



16 March 2015

## All a-Board! Final Firefighters' Pension Scheme governance regulations issued

The **Firefighters' Pension Scheme (Amendment)(Governance) Regulations 2015** were laid before Parliament on 5 March and set out the new governance arrangements for the Firefighters' Pension Scheme ("Scheme"). The regulations will come into force on 1 April 2015 and amend the main Firefighters' Pension Scheme (England) Regulations 2014 ("the Regulations") by inserting the new governance provisions.

### Local and national boards

The governance regulations provide for the creation of two new types of entity:

- **Local Pensions Boards**, whose role is to "assist" the Scheme Manager (the fire and rescue authority) to secure compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and any requirements imposed by the Pensions Regulator in relation to the Scheme. The Board also assists the Scheme Manager to ensure the effective and efficient governance and administration of the Scheme.
- a national **Firefighters' Pension Scheme Advisory Board**, the function of which is to provide advice as requested by the Secretary of State on the desirability of making changes to the Scheme and also to provide advice to the Scheme Managers and Local Pension Boards in relation to the effective and efficient administration and management of the Scheme.

Responsibility for establishing a Local Pension Board rests with each Scheme Manager (ie the fire and rescue authority) and is mandatory, not optional.

In relation to the Firefighters' Pension Scheme Advisory Board, this is directly established by the Regulations themselves.

Both types of boards are required to be established no later than 1 April 2015.

### Membership of the new Local Pension Boards

The Regulations confirm details regarding the required make-up of the new Local Pension Boards:

- As well as having equal numbers of member and employer representatives, the Board must have at least two representatives in each category (four in aggregate). There is no prescribed maximum number of members.
- In an unexpected change from the consultation draft, only member and employer representatives on Local Pension Boards have voting rights. This means that any 'other' board members who are not member or employer representatives, including any independent chairperson, do not get a vote.

- Member and employer representatives must have the “*capacity*” to represent members / employers (as appropriate). We envisage that the concern here is around time constraints rather than personal qualities.
- The proposed requirement (in the consultation draft) that member and employer representatives must have appropriate “*understanding*” has been dropped from the final form of the Regulations. The requirement for Local Pension Board members to acquire appropriate “*knowledge and understanding*” of pensions matters, under the Pensions Act 2004, will remain (but can be satisfied by Board members undertaking suitable training following appointment).
- Likewise, the proposed requirement (in the consultation draft) that member representatives must be in scheme employment (ie active members, or eligible to become so) has been abandoned, possibly as a result of concerns over potential indirect age discrimination.
- The Regulations also provide that a member of the fire and rescue authority who is a member of the Local Pension Board must be appointed as either an employer or member representative.
- They also provide that no member or officer of a fire and rescue authority who is responsible for the discharge of any functions under the Regulations (other than in relation to the Board) may be a member of the Local Pension Board.

Before appointing (or approving the appointment) of any Board member, the Scheme Manager must be satisfied that the person has no conflict of interest. This requirement also continues once the person has been appointed. A conflict of interest means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the Board. However, simply being a member of the Scheme does not create a conflict.

### **Joint Local Pension Boards**

Welcome clarification has also been provided on the question of whether fire and rescue authorities can ‘share’ a Local Pensions Board. The Regulations now expressly provide for a joint Board, but only in cases where scheme administration and management is wholly or mainly shared by two or more Scheme Managers. However, this requires specific Secretary of State approval. In practice, use of this new option is likely to be quite limited, and the Scheme Managers involved will need to give careful consideration to how a joint Board will operate.

### **Procedures and costs**

The Scheme Manager determines the procedures applicable to a Local Pension Board, including the establishment of sub-committees, formation of joint committees and payment of expenses. We would expect these procedures to be set out in a Terms of Reference document.

The Regulations give Boards the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

Scheme Managers must also have regard to any guidance issued by the Secretary of State in relation to Local Pension Boards (although no guidance has yet been issued).

### **Summary**

The late arrival of the final Regulations leaves Scheme Managers with a lot of work to do to get their Local Pension Boards in place within a very tight timescale. Boards will require comprehensive governance documentation, including Terms of Reference and various policies relating to ongoing legal duties that apply to Board members, such as whistle-blowing and knowledge and understanding requirements. Appropriate training will also need to be put in place for Board members.

Eversheds can assist Scheme Managers with the drafting of such documents and can provide bespoke training for Board members. For further information, please speak to your usual Eversheds adviser or contact:

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