

Emerging from the design shed – governance guidance for England and Wales

Running one week behind, but running on a parallel fast track, governance guidance emerged from the design shed of the Shadow Scheme Advisory Board (SSAB) to support and join the draft LGPS governance regulations Mark 2 issued by the Department for Communities and Local Government (DCLG).

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The governance guidance consultation closes on 21 November at the same time as that for the LGPS Governance Regulations. Responses should be sent to the SSAB and DCLG respectively.

Part guidance and part explanation, the draft guidance document provides a manual to assist administering authorities in their quest to comply with the regulations and to establish their local pension board by 1 April 2015 and then to operate it successfully. In this briefing note we reflect on the guidance and pick out just a few of the items which have caught our eye.

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Status and purpose of the guidance

The guidance has been written to take account of The Pensions Regulator's (TPR) draft Code of Practice 14 and the latest draft LGPS governance regulations. It is anticipated to form the guidance referred to in regulation 109 of those regulations. Whether some or all of it becomes statutory guidance remains to be seen, but the consultation states that it will, when finished, be adopted by the Scheme Advisory Board and as such administering authorities must have regard to it in accordance with the Public Service Pensions Act 2013.

One way or another, while of course we can expect the final guidance to change if the final versions of TPR's Code of Practice 14 or the LGPS regulations change, the guidance will be an influential element within the new LGPS governance regime. The draft now received provides useful explanation and an insight into the expectations of the SSAB, DCLG and TPR and should assist administering authorities in their onward planning.

Clear track ahead?

Assist is, however, the operative word and that is just what the guidance is aimed to do. The guidance is not intended to be prescriptive. This is in order to enable local solutions and decisions to be made in accordance with TPR's code and guidance, and reflects the manner in which the draft regulations have been written. Administering authorities should not therefore expect it to contain all the answers or a proforma line of action to follow. Each will need to work that out and set up their own rules, procedures and processes. As a result we can expect to see many variations emerge across the local pension boards of England and Wales.

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As well as the opportunity to comment on the guidance, the consultation invites respondents to consider if they have any further questions relating to the introduction of local pension boards and what further information could usefully be included in the guidance and what issues may require further clarification. A supporting question and answer document is intended to be delivered in due course and is likely to prove useful. We have identified a few suggestions and will be including these in our consultation response.

Catching our eye

In the meantime, we set out below just a few of the items catching our eye in the guidance.

The local pension board – separate legal entity or not?

Whether or not the local pension board is a separate legal entity to the administering authority has been the subject of some consideration. The guidance deals with the local pension board not as a separate legal entity but as being part of the administering authority. At the time of writing this note, reference to the Shadow Scheme Advisory Board website would indicate that this has been the subject of discussion with Her Majesty's Treasury who is to confirm the legal status. The status carries consequences for how the local pension board is treated under data protection, freedom of information and other legislation and should this position change, we can expect some further issues to arise and the guidance to require amendment.

Establishing a local pension board – what does established mean?

In an earlier briefing note we noted the change of expectations with regard to what 'established' meant in setting up a local pension board. We noted that the meaning of 'established' had changed to no longer mean a board populated with members, but one whose constitution had been confirmed by the full Council. Members did not need to have been selected and a first meeting did not need to have taken place; this was expected to have taken place as soon as practicable after 1 April 2015.

Under the guidance now received, a time limit has been added and local pension board members should now be selected and the board's first meeting held by 1 August 2015. Should an administering authority fail to establish a local pension board, the guidance helpfully contains a section on the range of adverse consequences which may then arise.

Appointing members – who can and can't be a member and who should have the opportunity?

Reflecting the draft regulations, the guidance makes clear that no officer or councillor may be a member of a local pension board if they are responsible for the discharge of any function under the Local Government Pension Scheme 2013, although it then goes on to suggest that administering authorities may wish to share a pool of potential members such as senior pension fund officers.

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The guidance notes that all employers and members within a fund must have equal opportunity to be nominated for the role of employer or member representative through an open and transparent process.

Closer examination of the draft regulations appears to show the relevant regulation in conflict with the intent of the regulations described in the covering letter and explanatory memo, where the restriction would appear to apply to sitting on the local pension board of the same administering authority in which the officer or councillor is responsible for discharging functions under the regulations. We understand that the final regulations will clarify this aspect to reflect the intent and consequently we would expect some minor tidying up of the guidance to follow.

The guidance notes that all employers and members within a fund must have equal opportunity to be nominated for the role of employer or member representative through an open and transparent process, and helpfully provides examples of how this may be achieved. Although not all then need be involved in the actual selection, if not already underway, administering authorities will need to start considering this aspect as soon as possible and formulate their open and transparent process if they are to have sufficient time to agree that process within their authority's meeting cycle, implement the process, appoint and train the members and hold their first meeting by 1 August. We would suggest that the potential difficulties and time required for this aspect should not be underestimated.

Other members – any light in the tunnel?

In our briefing note about the draft governance regulations we were puzzling over the removal of the requirement for member and employer representatives to exceed the number of other members appointed to the local pension board. We noted that the dropping of this requirement provides opportunity for a shift in power or completely different balances of power on local pension boards across the various administering authorities, enabling employer and member representatives to be reduced to a minority group. This appears to be against the spirit of the matter.

The guidance throws no further light on this, simply reflecting the draft regulations as they now stand. However, we understand that the final version of the regulations will reintroduce a restriction whereby other members may not exceed the number of member and employer representatives and as such this is one area we can expect the guidance to also change.

Capacity, knowledge, and understanding – an onerous task?

As predicted, the guidance discusses experience and capacity, knowledge, and understanding requirements. We would recommend reading this section thoroughly. While the requirements differ for member/employer and other representatives in the draft regulations, as the guidance suggests this will be equally important for all members and taken as a whole represents an onerous requirement.

With the guidance pointing out that each local pension board member's legal responsibility commences from the date that they take up the post, lengthy initial training plans will not be the ideal way forward and administering authorities will, we believe, want to be checking that the members appointed do really have the required capacity, knowledge and understanding or the ability to quickly acquire it. Similarly we believe that members will wish to have access to sufficient support and training right from the commencement.

The requirements may add to the difficulties of finding people wishing to take on this task and the guidance's section on allowances may well prove of interest!

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The guidance provides a useful source of background explanatory information, a clear steer in some areas and ideas in others and as such we consider that it will form a useful manual to have in the toolkit.

Combining the 101 committee with the local pension board – difficulties remain

While the ability, subject to Secretary of State approval, to combine the Section 101 committee with the local pension board remains within the draft regulations, as noted previously the problems associated with this remain as a significant barrier to actually achieving a joint committee/board in practice. The guidance further highlights this, indicating that this will not be an easy option to take.

Conclusion

Overall the guidance provides a useful source of background explanatory information, a clear steer in some areas and ideas in others and as such we consider that it will form a useful manual to have in the toolkit. We acknowledge the speed with which it was produced and anticipate that future versions will continue to develop the document to include between it and the promised question and answer document further useful information and perhaps some enhanced signposting to aid navigation and to enable easier identification of the information relevant to any specific issue.

The guidance, which will inevitably change again as the surrounding suite of regulations and TPR Code of Practice are finalised, is not intended to and cannot provide all the answers and administering authorities remain with many decisions to make, procedures and processes to develop and documents to produce before they can establish and operate their local pension boards. Time to stoke up the engine and move onto the fast track.

Further information and assistance

Our Public Sector Benefits Consultancy team is available to provide advice and assistance to clients on this and other issues.

Please contact Annemarie Allen if you would like to discuss the above topic in more detail via the following:

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