

9 September 2014

Edinburgh

CIPFA Pensions Network Workshops

Legal Developments in Public Sector Pensions

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Agenda

Look Back – Year to Aug 2014:

- ✓ Fair Deal II Oct 2013
- ✓ IORP II Directive Mar 2014
- ✓ Law Commission Reports Apr & Aug 2014
- ✓ LGPS Collaboration – SAB Response Jul 2014
- ✓ LGPS Governance Consultation Aug 2014

Look Forward – Year to Aug 2015:

- LGPS Scotland (Accruals) Apr 2015
- LGPS Scotland (Exits) Apr 2015
- NHS Pension Scheme Apr 2015
- LGPS Advisory Board Apr 2015
- Scottish Independence / Devolution



1. Fair Deal II Oct 2013

- **Fair Deal I Jun '99:** “broadly comparable scheme” used
- **Need:** TUPE doesn't protect “core” pension scheme rights
- **UK Policy Aim:** protection when central government outsources functions and transfers staff to private sector
- **England & Wales:** Participation Agreement should allow continued membership of pre-transfer Scheme
- **Scotland:** membership offered, but policy non-statutory

2. IORP II Directive Mar 2014

- **IORP I Jun 2003:** PA04 helped EU-wide OPS regulation
- **UK Policy:** HMG agreed in that OPS Regs should reflect Directive, and with Unison QC that IORP I applied to LGPS
- **England & Wales:** 31 Dec 16 deadline on OPS minimum governance standard, disclosure and member protection
- **Scotland:** likely to be similar to E&W, unless independent

3A. Law Commission Report (E&W) Apr 2014

- **Background:** Kay's concern on investment intermediaries between member and investee, short-termism
- **LC Focus:** adequacy of current fiduciary duties, member interests v. employer, ethical, ESG interests
- **Pension Focus:** chosen due to length of chain between member and investee
- **England & Wales:** LC said review LGPS Regs to (1) reflect IORP member best interests req, (2) alter quarterly measures
- **Scotland:** UK-wide legislation likely, unless carve-out for independence

3B. Law Commission Report (Scotland) Aug 2014

- **Background:** Draft Bill to replace all Scots trust legislation, except charitable and public trusts, after work with E&W LC
- **SLC Focus:** to update law to service private, commercial and cross-jurisdictional interests
- **Pension Focus:** recommendation for remedy where trustee has failed in exercise of fiduciary power
- **LGPS:** Not mentioned, so new law may apply only to private sector OPSs

4. LGPS Collaboration – SAB Response Jul 2014

- **Origin:** DCLG May 14 consultation on LGPS Reform: Opportunities for Collaboration, Cost Savings & Efficiencies
- **England & Wales SAB:** suggest (1) “explain or comply” rather than no active investment management, (2) CIVs positive, but infrastructure co-investment, joint committees and other collaborations also good
- **Scotland:** no reason for collaborations between 11 AAs not to increase, both for admin functions and making investment

5. LGPS Governance Aug 2014

- **Origin:** Public Service Pensions Act 2013
- **England & Wales SAB:** changes (1) expanded role for TPR – see draft Code of Practice Dec 2013, (2) Shadow Scheme Advisory Board until Apr 2015, (3) TPR “quick guides” to public service pension boards and their members Jul 2014
- **Scotland:** (1) TPR framework, (2) SPPA making plans with SLOGPAG, (3) Scottish SAB expected + local boards, (4) draft Regs expected Oct 2014, (5) implementation Apr 2015

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6. LGPS Scotland (Accruals) Apr 2015

- **LGPS (Scotland) Regs:** replaces 2008 Regs, save for Transitional Regs protecting rights under 4 earlier versions
- **Accrual:** 1/49th of CARE not 1/60th FPS
- **Accounts:** at least one account per member
- **Contributions:** tiered by salary 5.5% up to 10.1% (pre-tax)
- **Contribution Flexibility:** new 50:50 option
- **Rule of 85:** transitional protection to 2020 despite abolition
- **Future Costs:** new mechanism involving trade unions, employers and government

7. LGPS Scotland (Exits) Apr 2015

- **Flexibility in DC Schemes:** 2013 Budget changes due from Apr 2015
- **Transfers from LGPS:** exodus likely to access flexibilities?
- **UK Policy Aim:** shake-up of annuity and charging market – relevance to LGPS?
- **England & Wales:** different trends in Scotland?

8. NHS Pension Scheme Apr 2015

- **Expansion of Direction Status:** differences from admission agreement arrangements
- **UK Policy Aim:** replacement of broad comparability with private sector participation in public sector schemes, even though unfunded
- **Scotland:** NHS Regs 2008 & 2011 – likely effect and relationship with LGPS from 2015

9. LGPS Advisory Board Apr 2015

- **Legislation:** PSPA 2013 + SI/SSI Regs + TPR framework
- **Boards:** National and local – latter based on 101 LGPS Admin Authorities (11 in Scotland)
- **UK Policy Aim:** cost efficiencies and sharing of services and investment vehicles, convergence with private sector governance envisaged via IORP II compliance
- **Scotland:** opportunities from clarification of duties owed to members / employers, but revolution unlikely?

10. Independence / Devolution

- **Merger of 11 Scottish AAs:** Pathfinder revisiting unlikely?
- **Substance:** £20bn+ fund creates fund for accelerated investment in Scottish housing, infrastructure, etc – or still too small to make major changes without reciprocal investments?
- **Governance:** How tightly to define members' and beneficiaries' interests? When are employers' interests the same as members' interests?
- **Interim:** How much more can be done using current UK-wide powers, without waiting?

Any
questions?



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