

## Local Government Association

### Local Pension Boards – The legal perspective

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# Overview

- The new legislation
- Pension Boards
- Legal Requirements
- Setting up the Board
- Key documents required

# **The new legislation**

# The new legislation

## –Public Service Pensions Act 2013

- New legal framework
- New schemes created – 1 April 2015 (exception: 1 April 2014 – LGPS (England & Wales))
- New benefit structures
- New governance arrangements
- New regulation of schemes

## –The Firefighters' Pension Scheme (England) Regulations 2014

## –The Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015

# New Fire Scheme (April 2015)

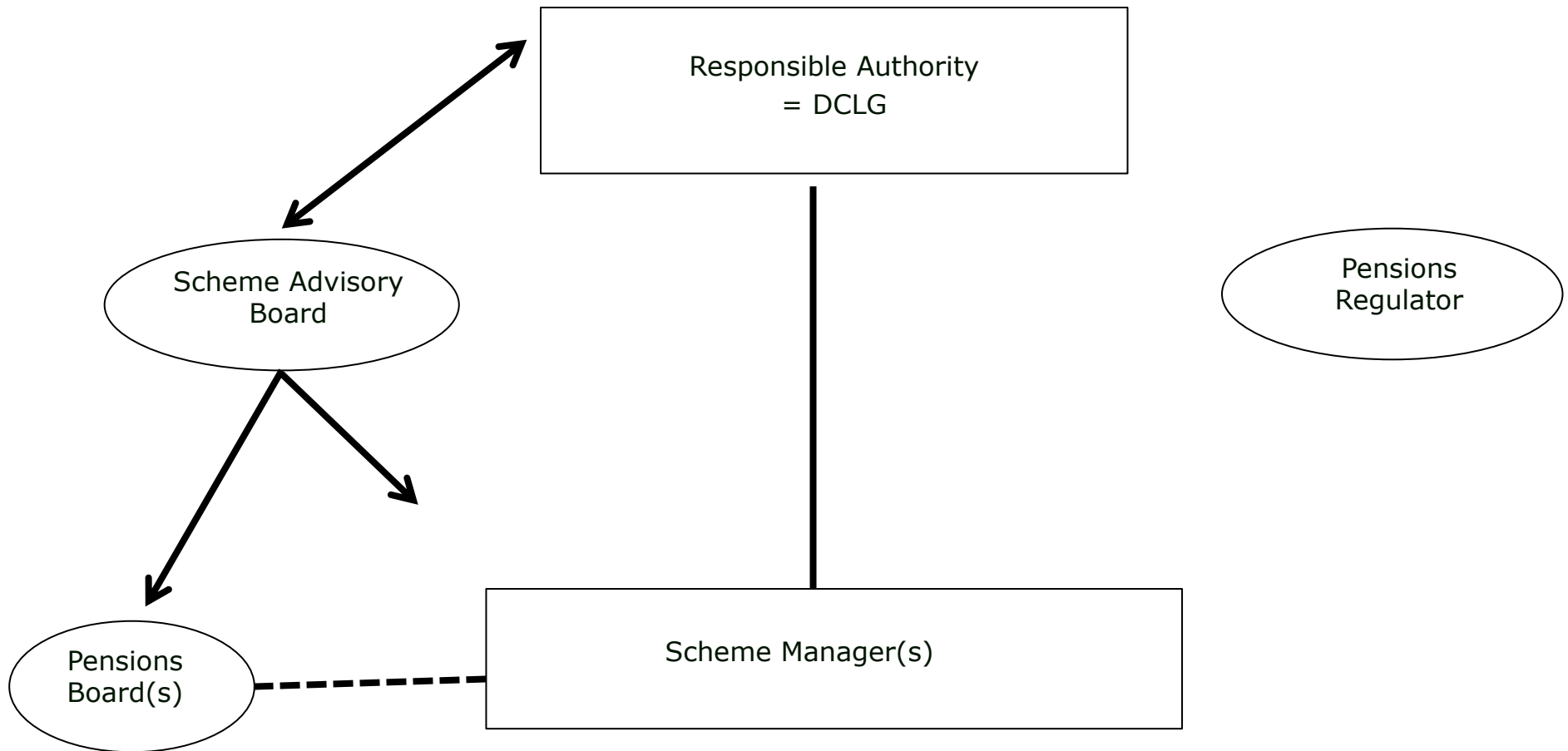
- Implementation – 1 April 2015
- New CARE benefit structure
  - 1/59.7th accrual
  - Revalued Average Weekly Earnings (AWE)
  - Optional lump sum by commutation
  - Linked to State Pension Age
  - 12.2% average contribution
- Transitional protections for older members

# New Governance requirements

- Change to current structures
- Re-naming of existing bodies
- Creation of new bodies
- Creation of new duties and responsibilities
- Biggest impact on locally administered schemes such as the Fire/Police/LGPS

# Firefighters' Pension Scheme

## New Governance Structure



# Scheme Manager

Public Service Pensions Act 2013

- “Scheme regulations ...must provide for a person to be responsible for managing or administering ...called the **scheme manager**”
- Firefighters’ Pension Scheme = Fire & Rescue Authority



# Pension Board(s)

Public Service Pensions Act 2013

– Scheme regulations... must provide for the establishment of a **board**... for assisting the scheme manager... in... the following matters:

- ..... securing compliance with... regulations relating to the governance and administration...
- and with requirements... imposed... by the Pension Regulator
- ...such other matters... regulations may specify

# **Local Pension Boards**

Firefighters' Pension Scheme

# Local Pension Boards

## Implementation

- Established by the Fire & Rescue Authority – it decides the structure, shape and scope!
- One Board per Fire & Rescue Authority
- Except where a Joint Board is approved by the Secretary of State
- Deadline was 1 April 2015!

# Local Pension Boards

## What Do They Do?

- Responsible for assisting the Fire & Rescue Authority to secure compliance with:
  - the 2015 Regulations
  - any other legislation relating to the governance and administration of the Scheme
  - any requirements imposed by the Pension Regulator
  - the effective and efficient governance and administration of the Scheme
  
- Power to do anything which is calculated to facilitate or conducive or incidental to the discharge of its functions

# Assisting the Fire & Rescue Authority

- Assist = To help (someone), typically by doing a share of the work
- Role covers all aspects of governance and administration of the Scheme
- The Local Pension Board does not:
  - replace the Fire & Rescue Authority; or
  - make decisions which are the responsibility of the Fire & Rescue Authority

## Examples of Assisting

- Develop/review scheme member/employer communications
- Compliance of scheme employers with their duties under the Regulations and relevant legislation
- Complaints and performance on the administration and governance of the scheme
- Employer discretions
- Development of improved customer services
- Review effectiveness of processes for the appointment of advisors and suppliers

# Setting up the board

# Local Pension Boards

## Who Sits on Them?

- Equal number of employer representatives & member representatives
- Minimum 4 members in aggregate
- Fire & Rescue Authority must be satisfied appointees have capacity to represent employers/employees
- Only employer & member representatives have the right to vote
- No member/officer of Fire & Rescue Authority with responsibility for the management of the Scheme may be a Board Member
- Board Members can't have a conflict of interest



# Local Pension Boards

How do they operate?

- Nothing too prescriptive in the Regulations as to how they operate / what the Board may consider
- Recommend Terms of Reference to govern the operation and scope of the Board
- Rules setting out how the Board will be constituted and operate on a day to day basis
- Should include as a minimum:
  - Functions of the Board / Statement of purpose
  - Composition of Board / Membership
  - Code of Conduct
  - Conflicts of Interest

# Conflicts of Interest

- Each scheme manager to be satisfied that appointees to a pension board do not have a conflict of interest
  
- “Conflict of interest” is defined in Public Service Pensions Act 2013 as:
  - “a financial or other interest which is likely to prejudice the person’s exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme)”

## Conflicts of Interest

- Ongoing requirement once appointed
- Appointees to provide reasonable information to the Fire & Rescue Authority in this regard
- The Fire & Rescue Authority must have regard to Secretary of State's guidance
- Guidance suggests that the Board should have a Conflicts Policy

**Key documents required**

# Local Pension Boards

## Terms of Reference

- Decision making and administration
- Chair's functions
- Reporting on activities
- Budget, expenses and allowances
- Advice and information
- Knowledge and skills
- Review/updating the Terms of Reference

# Local Pension Boards

## Terms of Reference

### – Functions of the Board

- statutory purpose
- specific functions above the Board's core statutory role

# Local Pension Boards

Ancillary documents?

–Ancillary documents:

- Nomination and Selection Rules
- Code of Conduct (incorporate Nolan Principles)
- Conflicts Policy and Register
- Knowledge and Understanding Policy

# Local Pension Boards

## How Much Do They Cost?

- Unlike Scheme Advisory Board nothing prescriptive in regulations about funding / administration costs
  
- Fire & Rescue Authority to determine procedure applicable to payment of expenses
  
- Budgets need to be considered
  
- Also other ongoing costs:
  - Secretarial
  - Training and support
  - Professional advice



## Local Pension Boards

So What Needs to Happen Next?

- Decide composition and selection process (if not already done so)
- Appoint Chair (if applicable)
- Adopt Constitution
- Arrange training and support
- Arrange first meeting (if not already done so)

# Local Pension Boards

## Ongoing Legal Duties

- Board members subject to own separate legal duties
  - Knowledge & Understanding
  - Reporting breaches of law
  
- Fire & Rescue Authority has own separate duties – expanded from 1 April 2015!

# Local Pension Boards

## Knowledge & Understanding

Every individual who is a member of a Pension Board must:

- be conversant with the rules of the scheme and any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme; and
- have knowledge and understanding of the law relating to pensions and such other matters as may be prescribed.

## Knowledge & Understanding

- Immediate and personal requirement
- Does not apply to scheme manager!
- Degree of knowledge and understanding:
  - working knowledge
  - relevant to an issue?
  - does a particular provision or policy may apply?
  - obligations of Fire & Rescue Authority
  - range and extent of overriding law
  - understand professional advice

# Knowledge & Understanding

- To enable Pension Boards to satisfy the legal requirements and to ensure Board Members maintain the necessary level of understanding to effectively fulfil their role, they will need to be conversant with/have knowledge and understanding of areas such as:
  - Legislative framework
  - The Pensions Regulator
  - Understanding key documents relating to the administration of the Scheme

## Knowledge & Understanding

- Role and responsibilities of the Pension Board
- Role and responsibilities of the Scheme Manager
- Role and responsibilities of Scheme Employers
- Role of advisors and key persons
- Role of key bodies connected to the scheme

A Knowledge and Understanding Checklist is very useful

## Knowledge & Understanding

- Is KU policy/framework fit for purpose?
- Additional training and support may be needed at outset
- Members to have personal training plan
- Sufficient time allocated?
- Sufficient training on an ongoing basis?
- Consider shared training with other pension boards/committees

# Demonstrating knowledge and understanding

- Keep records
- If got specific expertise – demonstrate this



## Action Points

- Adopt KU Policy and Framework
- Responsibility with designated person
- Access to induction (and ongoing) training – Scheme manager must do this!
- Provide list of core documents
- Assess personal training needs
- Maintain training records to demonstrate compliance

## Reporting Breaches of Law

- Legal requirement under S.70 of the Pensions Act 2004 - aka 'whistleblowing'
- Is the breach likely to be of material significance to the Regulator?
- Duty applies to Fire & Rescue Authority, local pension board members, scheme advisers and service providers
- Covered in Regulator's Code of Practice
- Must have effective reporting arrangements in place

# Questions

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