

## LOCAL GOVERNMENT PENSION SCHEME (GOVERNANCE) (SCOTLAND) REGULATIONS 2014

### Aberdeen City Council Pension Fund (North East Scotland Pension Fund) - CONSULTATION RESPONSE

This document details the comments of Aberdeen City Council Pension Fund on the draft Local Government Pension Scheme (Governance) (Scotland) Regulations 2014 (the “2014 Regulations”).

#### A - KEY POINTS

- 1. Lack of Clarity & Inconsistencies:** It is clear that much of the wording in the regulations has been copied from the governance Heads of Agreement which is inappropriate for primary legislation. A number of areas of the 2014 Regulations lack clarity and would potentially lead to practical issues in implementing the Regulations.
- 2. Appropriate breadth of appointments for Pension Boards:** There is a concern that the 2014 Regulations confuse the issue of employer and member *representation* and the technical *compliance* function of the Pension Board. There needs to be sufficient flexibility to populate Pension Boards with suitably qualified persons. There is a significant risk that employer and member representatives do not have sufficient knowledge and understanding to perform the role.
- 3. Active role of the Scheme Advisory Board:** It will be important that the Scheme Advisory Board has an active role in advising the Scottish Ministers, rather than simply advising on the request of the Scottish Ministers, to ensure that the Scottish Ministers continue to have an active involvement and awareness of LGPS matters.
- 4. Common purpose and duties:** The Pensions Boards and Scheme Advisory Board should each operate as a single body with a common purpose and duty to act in the best interests of the relevant stakeholders in the fund and (where appropriate) the wider LGPS scheme. The bodies only therefore need to appoint a single secretary and a single set of advisors to support their respective functions. Such decisions would be made by agreement of the members of the relevant body in accordance with its constitution. It would be confusing, potentially divisive and inefficient to operate a dual “member versus employer” structure within a single body of the nature of the Scheme Advisory Board and Pensions Boards. With that in mind, all reference to this dual structure (e.g. “two sides” etc.) should be removed from the 2014 Regulations.
- 5. Representation of members:** The reference to member representatives in the 2013 Act has been limited to trade union representation in the 2014 Regulations. A significant number of members of the LGPS are not members of a trade union body.
- 6. Standard of knowledge and understanding:** The 2014 Regulations could further clarify the levels of knowledge and understanding required of Pension Board members by cross referring to the Pension Regulator’s Codes of Practice. An equivalent approach could also be taken in relation to members of the Scheme Advisory Board. This would help inform the prospective members of the expectations on them in performing their roles.

7. **Inconsistencies with the Heads of Agreement:** A number of sections of the 2014 Regulations are inconsistent with the governance Heads of Agreement, particularly relating to the Scheme Advisory Board and Pension Board.
8. **Responses to Governance Consultation from early in 2014:** It appears that responses to the governance consultation earlier in 2014 appear not to have been taken into account in the drafting of the 2014 Regulations.

## B - DETAILED COMMENTS

REGULATION	COMMENT
<b>Scheme Advisory Board</b>	
1(4)	Certain Scheme managers manage multiple funds. This should be reflected in the definition here.  'Local government employer' is not a helpful term. Nor is the definition helpful. Per Schedule 1 of the 2014 regulations: "Scheme employer" means a body listed in Schedule 2 employing an employee who is eligible to be a member and includes an admission body.' The additional term "local government employer" is therefore otiose as it has the same meaning as Scheme employer.
2(1)	<b>Constitution and remit:</b> The regulation should formally constitute and establish the Scheme Advisory Board.
2(2)	The word "main" should be deleted as being ambiguous and confusing. The functions of the Scheme Advisory Board will be as stated in the 2014 Regulations, with any other functions requiring to be expressly detailed therein.  The Scheme Advisory Board should simply be constituted to advise the Scottish Ministers, rather than only doing so at their request.  Provisions should be included around the Scheme Advisory Board's ability to determine its own constitution, procedures etc.  Provisions should be included around funding the costs of the Scheme Advisory Board, how the costs will be split and/or determined and whether there will be any budget oversight for the Scheme Advisory Board.
2(3)	<b>Enforceability:</b> This provision is not sufficiently clear in setting out the intention behind the requirement of a body to "have regard to the advice". This may result in uncertainty and potential legal challenge, which would not be in the best interests of LGPS stakeholders. 2(3) should be removed.
3(1) and 3(2)	<b>Membership:</b> As above, restricting the membership of the Scheme Advisory Board to a "bipartite body" of local government employer and trade union representatives would provide sufficient flexibility to ensure that this body includes appropriately representative and qualified persons from time to time to perform the relevant functions.  The 2013 Act does not make specific reference to trade union representatives, rather providing for collective representation for members of the funds.  <b>Knowledge and expertise:</b> The words "inform their role" could be replaced with "perform their role to an appropriately competent standard of knowledge, skill and care and with regard to any relevant guidance issued by the Pensions Regulator from time to time".
3(4)	<b>Secretaries:</b> the role should be defined.  A single body should not have two secretaries. This would create confusion and cause unnecessary duplication, confusion and bureaucracy. A single secretary should be appointed by agreement of the members of the Scheme

	Advisory Board and the constitution could deal with such matters as rotation, term, re-appointment, removal etc.
3(5)	<b>Advisers:</b> The body itself should appoint its own advisers - acting collectively and with their common duty to the stakeholders of the funds in mind. The presence of multiple advisers would not be appropriate for the operation of a body of this nature nor would it be conducive to effective and efficient governance.
<b>Pensions Boards</b>	
5	<b>Constitution and remit:</b> Responsibility for establishing the Pension Board and maintaining the Board's constitution should be made clear. The Board itself should not be allowed to change its own constitution - this would not be a good governance model. The drafting of section 5(1) and (2) should be combined to more clearly state the responsibilities of the Pension Boards. In addition, (c) should be removed as being unnecessary and creating ambiguity. The remit of the Pension Board should be clearly set out in section 5 and not elsewhere. See also the below comments on paragraph 8 of the 2014 Regulations.
6(1)	<b>Membership:</b> The 2013 Act does not make specific reference to trade union representatives, rather providing for collective representation for members of the funds. In addition, the regulation should expressly set out that the Scheme Manager shall determine the membership of the Pension Board and the manner in which the appointment/removal process, terms of appointment, constitution etc. shall operate in consultation with the members and employers.
6(2)	The 2013 Act does not make specific reference to trade union representatives, rather providing for collective representation for members of the funds. The text 'depending on size of membership' does not appear to have any meaning and should be removed. 4 is too large a minimum - it is unlikely that smaller LGPS funds in Scotland will achieve representatives from 4 employers and/or members. In addition, employers do not have a collective organisation from which nominations can be sought. (CoSLA represent the Councils in Scotland). The allowance of substitutes is inconsistent with the Heads of Agreement. <b>Knowledge and expertise:</b> The words "inform their role" should be replaced with "perform their role to an appropriately competent standard of knowledge, skill and care and otherwise in accordance with the requirements and guidance of the Pensions Regulator from time to time."
6(3)	Remove the word 'relevant'
6(4)	<b>Secretaries:</b> as above for the Scheme Advisory Board. This was not included in the Heads of Agreement.
6(5)	<b>Advisers:</b> The body itself should appoint its own advisers - acting collectively and with their common duty to the stakeholders of the funds in mind. The presence of multiple advisers would not be appropriate for the operation of a body of this nature nor would it be conducive to effective and efficient governance
6(7)	The Scheme Advisory Board role is to advise, not mediate or adjudicate. Also the Scheme Advisory Board is unlikely to be established prior to 1 April 2015 to assist in the event of disagreement in the establishment of the Pension Boards.
6(8)	Add the word 'reasonable'. Costs should also be agreed by the Scheme Manager.
8	<b>Implementation of remit:</b> the remit of the Pension Board is set out in

	<p>paragraph 5 and paragraph 8 of the 2014 Regulations in fact details the matters that the Pensions Board may review to support its remit. The heading of this clause should therefore be amended to avoid confusion and to ensure it is clear that the remit should not extend beyond that set out in the 2013 Act and provided for in paragraph 5 of the 2014 Regulations. The current drafting may otherwise lead to ambiguity around the extension of the remit of the Pensions Board beyond what is anticipated by the 2013 Act. Reference to investments should read 'may' rather than 'shall'.</p> <p>8(1) - 'Pension Committee' should read 'pension fund'.</p> <p>8(1)(d) wording is inconsistent with the Heads of Agreement.</p> <p>8(2) should be deleted and any reference to investments of the fund and investment principals etc. included in 8(1), making it clear that the Pensions Board shall be to review such activities in order to fulfil its remit set out in paragraph 5 of the 2014 Regulations and the 2013 Act.</p>
8(3)	<p><b>Requisitioning reports:</b> Change 'requisition' to 'seek' The paragraph should also be amended so that the Pensions Board may only seek reports from the Scheme Manager where it (acting reasonably) determines that this would be necessary to enable it to properly carry out its functions in accordance with the 2014 Regulations.</p>
9	<p><b>Pension Committee and Pension Board disagreements:</b> the title of this section is unhelpful - the Pension Board and the Scheme Manager have different functions. A more appropriate title should refer to the situation when the Pension Board asks the Scheme Manager to reconsider a decision. The provision should also be amended to ensure that a review may only be requested where the Pension Board has demonstrated valid concerns in relation to the decision being in breach of any applicable law, regulation or Code of Practice.</p> <p>The grounds for review set out in paragraph 9(2) are too loosely construed and should therefore be amended accordingly and appropriately aligned to the remit of the Pensions Board itself. In particular, 2(a) and (d) are so general in nature as to enable a review to be requested on virtually any decision of the Scheme Manager.</p> <p>This section is also inconsistent with the Heads of Agreement.</p>
9(3)	<p>The definition of a 'joint secretarial report' is unclear. Separate reports on the issue by the Pensions Board and the Scheme Manager may be more appropriate and practical. There should also be a requirement for these reports to be passed to the Scheme Advisory Board within certain timescales to allow the Scheme Advisory Board to undertake its role as defined in 9(4).</p>
<b>Training Programme</b>	
10	<p>This should include appropriate reference to the requirements and guidance issued by the Pensions Regulator from time to time. Also consistent across all Scottish Funds.</p>