scheme Advisory Board's membership is such that it properly takes into account the views of the Scheme Managers and their Pensions Boards and the Pensions Regulator, and (ii) that such advice is given having consulted with the Scheme Managers
- Inclusion of such a provision would allow the Scheme Advisory Board to play both a proactive and reactive role, and to contribute where it considers appropriate.
- It will always be up to Ministers whether such advice is acted upon.

Please use this space for additional comments

Q17. Are there any specific areas of advice that Scheme regulations should prohibit the scheme advisory board from giving?



Responses: 16
Yes: 2
No: 13
No comment: 1

Additional comments from yes responses:

- The Act states that the regulations may also provide for the board to provide advice (on request or otherwise) to the scheme managers or the scheme's pension boards in relation to the effective and efficient administration and management of the scheme and any pension fund of the scheme. If the regulations do include this provision, then it should be restricted to matters on which the Scheme Advisory Board is properly qualified to advise.

Additional comments from no responses:

- As the Scottish Ministers remain responsible for making scheme regulations

there should be an agreed protocol between the Scottish Ministers and the Advisory Board as to whether the Scottish Ministers should make regulations without first discussing these with the Board.

- It is vital to the Scheme Managers that all bodies involved in the scrutiny and advisory roles for the Scottish LGPS have clear lines of communication, accountability and responsibility. It is important that all involved understand how the Scheme Advisory Board will interact with the other parties involved with the LGPS in Scotland (e.g. Pension Regulatory, Responsible Authority).
- Scottish Ministers have no obligation to act on such advice, so there should be no restrictions, but the advice should only be within the parameters set by the legislation.
- Advice must be backed up by professional advice where appropriate.
- SAB should not have the power to instruct local Pension Boards and Committees, but should have a role in setting standards.

Please use this space for additional comments

Q18. What would be your preference be for establishing membership of the scheme advisory board?

Responses: 16

[SLOGPAG to make recommendations to Scottish Ministers: 10](#)

[Other: 6](#)

No comment: 0

[Additional comments from SLOGPAG to advise response:](#)

- Members will need to have significant knowledge and understanding of local authority
- pension matters or of the broader pensions industry to enable them to perform their role on the Scheme Advisory Board. For example, Board members may have to contend with matters such as scheme benefits, investments, governance, funding, and accounting.
- Stakeholders should be consulted as part of SLOGPAG's work on the SAB membership and constitution.
- The independence and expertise of the board members is important to its successful operation.
- We believe that the membership could comprise representatives from:
 - The Pensions Regulator (1)
 - The Scottish Ministers (1) (in a capacity as an Observer)
 - The Pensions Boards (4) (by rotation)
 - Employers (2) (by nomination/election)
 - Members (2) (by nomination/election)
 - Independent Experts (2)
- The Heads of Agreement anticipate that the Scheme Advisory Board will be

bilateral with an equal number of employer and employee representatives and an independent chair. The size of the Board would be around 15 people with additional advisors and observers in attendance. That appears to be a suitable structure, but SLOGPAG should continue to develop the model.

Other suggestions:

- Nominations could be sought from individual funds, and/or through COSLA. Whatever approach is adopted, there will be a need to ensure a nomination process is in place to allow the most suitable candidates for the advisory board to be identified.
- That each Scottish Pensions Board has a seat on the advisory board.
- There should be a national TU rep and a SG rep.
- Of the Pension Board reps ideally there should be a mixture of employer reps coming through and member / scheme reps.
- No particular preference with regards to the method for establishing the Board. However whatever means is chosen, it should ensure that all relevant stakeholders are represented and that the Board has access to the necessary advice and expertise require to fulfil its remit.
- The regulations should provide for the SAB to establish a fair, transparent and democratic process for election to it. The regulations should specify the sectors from which the membership must be drawn from. The regulations should empower the SAB to be able to set up sub-committees as it sees fit specifying whether or not membership of such sub-committees is restricted to SAB members only or not. Again they should have a fair, transparent and democratic process for election on to them.
- The regulations need to clarify what the voting rights are on the SAB and any sub-committees and it would seem logical that all “sector” members have voting rights. The chairman should have a casting vote to avoid a hung Board in voting and specialists appointed to the Board should probably be denied voting rights. The SAB should be required to publish its minutes and its votes.
- Employer representatives would be primarily political, with a majority to councils. We need to ensure that at least some politicians are involved in fund administration at their councils. Representation from non- administering authorities is also important.
- Other employers would also need to be represented, primarily scheduled bodies i.e. education sector and others (e.g. Scottish Water). Nomination process would need to be considered and discussed with these bodies.
- The Board should have equal numbers of employer and employee representatives, with possibly around 6 on each side.
- The Board could also have advisers attending, such as:
 - A senior finance officer - nomination probably from the CIPFA Director of Finance group
 - A pension fund practitioner - nomination from the pension fund group (the group is in the process of changing its name)
 - Actuarial - probably nominated by the Association of Consulting Actuaries
 - Legal - nomination process uncertain
 - Anyone else the Board wish to appoint
- The Board could also have observers, such as:

- The Pensions Regulator
- SPPA
- Audit Scotland
- NAPF (if they have no other role)
- The Board could be bilateral (employer and employee representatives) rather than tri-partite. SPPA would not be a formal member as the Board advises the Scottish Ministers and SPPA has a separate role to do the same.
- Chair could be independent.
- Working group(s) should include officer representatives rather than politicians. Again, these could be bilateral, with involvement of (some) professional advisers and observers as above. However it is too early to say how these could be made up as it partly depends on the regular agenda items for the Board and the extent of its business.
- A framework should be set out in the regulations that allows for some discretion to reflect local circumstances.
- We support the retention of the current tripartite structure and recognise that membership would need to be formalised. The Trade Union membership should be one lay and one FT official from UNISON, Unite and GMB plus a representative from UCATT. The employer and government side membership is a matter for those sides, although we see merit in retaining technical expertise.

Please use this space for additional comments

Q19. Should Scheme regulations require the Scottish Ministers to approve any recommendation made for the position of Chair?



Responses: 16

Yes: 8

No: 5

No comment: 3

Additional comments from yes responses:

- Approval process to be written into the constitution.
- Approval of the Scottish Ministers would be very helpful in endorsing the status of the board and its chair.
- We support Regulations that ensure that Scottish Ministers have power of veto on the Chairman's appointment, but subject to specific conditions, that could be set out in guidance. It is important that a person with the appropriate knowledge and technical and interpersonal skills is not vetoed by Scottish Ministers unless there are substantive and objective grounds for doing so. This condition should be enshrined in the Regulations.
- Board should be free to choose its own Chair; should be subject to endorsement from Scottish Ministers.
- Scottish Ministers should not play a part in the proposal or selection of the

chair, but should agree the appointment as an endorsement.

Additional comments from no responses:

- Should be part of constitution rather than regulations. SLOGPAG should work on this, along with the membership structure. Requires consultation.
- No. The chairperson of the board should be appointed by the board.

Please use this space for additional comments

Q20. Should Scheme regulations prescribe tenure of office? If so, what should the maximum period of office be and should this also apply to the Chair of the board?



Responses: 16

Yes: 3

No: 7

? : 4

No comment: 2

Additional comments from yes responses:

- 4 years, can only be reappointed once – max 8 year term. The first reappointment dates should be phased, so not all members leave at the same time.
- For the chair, a minimum three year term to coincide with fund triennial valuations. Might wish to consider tying the length of tenure in with the electoral cycle which would suggest a slightly longer period. For Board members we suggest that this be reserved for the Board to determine within its own terms of reference.

Additional comments from no responses:

- Should be addressed in constitution of SAB (developed by SLOGPAG and widely consulted on).
- Staggered tenure for initial members to avoid loss of knowledge.
- Tenure length should reflect complexity of the pensions area and allow build up of knowledge required.
- 5 years.
- The different representative groups would require their own rights and process to nominate, remove and hold accountable their own representatives (e.g. members, employers, Pensions Boards (by rotation) etc.).
- For the Scheme Advisory Board's terms of reference to set out the tenure and the process for regular re-elections, perhaps setting a range (e.g. every 3-5 years) within which the SAB can exercise its discretion. Only exception to this is the position of Chair; Regulations should limit this to two terms of 5 years (so ten years maximum). Chair should not be prohibited for standing for ordinary

membership after their terms of office in the interests of maintaining knowledge / continuity where possible.

Responses designated as ? (no response re regulations) :

- It would be sensible to tie these into the timescale of LA elections (no response re regulations).
- SLOGPAG should continue to develop the Scheme Advisory Board model.
- 5 year maximum tenure allowing for training to be planned and implemented appropriately.

Please use this space for additional comments

Q21. Should Scheme regulations make provision for board members, including the Chair, to be removed in prescribed circumstances, for example, for failing to attend a minimum number of meetings per annum? If so, who should be responsible for removing members and in what circumstances (other than where a conflict of interest has arisen) should removal be sought?



Responses: 16

Yes: 4

No: 7

Yes & No: 1

? : 3

No comment: 1

Additional comments from yes responses:

- If there is a gross breach of expected standard of conduct there should be automatic removal of a board member.
- There should be a minimum level of attendance required for a SAB member to retain their position (eg 50% of meetings in a 12 month period) and it should be possible to attend by conference call or video conference. In cases of illness extending to a period of 12 months, the other Board members should be able to appoint a temporary replacement if they deem necessary – for example, to retain equal proportions of employer and employee representation.
- Membership should be rescinded where future attendance is impossible e.g. where a Board member is convicted of a crime and sentenced to incarceration of more than 6 months.
- SAB should be able to vote off any member convicted of a crime the nature of which could bring the pension scheme and its governance into disrepute, such crimes including but not limited to fraud, tax evasion, embezzlement, etc.
- The SAB Chair should be empowered to remove any member with a majority vote of the Board and informing Scottish Ministers of any such change. Where the Chair is the position in question, Scottish Ministers would need to become involved directly.
- Secretary of State should have powers to remove Chair in prescribed circumstances.

Additional comments from no responses:

- There should such a facility, but this should be included in the constitution of the SAB.
- Development of constitution requires consultation.
- Chair should have powers of removal.
- Attendance, or lack of it, should be included as a reason for removal from Board.
- Scottish Ministers perhaps having ultimate sanction of removing a board member.
- Up to the Board to determine.
- The representative groups should each have the right to appoint and remove their members on this board in line with their own requirements and interests, but there should be a general power for members to be removed by a vote of the Scheme Advisory Board if that member is not seen to be carrying out its role (whether through non-attendance or lack of requisite knowledge and understanding etc.).

Additional comments from yes & no response:

- Scheme Regulations should certainly sanction removal where a member is:
 - Convicted of any criminal act or;
 - Struck off as a Company Director or Trustee of a charity or pension fund for example or;
 - Struck off by their own professional organisation.
- Outside of these conditions however, it should be left to the Scheme Advisory Board to police itself.
- Removal of the Chair should be in the power of Scottish Ministers but the Board needs to have an escalation route to Scottish Ministers if the Board independently of Scottish Ministers believes it is in its interests to have the Chair removed.
- Removal of ordinary Members should be in the power of the Scheme Advisory Board; and we would suggest on a 2/3rds majority of the entire Board.

Responses designated as ? (no response re regulations) :

- SLOGPAG should continue to develop the Scheme Advisory Board model.
- It should only be possible to remove the Chair from post if the other board members agree to the removal. This would enable an underperforming Chair to be removed without creating conditions that meant removal could be avoided.

Please use this space for additional comments

Q22. Should Scheme regulations prescribe a minimum number of meetings in each year? If so, how many?



Responses: 16

Yes: 3

No: 9

? : 2

No comment: 2

Additional comments from yes responses:

- Two or three annual meetings.
- Could be related to the size of the fund quarterly for larger funds bi-annually for smaller funds. Should be set out in good practice guidelines.
- Perhaps three SAB meetings a year unless there are circumstances requiring special meetings, such as further scheme changes.

Additional comments from no responses:

- Should be part of constitution, which requires consultation.
- Should be left to the Scheme Advisory Board's terms of reference
- Minimum of one annual meeting.
- Minimum of two annual meetings.
- Minimum of four annual meetings.
- It makes sense to have a minimum number of meetings each year but this should be determined by the Scheme Advisory Board.

Responses designated as ? (no response re regulations) :

- SLOGPAG should continue to develop the Scheme Advisory Board model.

Please use this space for additional comments

Q23. Should Scheme regulations prescribe the number of attendees for the board to be quorate? If so, how many or what percentage of the board's membership should be required to be in attendance?



Responses: 16

Yes: 2

No: 8

? : 4

No comment: 2

Additional comments from yes responses:

- 4 – at least one employer rep and one independent and one employee.
- A quorum could be 60% or more of employer representative members plus 60% or more of employee representative members.

Additional comments from no responses:

- Should be specified in the constitution; requires consultation.
- Board should have attendance of at least 1/2 membership to be quorate.
- A matter for the advisory board to decide and should be encapsulated in its constitution.
- A minimum of one per interest group for the meeting to be quorate [interest groups: The Pensions Regulator (1), The Scottish Ministers (1) (in a capacity as an Observer), The Pensions Boards (4) (by rotation), Employers (2) (by nomination/election), Members (2) (by nomination/election), Independent Experts (2)].
- Should be left to the Scheme Advisory Board's terms of reference, but a quorum should be a majority.

Responses designated as ? (no response re regulations) :

- SLOGPAG should continue to develop the Scheme Advisory Board model.
- The Heads of Agreement state that SLOGPAG will review the membership and constitution of the SAB, and so decisions on the topics covered by Q19-23 would fall within the review that SLOGPAG will undertake.

Please use this space for additional comments

Q24. Rather than make specific provision in Scheme regulations, should the matters discussed at Q16 to Q23 be left as matters for the scheme advisory board itself to consider and determine?

Responses: 16

Yes: 13

No: 3

No comment: 0

Additional comments from yes responses:

- In general terms, the shape and working arrangements of the Scheme Advisory Board should be for the Board to determine within its budget. The initial establishment of the Board structure should be undertaken by SLOGPAG following stakeholder engagement.
- SLOGPAG should be given the initial role to determine the constitution and membership profile of the Scheme Advisory Board following extensive stakeholder engagement and consultation.
- The Constitution should include an appropriate provision that prevents the Scheme Advisory Board from making amendments without the involvement of stakeholders, in particular the Responsible Authority, the Pension Regulator and the Scheme Managers.
- No, the Advisory Board should not be left to self-regulate, rather there should

be wide consultation and then provisions should be included in constitution.

- The constitution would ideally be approved by the Scottish Ministers, the Pensions Regulator and at least 75% of Scottish LGPS funds (with appropriate consultation with, and taking account of the views of, their employer and member representatives). This general control should be prescribed in the regulations.
- The Scheme Advisory Board's terms of reference and that of its committees should be published.

Additional comments from no responses:

- It will be easier to implement and save time if specified in regulation.
- Regulations should describe the minimum requirements but the Scheme Advisory Board could determine variations in excess of the minimum.

Please use this space for additional comments

Shadow Advisory Board

1.29 The Scheme Advisory Board will be established from 1 April 2015 and the establishment of a Shadow Scheme Advisory Board will be kept under review, but such a Shadow Scheme Advisory Board is anticipated to be beneficial from Autumn 2014 onwards.

1.30 In the period until the Board (or Shadow Board) is established, SLOGPAG will review the governance arrangements within its agreed remit of developing a new Scottish LGPS. Topics for consideration will include, but are not limited to:

- a. The structure of the 4 governance related roles identified by the Public Service Pensions Act 2013
- b. The membership and constitution of the Scheme Advisory Board
- c. Operation of the cost control mechanism
- d. The requirements of the Pensions Regulator
- e. Publication of scheme information
- f. Relevant provisions in the Institutions of Occupational Retirement Provision (IORP)
- g. Data collection

Q25. What other specific issues should SLOGPAG consider prior to the Board being established?



Responses: 16

Comments: 13

No comment: 3

Comments:

- To avoid unnecessary duplication of work, the shadow board should be established in such a way, that it can morph to be the actual Board without change of personnel etc on 1st April, 2015.
- The priority for the work up to the commencement of the Scheme Advisory Board is to gain clarity and agreement on its membership, remit and constitution. Following this there will need to be focus on ensuring that the new members have the appropriate level of knowledge and understanding prior to commencement in April 2015.
- There will be a need to develop a single point of reference or guidance document on the various topics indicated in the responses to the previous questions, such as Pension Board membership, conflicts of interest and annual statements. Guidance on how and when the requirements of the Pensions Regulator will have to be implemented by Scheme Managers. Supporting the implementation of the scheme changes that will go live in April 2015.
- For any data collection, the issue of data consistency between the Scheme Managers will need to be addressed prior to the commencement of any data collection process.
- A broader representation of stakeholders should be considered to secure the necessary knowledge and understanding prior to going live.
- SLOGPAG should maintain a shadow role with a focus on facilitating the establishment of the statutory board.
- The Heads of Agreement covers several topics considered appropriate for SLOGPAG to discuss.
- Implementation should be done in the way that reduces bureaucracy and duplication.
- Consideration of personnel matters should be made within the context of the SAB constitution e.g. how complaints or grievances will be handled should they arise between SAB members (such as harassment, bullying or discrimination). How will whistle-blowing operate?
- Thought should also be given to data protection policies – although the SAB is unlikely to have access to personal information of scheme members, it may still have to deal with confidential data or information and it should be clear how this is to be controlled.
- SLOGPAG should also consider:
 - Guidance required for Scottish Funds in the interim
 - The outcomes from this consultation
 - Its own role following the introduction of Board (or Shadow Board)

Please use this space for additional comments

Q26. Under what circumstances should a Shadow Board be established prior to April 2015?



Responses: 16

Comments: 14

No comment: 2

Comments:

- The priority for the work up to the commencement of the Scheme Advisory Board is to gain clarity and agreement on its membership, remit and constitution. Following this there will need to be focus on ensuring that the new members have the appropriate level of knowledge and understanding prior to commencement in April 2015. This takes priority over the establishment of a temporary Shadow Board, and in the event that a Shadow Board is established prior to April 2015 it is to be operated in line with the agreed constitution/membership for the Scheme Advisory Board and use the time to work towards the new membership gaining the knowledge and understanding required.
- It would seem sensible to continue with SLOGPAG, rather than convene a completely new group in haste. Continuation of SLOGPAG does not preclude the preparatory work required to make the Board fully functional for 1/4/2015.
- Once the necessary skills and knowledge have been identified and “acquired” through due process then a shadow board should be established to enable a go-live in April 2015.
- Given the scale of change to be implemented, a shadow board would be extremely helpful, and greater credence would be given to the remit listed above at 1.30 if taken forward by a shadow board rather than say SLOGPAG in a more informal capacity.
- There is no immediate requirement for a Shadow Board which would in any event have no statutory role before April 2015. SLOGPAG should broadly fulfil the role of shadow board in the interim. A shadow board might be useful in the period immediately before April 2015 to ensure a smooth transition to the new arrangements.
- A shadow SAB should be kept under review as to when this is needed. The benefits of establishing a shadow SAB ahead of April 2015 need to be justifiable and fit in with the remit of SLOGPAG. A shadow SAB should only be set up if it allows appropriate decisions to be made ahead of April 2015 and to facilitate a smooth transition to the SAB.
- One clear advantage to establishing the Board in shadow form, is that it allows time for matters such as constitution, seeking a chair and members, establishing terms of reference and organising a forward work plan to be addressed before going fully live. Experience in England and Wales has shown that these administrative issues can take time to resolve.
- No specific comments. This may depend on whether there is both the time and resource to do so, and if the business considered will be worthwhile and contribute towards the success of establishing a thorough governance structure from 2015.

Please use this space for additional comments

Resourcing of the Advisory Board

1.31 If the scheme advisory board is to undertake its full range of duties effectively, it will need to have access to finance for example to pay for secretarial services and the necessary advice or analysis on which to base its decisions.

1.32 It is proposed this is regarded as an administration cost and therefore payable by the individual pension funds.

Q27. Do you agree that the scheme advisory board should be funded by a mandatory levy on all Scheme pension fund authorities? If not, what alternative approach would you propose?

Responses: 16

Yes: 12

No: 2

No comment: 2

Additional comments from yes responses:

- Should be consistent with the method funding the other Scottish Public Sector Pension Scheme Advisory Boards.
- The Board is providing a service to not only the Funds but also to the Scottish Ministers and accordingly part of the costs should be borne by the Scottish Ministers.
- SAB must ensure the funding provided from various sources is being utilised in a transparent and value for money manner.
- Should be proportionate.
- The new legislation will significantly increase the governance costs on the pension funds and the Scheme Managers are required to be accountable for this increased expenditure.
- The budget and funding arrangements for the SAB should be subject to some form of independent annual audit, review and approval mechanism to ensure its financial accountability.
- The SAB should have a mechanism in place to discuss and achieve agreement to an annual budget prior to the commencement of the financial year and certainly before any spend is incurred.
- A low level administrative levy should be applied consistently to all LGPS funds. There may be scope for certain larger costs/expenses to be levied on an *ad hoc* basis and borne in proportion to fund size (should the scheme advisory board deem that demonstratively fair and equitable).
- Would there be any merit in a tiered/proportionate approach eg depending on the size of scheme, etc?

Additional comments from no responses:

- As the primary role is to advise Ministers, it is reasonable that cost is met by Scottish Government. Furthermore, the nature of the Board should be such

that administrative costs are kept to a minimum and related largely to costs associated with holding its meetings.

- This is a government initiative to amend pensions legislation as such the costs of this work should be met by Scottish Government (SG).

Please use this space for additional comments

Q28. How should the subscription vary by fund? Should it be a fixed fee for all funds or proportional to their membership?



Responses: 16

Fixed: 2

Proportionate: 2

Fixed + proportionate: 8

No fee: 2

No comment: 2

Comments:

- Proportionate to the size of the fund possibly based on membership numbers of scheme employer organisations.
- This fee should be proportionate based on value of fund.
- Scottish Government should cover the costs.
- This should not be an additional administration cost on the fund. Any amendments to governance should be targeted at reducing administration costs whilst maintaining governance standards appropriate for the size of the fund.

Please use this space for additional comments

Constitution

1.33 The Act requires the setting up of the scheme advisory board but not the manner of its legal constitution. This would imply some form of body corporate to be set out in scheme regulations. Beyond setting out the corporate status of the board, scheme regulations would also need to spell out the personal liability protection for board members.

Q29. What would be your preferred manner of legal constitution of the scheme advisory board and how should Scheme regulations deal with the issue of personal liability protection for board members?



Responses: 16

Comments: 9

No comment: 7

Comments:

- It is anticipated that the Board would be constituted as a body corporate.
- This is a matter on which the Board should take its own advice. It is accepted that prior to appointments being made some preparatory work, especially in the area of Personal Liability Protection, may need to be undertaken by SLOGPAG.
- Assuming that a new corporate body is really required (despite a general aim of trying to reduce the need for new bodies), then what is established should be as easy and cheap to administer as possible. Traditionally a limited liability company would be used but we are not sure if there would be any benefit in using e.g. a Limited Liability Partnership. Perhaps based on earlier comments a Joint Board would be appropriate.
- Consideration will need to be given as to who is going to Clerk and provide legal advice to this new body and how this is to be paid for.
- It is essential that ease of administration and the need to control costs are two key issues which must be given priority in any decision as to which legal form the new body is to take.
- The members of the Scheme Advisory Board should act with the benefit of taking proper advice and should only be liable if they have acted in a negligent manner either without the benefit of such advice or at odds with such advice. The body should retain appropriate liability insurance.
- Further research and legal advice is required on options.
- With regard Q27-29, the Heads of Agreement state that SLOGPAG will review the membership and constitution of the SAB. Decisions on the topics covered by Q27-29 would fall within the review that SLOGPAG will undertake.
- Board members should have similar assurance provided to them as non-executive directors of NDPBs.
- No particular preference regarding the legal constitution of the Board but it is clear that there should be no personal liability issues for its members on the grounds that they are volunteers and are not undertaking the role in a commercial capacity.

Please use this space for additional comments

Part 4 – “Review of the Structure of the Scottish LGPS”

1.34 The Heads of Agreement includes the commitment for SLOGPAG or the Shadow Scheme Advisory Board, as appropriate, to establish a process,

commencing April 2014, to consult on, and collate data relevant to, a review of the structure of the Scottish LGPS, in order for the Scheme Advisory Board to be in a position to complete such a review.

Q30. What factors should be taken into account in a review of the structure of the Scottish LGPS?

Responses: 16

Comments: 14

No comment: 2

There was general agreement on several points such as; setting the objectives at the start of the review, and that recommendations should be in line with these objectives.

Many respondents considered that it is essential that there is clarity and consistency in the process of collecting data. Also that the outcome should not just be measured on cost savings; but must be based upon comparable empirical data rather than any theoretical estimate of the economies of scale.

There was agreement that there should be clarity as to the ownership of the review and that a full risk analysis of any proposed changes should be included. Some respondents also offered comments on improvements such as the pooling of investments and the introduction standard procedures and timescales. It was considered important that any review should retain focus on the long term horizons of pension schemes when considering any changes.

Comments:

- The objectives of the review should be determined at the outset
- The recommendations from the review should be in line with the agreed objectives. Outcomes need to be achievable, within appropriate timescales and costs, and in line with objectives.
- The outcome to be measured not simply on cost grounds, but in terms of effectiveness and such as taking into account the desirability of funds to be close to their employer and membership bases.
- There are potentially a range of options beyond status quo and full-scale amalgamation. Alternatives strategies such as opportunities for shared / pooled investment vehicles should be investigated.
- Any reform of structure of the Scottish LGPS, including the number of administering authorities, must be based upon comparable empirical data, not a theoretical estimate of economies of scale that may accrue from a smaller number of larger funds.
- Change to the current configuration of funds or their governance arrangements requires unambiguous evidence of net benefit to funds before it could be contemplated. In order to ensure a sound basis for informed decision making, there should be clarity over the nature of data being requested and consistency over any data collected.

- Timescales for the review (and for implementation of any agreed re-structuring) should be realistic and reflect the significant burdens and delivery requirements that are currently impacting on the Scheme Managers.
- The review will be more meaningful if the data and evidence used to support it is captured under the operation of the new scheme from April 2015 onwards and preferably following conclusion of the 2015/16 financial year.
- There should be clarity as to the ownership of the review (SPPA / SLOGPAG).
- Local determination with regard to investment priorities and funding implications should continue.
- Review outcomes to demonstrate clear improvement above what is currently being delivered in terms of administration, investment, performance, scheme affordability, governance and employer/member accountability. A full risk analysis of any proposed changes should be included.
- The review should also recognise the existing body of work from the Pensions Pathfinder project, and consider to what extent the work of that review can be used to inform this exercise.
- In particular, there needs to be clarity in relation to the duty of the Scheme Manager (e.g. its fiduciary duty to members, employers and taxpayers) and how this should be managed and/or how structural change could make the duty of the Scheme Manager clearer and more workable.
- The issues around certain conflicts which might arise from the Administrative Authority/Scheme Manager being a single legal entity but performing different functions that are the subject of conflicting statute/regulation (e.g. separate legal distinction in relation to the administering body of the pension funds, which could be achieved within the administering body) need to be considered and addressed.
- This conflict also manifests itself in the current requirement for a two thirds majority of local authority Councillors on Pensions Committees, where that local authority in particular might not have an equivalent stakeholder interest, which can artificially skew the representation in favour of the Administering Authority/Scheme Manager.
- Councillors are elected members with expertise in decision making roles and boards do not always wholly comprise of stakeholder representation. We are generally comfortable that our Pensions Committee, and wider structure, adopts a neutral role and is mindful of its separate regulation and duties.
- The current regulation and structure of the LGPS does not support the essential principles of good governance. Stakeholder participation at Administering Authority/Scheme Manager level in Scotland varies.
- It is not clear that there is any compelling need for such a review at this time, and certainly not before the new scheme and associated governance arrangements have been implemented.
- A review should take into account the following factors:
 - the certainty of transitional costs
 - the uncertainty of the extent of transitional costs
 - the uncertainty of any benefit from re-structuring
 - the probable efficiency and effectiveness of any proposed new structure compared to the cheapest option in terms of explicit costs
 - risks including transitional risk,
 - concentration risk if the number of funds is reduced

- Governance risk.

- Any decisions on the number and structure of Funds must be made in line with the long term stability and sustainability of the Funds and not for short term political reasons. Decisions should consider clear evidence of affordability through contribution rates and of sustainability through funding levels.
- Current funding levels of individual funds and their differing current employer contribution rates are key as these are the product of everything else that happens within the Fund. These should be key factors for consideration, coupled with the importance of local accountability for maintaining and managing these.
- Ease of use and quality of customer experience / service for employers and members should feature in any structural review of the LGPS in Scotland. At present, although all administering bodies provide the same pension benefits as per LGPS regulations, administration procedures vary to a degree between funds. For employers with multiple funds this creates an internal operational burden for no apparent purpose.
- Allowing administering bodies to develop individual Pension Administration Strategies can be less than helpful for employers and for members, standard procedures and timescales would be of tremendous help.
- Such improvements could perhaps be achieved by separating member and employer administration from fund management and reducing the number of administering organisations.
- Review should retain focus on the very long time horizons of pension schemes.
- Understandably, reviews driven from whatever part of the political spectrum are unlikely to always be considering the effect a half-century or more into the future, making it all the more important for the Scheme Advisory Board to take the long view.
- Matters of social policy are rightly in the hands of elected politicians, but the SAB has a duty to highlight the broad scale, positive or negative impact of actions likely to affect the retirement incomes of a very significant proportion of Scotland's people.
- The review should take into account the Hutton Commission's aims of reformed public service schemes that are affordable, sustainable, and fair and provide adequate benefits to scheme members.
- It should also take into account the development/implementation of the LGPS in England & Wales especially with regard to:
 - Administration
 - Transitional arrangements
 - Governance
 - Cost Management
 - Communication

Please use this space for additional comments

General

1.35 The current LGPS (Scotland) Regulations have a 'light touch' on governance, instead they refer to the Governance Compliance Statement. This allows for changes in governance arrangements to be made without having to amend existing regulations.

Q31. Would it be preferable to retain a 'light touch' to governance in the Scheme regulations, with reference instead to a Governance Compliance Document which would contain the detailed governance requirements?



Responses: 16

Yes: 11

No: 2

Maybe/not sure: 2

No comment: 1

Additional comments from yes responses:

- Continuation of Scottish Ministerial guidance in this area would ensure the consistency that is required across Scheme Managers.
- Yes, within reason, however the new bodies to be introduced by the Act will require some general principle based regulation in order for them to be effective.
- Any compliance document should set out principles and guidance, not detailed requirements. The Pensions Regulator's Code of Practice will provide adequate guidance in many areas.
- Yes. A full change of the regulations, with the required consultation, could be avoided if governance requirements are kept within a Governance Compliance document. The creation of a single set of regulations to include both scheme benefits and scheme administration is to be welcomed, but to place detailed scheme governance requirements within the regulations could become unwieldy.
- The legislation will need to cover governance to an appropriate level. A separate document sounds reasonable but there would need to be a mechanism to ensure consistency and quality. The Compliance document should make clear how changes would be managed consistently, fairly and appropriately.

Additional comments from no responses:

- Much is made of the importance of governance within the Act and a 'light touch' would not necessarily give the right impression within the LGPS. Whilst some issues as explained above should be left to the Scheme Board, the Regulations need to emphasise in some way the spirit of the Act and the need for good governance. This is also covered in the Regulator's draft Code of Practice on the Governance and Administration of public service pension schemes.

Additional comments from not sure responses:

- **Not sure that a “light touch” is really possible considering the 2013 Act requires the scheme regulations in a number of places to make reference to governance matters.**
- **However, that aside, it would seem reasonable for the regulations to refer to a Governance Compliance Document with the detailed content being contained in guidance.**
- **This would depend on the relative timing of decisions arising from the work of SLOGPAG and the parliamentary timetable for the legislation.**