

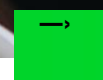


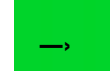
# Surrey Pension Fund

Review of the current governance arrangements  
and options for change

Barnett Waddingham LLP  
20 August 2024

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CONFIDENTIAL





# Surrey Pension Fund

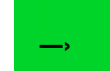
## Review of the current governance arrangements and options for change

### Contents

Review of the current governance arrangements and options for change.....	5
Disclaimer .....	5
Regulatory references.....	5
Client Requirements .....	6
Options under current legislation .....	6
Options under new or amended legislation.....	7
Executive Summary.....	8
Current governance arrangements.....	8
The legislative landscape .....	8
Future challenges .....	8
Options under current legislation .....	9
SCC Current arrangements .....	10
Surrey Pension Fund Committee .....	10
Surrey Local Pension Board.....	11
Delegation to officers.....	11
The Legislative landscape.....	12

The LGPS Statutory Function .....	12
Discharging a Statutory function .....	12
Current arrangements across the LGPS .....	13
Arrangements other than by committee .....	13
Consideration of arrangements other than by committee .....	15
Future challenges.....	17
Significant administrative developments .....	17
Increasingly complex governance requirements.....	17
Boycotts and sanctions legislation .....	21
The Pensions Review 2024 .....	24
Options under current legislation .....	26
Increased use of delegations.....	26
Full delegation to officers (the Cheshire and Southwark model) .....	28
Combined committee and pension board.....	28
Accountability and oversight considerations.....	28
Options under new or amended legislation .....	29
Amend the 2013 Regulations.....	29
Make use of Section 9BA of the 2011 Act.....	30
Request the creation of a Single Purpose Combined Authority .....	31
Next steps .....	32
ANNEX – Relevant Legislative extracts.....	33
The LGPS Function.....	33
Local Government Legislation Discharge of Functions.....	35





Power to create a Combined Authority or Combined County Authority .....55  
Power to transfer functions assets and liabilities to CAs or CCAs .....57

# Review of the current governance arrangements and options for change

## Disclaimer

This document has been prepared at the request of Surrey County Council (SCC) in its capacity as a Local Government Pension Scheme (LGPS) administering Authority. The information contained in this document is based on our understanding of current and proposed legislation and practice which may be subject to future variation. This document is not intended to provide nor must be construed as legal advice.

## Regulatory references

In this document any reference to regulations or to specific provisions of regulations should be treated as referring to the following:

- The 2013 Regs – The Local Government Pension Scheme Regulations 2013
- The 2016 Regs – The LGPS (Management and Investment of Funds) Regulations 2016

Likewise, any reference to Acts should be treated as referring to the following:

- The 1972 Act – The Local Government Act 1972
- The 1989 Act – The Local Government and Housing Act 1989
- The 1999 Act – The Local Government Act 1999
- The 2009 Act – The Local Democracy, Economic Development and Construction Act 2009
- The 2011 Act - The Localism Act 2011
- The 2013 Act – The Public Service Pensions Act 2013
- The 2023 Act – The Levelling-up and Regeneration Act 2023

unless specified as otherwise.

Relevant extracts from the above legislation can be found in the ANNEX to this report.





## Client Requirements

### Options under current legislation

SCC wishes to explore options for the greater segregation of governance and supporting functions in relation the administering authority function from those of other functions within the council. Such options are to be limited to those which are possible under current legislation, including options requiring the consent of the council and the Secretary of State.

The objectives for these options would be to:

- Make the governance and supporting arrangements for the LGPS function work more effectively and efficiently.
- Ensure conflicts of interest between the council and LGPS function are managed.
- Ensure the independence of the LGPS function is recognised.

In seeking to achieve these options SCC seeks to acknowledge the unique status of the LGPS function in that:

- 
1. Although the pension fund is a revenue reserve of the council it is ringfenced to the extent of having a single purpose – that of paying pensions.
  2. The costs of management and administration associated with the LGPS function may be met from the pension fund and therefore do not impact on the revenue expenditure of the council.
  3. Investment decisions in regard to pension fund monies should be made in the light of the quasi-trustee fiduciary duties of the decision makers.
  4. Decisions around the amount of employer contributions set at triennial valuations should be demonstrably equitable and not either favour or perceive to favour the administering authority.
-

Within SCC as it is across the vast majority of LGPS administering authorities the function is effectively delivered with potential conflicts of interest well managed. However, increasing demands on LGPS authorities together with the potential for increasing turnover of elected members may make that position more difficult to sustain.

### Options under new or amended legislation

SCC also wishes to explore 'blue sky' options for the greater segregation of governance and supporting functions in relation the administering authority function from those of other functions within the council which would require either new legislation, amendments to current legislation or the introduction of new provisions by the Secretary of State, for example by Direction or Order, under powers contained in existing legislation.

The purpose of these options would be to provide a greater degree of effective, independent and conflict free provision in relation to the LGPS function beyond those possible under current legislation even with the consent of the council and the Secretary of State.





## Executive Summary

### Current governance arrangements

SCC delegates the delivery of LGPS administering authority function to a Pension Fund Committee assisted by a local pension board both of which are supported by officers and advisors. Although these arrangements are common amongst LGPS administering authorities, they rely on the goodwill of those involved to ensure that the potential conflicts of interest between those of the pensions function and the other functions of the council are effectively managed.

Alternative governance arrangements are used in a minority of other LGPS administering authorities.

### The legislative landscape

As a statutory function of the authority and a responsibility under public service pensions law, arrangements for governance are determined by SCC within the provisions of a range of primary and secondary legislation including:

- The Local Government Pension Scheme Regulations 2013
- The LGPS (Management and Investment of Funds) Regulations 2016
- The Local Government Act 1972
- The Local Government and Housing Act 1989
- The Local Government Act 1999
- The Localism Act 2011
- The Public Service Pensions Act 2013

### Future challenges

The LGPS is facing significant challenges going forward which may require the review and potential adjustment of current governance arrangements. These include:

- McCloud, Fair Deal and Pensions Dashboard
- The Pension Regulators General Code and the Scheme Advisory Board's Good Governance Review



- Boycotts and Sanctions Legislation (not in Kings Speech 2024)
- The new Government's Pensions Review 2024

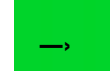
### Options under current legislation

This report provides a review of the options available to SCC under the current legislative framework in order to minimise the potential for conflict and the impact of future challenges:

- Increased use of officer delegations
- Full delegation to officers
- Combined committee and pension board

The report also includes a brief overview of options under new or amended legislation.





## SCC Current arrangements

### Surrey Pension Fund Committee

Surrey County Council delegates the delivery of LGPS administering authority function to a Pension Fund Committee (originally named Surrey Pension Fund Board) with responsibility for the governance and administration of the Surrey County Council Pension Fund.

#### **Purpose of Committee**

1. To undertake statutory functions on behalf of the Local Government Pension Scheme and ensure compliance with legislation and best practice.
2. To determine policy for the investment, funding and administration of the pension fund.
3. To consider issues arising and make decisions to secure efficient and effective performance and service delivery.
4. To appoint and monitor all relevant external service providers:
  - fund managers
  - custodian
  - corporate advisors
  - independent advisors
  - actuaries
  - governance advisors
  - all other professional services associated with the pension fund.
5. To monitor performance across all aspects of the service.
6. To ensure that arrangements are in place for consultation with stakeholders as necessary.
7. To consider and approve the annual statement of pension fund accounts.
8. To consider and approve the Surrey Pension Fund actuarial valuation and employer contributions.

The 'standard' Committee diary provides for four meetings a year and additional meetings are occasionally required for a specific purpose.

The Committee is made up of publicly elected Members as well as co-opted members who provide stakeholder membership. The co-opted members represent the members of the Fund (trade union representation), District and Borough Councils and other employers in the Fund. Co-opted Members have the same rights on access to information and voting as elected Members.

### Surrey Local Pension Board

The Pension Fund Committee is assisted by the Local Pension Board which has the role of assisting the committee:

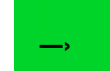
1. to secure compliance with:
  - the scheme regulations
  - any other legislation relating to the governance and administration of the LGPS Scheme and any connected scheme
  - any requirements imposed by the Pensions Regulator in relation to the LGPS Scheme.
2. to ensure the effective and efficient governance and administration of the LGPS Scheme.

### Delegation to officers

There are currently limited delegations to officers of SCC as set out in the scheme of delegations, for example:

The Chief Finance Officer/ Strategic Finance Manager (Pension Fund and Treasury) have delegated authority for the borrowing, lending and investment of County Council Pension Fund moneys, in line with strategies agreed by the Pension Fund Committee and to take urgent action as required between Pension Fund Committee meetings, but such action can only be taken in consultation with and by agreement with the Chairman or Vice Chairman of the Pension Fund Committee and following consultation with any relevant Consultant or Independent Advisor.





## The Legislative landscape

### The LGPS Statutory Function

SCC is a public service pension scheme manager under the 2013 Act as defined by its status as an LGPS Administering Authority under the 2013 Regs Schedule 3 Part 1.

The role of administering the scheme in relation to those scheme members defined in Part 2 of Schedule 3 of the 2013 Regs is therefore a statutory function of SCC. The council is the administering authority, and the administering authority is the council, there is no legal distinction between the two. In this sense the function of administering the LGPS is no different from any other statutory function assigned to the council from time to time.

The latest [combined list of statutory functions](#) (duties) on local authorities was compiled in 2011. Administering the LGPS is number 192 in the spreadsheet entitled 'List of statutory duties – DCLG owned (revised 30 June 2011)'

### Discharging a Statutory function

A local authority may discharge a statutory function at full council level or, using the powers granted by Section 101 (1) of the 1972 Act, arrange for the function to be discharged by:

- A committee or sub-committee of the authority
- An officer of the authority
- Another local authority

However, any such arrangements do not prevent the authority from discharging the functions itself (i.e. at full council level) – See 1972 Act Section 101(4).

Voting on and political balance across committees is set out in Sections 13, 15 and 17 of the 1989 Act.

Under the 1999 Act powers are conferred on the Secretary of State to modify or confer new powers on 'best value authorities', while the 2011 Act sets out the extent and limitations of the general power of competence granted to authorities in respect of governance arrangements.

## Current arrangements across the LGPS

The vast majority of administering authorities currently discharge the LGPS function using a committee set up under the powers of Section 102(1) of the 1972 Act with some also adding a sub-committee (for example to deal specifically with investment matters).

### Arrangements other than by committee

Two LGPS authorities (Southwark and Cheshire) discharge via an officer making use of Section 101(1)(c) of the 1972 Act:

*(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions—*

*(a) by a committee, a sub-committee or **an officer** of the authority; ....*

In both cases the officer is 'advised' by a pension committee set up under Section 102(4) of the LG Act and further information on these is set out below.

A small number of authorities combine the committee and local pension board and an example of this (Hampshire) is also set out below.

### **LB Southwark**

The London Borough of Southwark is the Administering Authority for The London Borough of Southwark Pension Fund (the Fund).

The London Borough of Southwark, as the Administering Authority of the Fund, has delegated responsibility for the management of the Fund to the chief finance officer (the Strategic Director of Finance and Governance), who will take into account advice from the [Pensions Advisory Panel](#) (the Panel).

The chief finance officer's powers include the requirement to review investments made by external investment managers at least once every three months and to administer all other functions relating to the Fund in accordance with the relevant legislation and regulations. This includes responsibility for the management of the Fund, oversight of the general framework within which the Fund is managed, and agreements of the policies under which the Fund will operate.





### **Cheshire Pension Fund**

Cheshire West and Chester Council is the Administering Authority for the Cheshire Pension Fund (the Fund)

Overall responsibility for managing the Fund lies with the full Council of who have delegated the management and administration of the Fund to the Chief Operating Officer.

The full Council reviews the discharge of its responsibilities through the Council's [Audit and Governance Committee](#). Follow the link for all agendas and minutes of these meetings.

The Local Pension Board assists the Council to deliver efficient governance and administration of the Fund responsibilities through the Council's Audit and Governance Committee.

The Chief Operating Officer is advised by the Pension Fund Committee and also takes appropriate advice from the Councils Head of governance, the Fund actuary and from the strategic Investment Advisor.

The Pension Fund Committee receives recommendations from the Investment Sub Committee and the Pensions Consultative Forum to enable it to discharge its responsibilities effectively.

### **Hampshire Pension Fund**

The 2013 regulations provide for the committee and the pension board to be one and the same.

*106 – (2) Where the Scheme manager is a committee of a local authority the local pension board may be the same committee if approval in writing has been obtained from the Secretary of State.*

An example of where such arrangements are used is Hampshire County Council. Hampshire County Council is the Administering Authority for the Hampshire Pension Fund (the Fund)

Its website states that the combined body has the following roles:

1. In its role as the Pension Fund Panel for the Hampshire Pension Fund the Pension Fund Panel and Board is responsible for the County Council's statutory functions as administering authority of the Hampshire Pension Fund ..... This includes dealing with all matters arising that relate to the Hampshire Pension Fund, including the management and investment of the Fund.
2. In its role as the Pension Board for the Hampshire Pension Fund it is responsible for assisting Hampshire County Council, as the administering authority of the Hampshire Pension Fund, to secure compliance with the Local Government Pension Scheme Regulations 2013 and any other legislation relating to the governance and administration of the Local Government Pension Scheme ('LGPS), for securing compliance with requirements imposed in relation to the LGPS by the Pensions Regulator and for ensuring the effective and efficient governance and administration of the Hampshire Pension Fund.

### Consideration of arrangements other than by committee

Arrangements other than by committee are not the norm for LGPS authorities which may, at least in part, due to convention. There is no legislative reason why the LGPS function should be delegated to a committee, as opposed to any other arrangement provided for under the 1972 Act.

#### **Officer delegation**

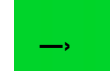
Although perfectly acceptable under legislation this arrangement has limited use presumably due to elected members' wishing to have control of decisions for the function particularly around investments. Given the introduction of pooling with manager selection and investment implementation now in the hands of pools such considerations have, to an extent, been superseded.

A further issue with such arrangements centers on the accountability elected members have to local taxpayers for investment decisions which may have an adverse effect on employer contributions. This issue should however be considered in the light of the fact that it is investment strategy rather than manager selection or implementation which drives the vast majority of returns.

#### **Combined committee and board**

There are issues around this arrangement mainly with regard to meeting the membership requirements for pension boards as set out within Section 5 of the 2013 Act:





(4) The regulations must include provision—

(c) requiring the board to include employer representatives and member representatives in equal numbers.

Together with the membership requirements for committees as set out in Section 102 of the 1972 Act and Section 15 of the 1989 Act (allocation of seats to political groups), and the voting requirements of such committees as set out in Section 13 of the 1989 Act.



## Future challenges

There are a number of challenges to the delivery and governance of the LGPS function coming over the next 12 to 24 months which may require the review and potential adjustment of current arrangements. The rest of this section further explores two of these, increasingly complex governance requirements together with proposed boycotts and sanctions legislation.

### Significant administrative developments

The increasingly complexity of the scheme, for example ongoing changes to survivor benefits and upcoming Fair Deal regulations will be added to by the requirements of McCloud and the Pensions Dashboard to significantly increase the demands on the administrative element of the LGPS function. These developments will require flexibility of service delivery, the development and implementation of new/revised processes and systems, the potential for an increased internal resource and/or the use of external resource together with extensive communication exercises.

In order to meet these challenges the LGPS function will not only need to appropriately plan and budget in advance but also but adaptable to moving circumstances and timescales requiring the ability to flex those plans and budgets.

### Increasingly complex governance requirements

These requirements fall under two main headings, firstly the new TPR General Code and secondly the SAB's Good Governance recommendations. Both of these will increase the level of compliance within governance structures which inevitably will come with increased demands on the time of decision makers and the resources needed for support.

#### **TPR General Code**

The Code replaces all the previous codes, including Code of Practice 14 for public sector schemes, and covers the following subject areas many, but not all, of which will apply to the LGPS.

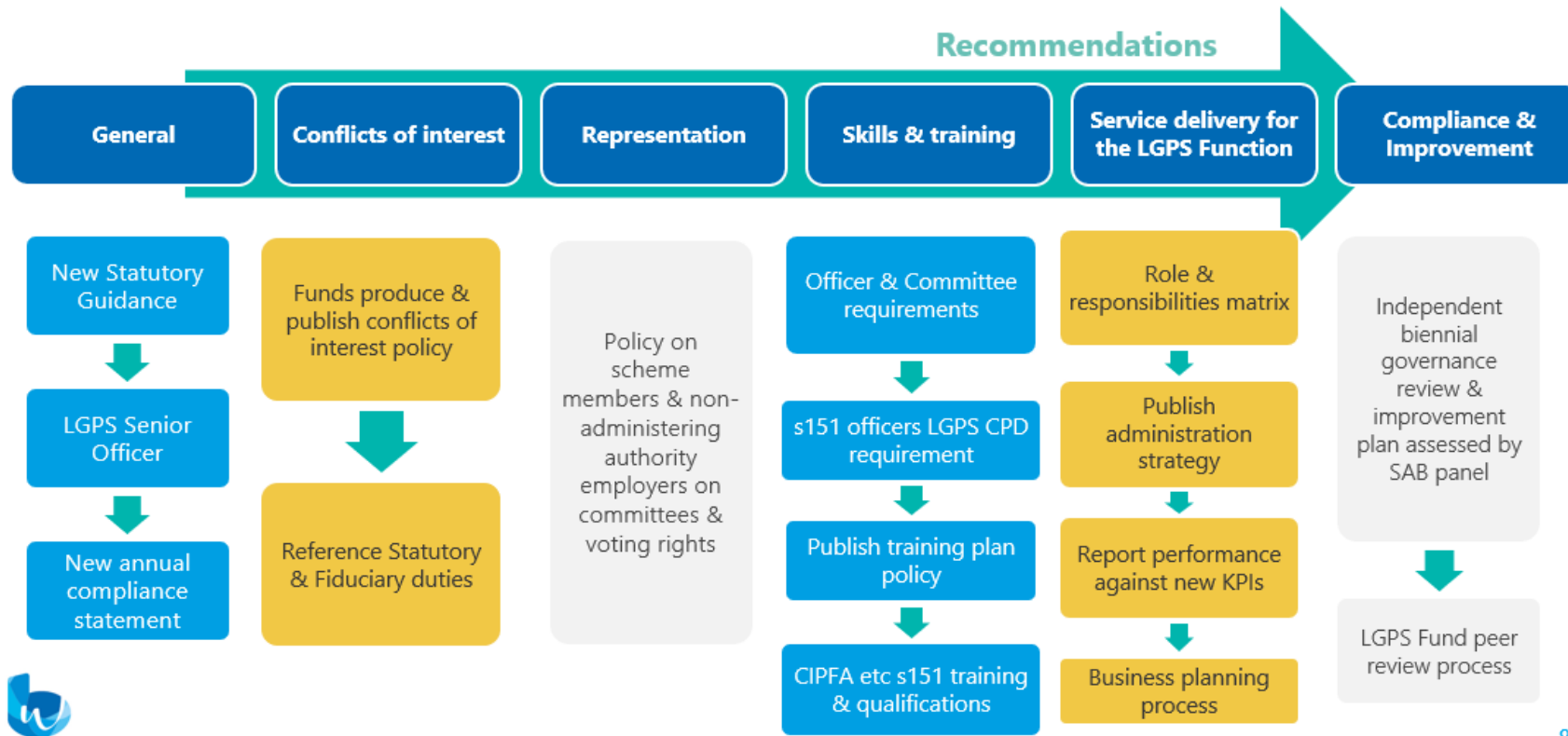




1. Status of the Code
2. The Governing Body: Board structure and activities
3. The Governing Body: Knowledge and Understanding
4. The Governing Body: Value for scheme members
5. The Governing Body: Advisors and service providers
6. The Governing Body: Risk management
7. The Governing Body: Scheme governance

8. Administration: Scheme administration
9. Administration: Information handling
10. Administration: IT
11. Administration: Contributions
12. Communications and Disclosure: Information to members
13. Communications and Disclosure: Public Information
14. Reporting to TPR: Regular report
15. Reporting to TPR: Whistleblowing

## SAB Good Governance Review



### Elected member Knowledge and Understanding (K&U)

To pick just one challenge stemming from both of the above SCC will need to consider how it meets the K&U requirements for LGPS decision makers.





The General Code states that the 'governing body' (the committee in the case of SCC) should:

- have a balance of skills and experience throughout the board and be able to demonstrate this
- be able to apply its knowledge to governing the scheme
- have enough skills to judge and question advice or services provided by a third party
- be able to identify and address skills gaps
- have enough understanding of industry good practice and standards to assess scheme performance and its service providers
- keep records of the learning activities of individual members and the body as a whole
- be able to demonstrate steps it has taken to comply with the law
- have and maintain training and development plans to ensure that individual and collective knowledge and understanding is kept relevant and up to date.

DLUHC in support of SAB recommendations has in the recent investment consultation response stated that it will:

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*"...revise guidance on annual reports and on governance to require all funds to publish formal training policies for pension committee members, to report on training undertaken, and to align expectations for pension committee members with those for local pension board members. Given the role and responsibilities of committees, including setting the investment and funding strategies for funds, it is essential that members of committees should have the appropriate training, knowledge and skills to undertake their role."*

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This K&U requirement may prove difficult to implement should there be a high turnover of elected members on the pension committee or should new elected members not wish to commit to the necessary training in order to be a member of the committee.

## Boycotts and sanctions legislation

The Economic Activities of Public Bodies (Overseas Matters) - EAPB (OM) Bill was brought by the previous government and was well on its way through both houses of parliament when it fell due to the election in July 2024.

Although the Bill did not appear within the Kings Speech 2024 its reappearance has not been definitively ruled out by the new government and therefore this section has been retained from the earlier draft of this report. The Bill covered both procurement and investment decisions of public authorities, however for this purpose the description below focuses only on LGPS investment decisions.

### In summary the Bill:

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- Prohibits public authorities from making a decision to invest or divest based on its moral or political opinion (or the opinion of any pressure groups which are seeking to influence it) of the actions of foreign states abroad.
- Prohibits the authority going on record saying it would have made that investment or divestment decision if not for the existence of this legislation.
- Includes a number of exemptions although these are in the main restricted to actions which are illegal.
- Provides for sufficiently interested parties to bring about legal proceedings against the authority and/or report the authority to TPR if they consider an investment decision to be or likely to be in contravention of the above prohibitions.

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Should the Bill become law SCC will need to carefully consider not only the potential for decisions actually being in contravention of the legislation but also the potential for interested parties to bring about costly and time-consuming legal proceedings in relation to decisions they do not agree with. [In doing so SCC may want to revisit its governance arrangements particularly in relation to investment decisions in order to minimise the risk of challenge.](#)

### What will the Bill prohibit?

The Bill seeks to prevent public authorities making decisions or statements of intent about investment which result from political or moral disapproval of the actions of a foreign state which have an overseas impact,





The stated purpose of the Bill is to catch both open participation in boycotts or divestment campaigns, and more subtle ways of singling out countries or territories that could produce similar results, for example expressing support for engaging in boycotts and divestment campaigns.

The Bill will not prevent public authorities from complying with formal UK Government legal sanctions, embargoes and restrictions.

**How will the Bill achieve this aim?**

The Bill will prohibit a public authority, when making an investment decision, having regard to a territorial consideration in a way that would cause a reasonable observer to conclude that the decision was influenced by moral or political disapproval of a country or territory's foreign state conduct.

The Bill will also prohibit public authorities having any regard to a third-party's moral or political disapproval of a country or territory's foreign state conduct if that third party is trying to persuade the decision maker to act. This applies even when the decision is not influenced by the authority's own political or moral disapproval of foreign state conduct.

The public authority will also be prohibited from publishing a statement indicating that they would have made such a decision if it were lawful to do so. It is worth noting that the prohibition on statements will apply to the authority not to individuals so, for example, an individual councilor will be able to express support for a boycott without fear of personal liability under the legislation.

**Are there any exemptions?**

Yes, the Bill lists those considerations which may be taken onto account when making an investment decision without breaching the prohibitions. These exemptions are:

- financial and practical matters
- national security
- international law
- bribery
- labour-related misconduct

- competition law infringements, or
- environmental misconduct

At first glance these exemptions may appear pretty broad and/or straightforward but on closer reading not so much, as they are in the main reliant on the action being illegal.

For example, environmental misconduct includes conduct which causes, or has the potential to cause, significant harm to the environment, including the life and health of plants and animals, so far so wide. However, the exemption only applies where such conduct is an offence under the law of the United Kingdom or another country or territory. Therefore, an investment decision based solely on considerations of actions which have a significant environmental impact but are perfectly legal worldwide would be caught by the prohibitions of the Bill. Similarly, the labour-related misconduct exemption only applies to consideration of actions which would be an offence or result in a misconduct order in the UK.

### **How could the Bill impact on SCC?**

The Bill provided for two routes of enforcement firstly via an enforcement authority and secondly through legal proceedings.

The Pensions Regulator will be the enforcement authority in relation to public authorities which are LGPS scheme managers and may make use of existing enforcement powers in pensions legislation including improvement notices under Section 13 of Pensions Act 2004 and ultimately fines of up to £50,000 under Section 10 of Pensions Act 1995.

Given the resource demands and expertise required for TPR to enforce the Bill together with the fact that very few, if any LGPS authorities actually make decisions which would contravene the provisions of the Bill, it is not anticipated that the major impact on LGPS authorities would come from the direction of TPR.

It is far more likely that third parties with a wide variety of political and moral agendas will seek to commence legal proceedings against SCC in respect of an investment decision, to either take an action they disagree with or not to take an action they are in favour of.





Legal proceedings may take the form of a Judicial Review (JR), where appropriate, or by application to the High Court. The High Court may permit an application by a person it considers has 'sufficient interest' and may, if satisfied that the legislation has been or is likely to be contravened, make any order that the court thinks appropriate by way of relief and/or any order appropriate to preventing such a contravention.

### The Pensions Review 2024

On Monday 22 July 2024, the Chancellor Rachel Reeves convened a meeting at Number 10 to discuss how the government intends to encourage better use of the assets of pension schemes to foster growth. Those invited included representatives from the LGPS for whom, according to the [government press release](#), there were some specific messages.

*'The Local Government Pension Scheme (LGPS) in England and Wales is the seventh largest pension fund in the world, managing £360 billion worth of assets. Its value comes from the hard work and dedication of 6.6 million people in our public sector, mostly low-paid women, working to deliver our vital local services. Pooling this money would enable the funds to invest in a wider range of UK assets and the government will consider legislating to mandate pooling if insufficient progress is made by March 2025.'*

*'To cut down on fragmentation and waste in the LGPS, which spends around £2 billion each year on fees and costs and is split across 87 funds – an increase in fees of 70% since 2017, the Review will also consider the benefits of further consolidation.'*

Since the press release a further clarification of the government's thoughts has emerged in the news ([6 August 2024](#)) that the chancellor is to:

*'...meet bosses of big pension schemes in Toronto on Wednesday, as she seeks to create a "Canadian-style" model in the UK with massive retirement funds investing in equities and infrastructure.'*

In order to potentially:

*'...unlock the investment potential of the £360bn local government pension scheme, which has more than 6mn members but is fragmented into 86 individual funds in England and Wales. If it were a single fund, it would rank among the top 10 biggest funds in the world. Reeves wants the UK market to achieve the scale of the megafunds operated in Canada by the so-called Maple 8.'*

On August 18 2024 the [Terms of Reference](#) of the review were published and included in the background section:



*'The review will also work closely with the Minister of State at MHCLG Jim McMahon to look at how tackling fragmentation and inefficiency can unlock the investment potential of the £360 billion Local Government Pension Scheme in England and Wales, which manages the savings of those working to deliver our vital local services, including through further consolidation.'*

Under the Policy Remit was included:

*'Tackling fragmentation and inefficiency in the Local Government Pension Scheme through consolidation and improved governance;'*

The review is due to report later this year in advance of the Pension schemes Bill, presumably to ensure there is a primary legislative vehicle available for any provisions the government deems necessary to achieve its objectives.

It seems clear that the new government has governance and consolidation of LGPS funds in its sights. Current administering authorities should therefore reflect on how they will evidence improved governance and either make the case for their continued existence or consider options for consolidation on their terms and with their preferred partners.





## Options under current legislation

### Increased use of delegations

Under this option the pension committee would retain the principal role of oversight and strategic decision making in all areas of the LGPS function while delegating the majority of functional and implementation decisions to officers. This would:

- Enable the committee to concentrate its time and resources on material matters for which it is accountable to the full council and ultimately the local taxpayer.
- Significantly reduce the potential for actual or perceived conflict of interest.
- Increase the ability of officers to act swiftly and efficiently in delivering the LGPS function.

In summary this option would see the Pension Fund Committee with the following roles:

- Set the Investment Strategy.
- Agree the Funding Strategy.
- Agree the Business Plan and Budget.
- Monitor the delivery of the function against the Business Plan.
- Oversee compliance with regulation and guidance.

With the following roles delegated to the senior LGPS officer:

- Implementation of the Investment Strategy.
- Setting and implementing the Funding Strategy.
- Setting and implementing the Business plan and budget.
- Deliver compliance with regulation and statutory guidance.
- Procurement and use of internal services.

Some of the more significant advantages of moving to this option, particularly in respect of the challenges set out in the previous section of this report are set out below.

### **A forward looking and adaptable service**

Enabling the senior officer responsible for the delivery of the function to plan and budget in advance would provide the ability to successfully meet the expectations of scheme members and regulators. Setting a budget, which has a clear and prudent process for in year changes, to be met from the pension fund based on a clear business plan provides a greater degree of both certainty of delivery as well as the flexibility to quickly adapt to shifting priorities and resource requirements.

### **More focused K&U requirements for committee members**

Clear focus of committee responsibilities at the strategic level would enable the K&U requirements for committee members to also be set at that level. This would focus training requirements on a smaller number of high-level areas avoiding the need for committee members to commit significant time to gaining knowledge of detailed subject areas thereby making it more attractive and easier for new members to meet K&U requirements and for existing members to maintain the necessary knowledge as the scheme develops in the future.

### **Reduced exposure to legal challenge**

Delegating potentially contentious implementation decisions, especially those in relation to investment, to officers would minimise the risk that third parties could seek to challenge the political nature of such decisions. For this to be effective however the committee would need to be careful to set the Investment Strategy at a sufficiently high level to avoid the accusation that officer decisions have been fettered to the extent that they are forced into making what are effectively political or moral decisions. For example, if an Investment Strategy set a target for equities which contained detailed exclusions in respect of the nature of companies or territories which should be avoided.





### Full delegation to officers (the Cheshire and Southwark model)

Under this option the LGPS function would be delegated in full to a senior officer. As with Cheshire and Southwark a Pension Fund Committee could be retained in an advisory capacity (under Section 102(4) of the 1972 Act). The committee would also, assisted by the pension board, have a role in monitoring the delivery of the function and its compliance with regulation and guidance.

This option would include the advantages set out in the greater delegation option above but would provide a further reduction in the risk of legal challenge as there would not be the potential for detailed strategies fettering the decisions of the delegated officer.

### Combined committee and pension board

Use of either of the above options would more easily enable SCC to consider the adoption of a combined committee and pension board as such a body would be either partly or entirely advisory/monitoring in nature. This would provide a more streamlined governance structure reducing the time required from members (particularly where there is duplication of membership) and the support required from officers and may be a more attractive body for employers and scheme members.

### Accountability and oversight considerations

Although the above options would by default place an increased level of decision making with officers it should be remembered that making use of the delegation powers under Section 101 of the 1972 Act does not remove the accountability for or the ability to override such decisions from the authority as a whole. Section 101(4) of the 1972 Acts is clear that:

*Any arrangements made by a local authority or committee under this section for the discharge of any functions by a committee, sub-committee, officer or local authority shall not prevent the authority or committee by whom the arrangements are made from exercising those functions.*

Therefore, elected members of the authority can be confident that they can continue to ultimately provide the necessary level of oversight of the function and the necessary level of accountability for the function to local taxpayers, scheme members, employers and regulators.

## Options under new or amended legislation

Given the limited potential for the time and appetite of a government for amendments to primary legislation the options below are restricted to existing powers to make or amend secondary legislation (regulations).

### Amend the 2013 Regulations

This option would seek to add to Part 3 of the 2013 regulations regarding the manner in which they exercise the LGPS function. The purpose of the amendments would be to place new duties on the LGPS authority. These duties would seek to ensure that the necessary resources and plans are in place to properly exercise the function and that all decisions made in relation to the function are as free of conflict as is possible either by delegating those decisions or by showing that those decisions followed the interests of scheme members and employers.

For example, the 2013 regulations could be amended to introduce a new regulation 105A as follows:

#### **Duties of an administering authority**

*105A (1) In exercising the provisions of these and related regulations an administering authority must take account of its duties under paragraph (2)*

*(2) An administering authority shall:*

- a) Publish a properly costed and budgeted business plan for the proper exercise of the provisions of these and related regulations, and*
- b) Either*
  - i. Delegate all decisions relating to these and related regulations except for those relating to paragraph 7 of The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (Investment Strategy) and to officers apart from setting strategic plans for investment and funding, or*
  - ii. Publish the policies and procedures it has in place to ensure that all investment and funding decisions are made in the best interest of scheme members and employers.*





Amending the regulations in this way could replicate many of the advantages in the previous options while preventing a future administration of SCC furthering an agenda for the pension fund and function which may reverse those advantages.

The disadvantage of this option is that it would apply to all LGPS authorities equally and therefore may not gain their agreement through consultation for a number of different reasons.

**Make use of Section 9BA of the 2011 Act**

**Provisions of the section**

The purpose of this option would be to provide the ability for SCC to apply to the Secretary of State for permission to use governance arrangements which are beyond those contained in existing legislation in order to create even further distance between the exercise of the LGPS function those of the council’s other statutory functions, thereby further reducing the potential for any conflict.

Section 9BA enables the Secretary of State to:

*..by regulations make provision prescribing arrangements that local authorities may operate for and in connection with the discharge of their functions*

Furthermore, it provides that:

*A local authority may propose to the Secretary of State that the Secretary of State make regulations prescribing arrangements specified in the proposal..*

Providing that such proposals are an improvement on current arrangements, would ensure decisions are efficient, transparent and accountable and that they would be appropriate for either all authorities or any particular description of authority.

**A possible proposal under the section**

SCC could propose that the Secretary of State make regulations to allow LGPS administering authorities to make use of the arrangements prescribed in those regulations.

Such arrangements could include a new definition of a decision-making body (committee or otherwise) the constitution of and members of which are closer in nature to the trustee model including the obligation to act solely in the interests of scheme members and employers.

The advantage of this option over amending the 2013 regulations would be to provide for other LGPS authorities to make use of the proposed arrangements only if they wish to do so rather than placing the same obligation on all.

### Request the creation of a Single Purpose Combined Authority

The 2009 Act and the 2023 LU Act include powers to set up Combined Authorities (CAs) and Combined County Authorities (CCAs) across and within existing council boundaries. These authorities are created, and functions and assets transferred by regulation or by order of the SoS and require the consent of all of the councils involved in the creation and included in the boundaries of the new authority.

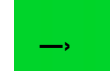
As yet, no single purpose LGPS CA or CCA has been created under the 2009 Act or the 2023 LU Act, however the South Yorkshire Pensions Authority (SYPA) - created in 1986 after the abolition of the metropolitan counties is a good example of one created under earlier legislation. SYPA is a single purpose local authority governed by a committee with representatives from all of the councils within its boundary and created with the sole purpose of managing and administering the LGPS function and fund of the previous South Yorkshire County Council.

### A possible proposal under the section

An LGPS CA or CCA, which could become the LGPS administering authority, could leverage its single purpose status to be able to focus all of its time, resources and planning into that function without the potential for conflict with other functions and priorities while still retaining overall control by elected members.

Such a structure could provide the opportunity for the SCC pension fund to discuss mutually beneficial merger options with other LGPS pension funds potentially pre-empting any mandating of consolidation by the new government.





## Next steps

This draft has been provided to SCC for consideration. The next stage would be for SCC officers to digest the contents of this report then to agree the form in which it shall, if appropriate, be presented to senior management and/or committee.

The final version shall include an Executive Summary based on the discussions referred to above together with a contents page.

**Jeff Houston,**  
**Principal and Senior Public Sector Consultant**



## ANNEX – Relevant Legislative extracts

### The LGPS Function

#### Public Service Pensions Act 2013

##### 1 Schemes for persons in public service

(1) Regulations may establish schemes for the payment of pensions and other benefits to or in respect of persons specified in subsection (2).

(2) Those persons are—

.....

(c) local government workers for England, Wales and Scotland;

.....

(3) These terms are defined in Schedule 1.

(4) In this Act, regulations under this section are called “scheme regulations”.

##### 4 Scheme manager

(1) Scheme regulations for a scheme under section 1 must provide for a person to be responsible for managing or administering—

(a) the scheme, and

(b) any statutory pension scheme that is connected with it.

(2) In this Act, that person is called the “scheme manager” for the scheme (or schemes).

(3) The scheme manager may in particular be the responsible authority.





- (4) Subsection (1) does not apply to a scheme under section 1 which is an injury or compensation scheme.
- (5) Scheme regulations may comply with the requirement in subsection (1)(a) or (b) by providing for different persons to be responsible for managing or administering different parts of a scheme (and references in this Act to the "scheme manager", in such a case, are to be construed accordingly).
- (6) For the purposes of this Act, a scheme under section 1 and another statutory pension scheme are connected if and to the extent that the schemes make provision in relation to persons of the same description.
- (7) Scheme regulations may specify exceptions to subsection (6).

### **LGPS Regulations 2013**

#### 53. Scheme managers

- 53. -(1) The bodies listed in Part 1 of Schedule 3, referred to in these Regulations as "administering authorities", must maintain a pension fund for the Scheme.
- (2) An administering authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate administering authority under these Regulations.
- (3) The appropriate administering authority in relation to a person who is or has been a member of the Scheme, or is entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the authority specified in Part 2 of Schedule 3 in relation to that person.

#### Schedule 3 Part 1

- 1. The following bodies are required to maintain a pension fund and are administering authorities for the purposes of these Regulations-
  - (a) a county council in England;

.....

## **LGPS Investment regs 2016**

2.—(1) In these Regulations—

“authority” means an administering authority listed in Part 1 of Schedule 3 to the 2013 Regulations;

## **Local Government Legislation Discharge of Functions**

### **LG Act 1972**

101 Arrangements for discharge of functions by local authorities.

(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions—

(a) by a committee, a sub-committee or an officer of the authority; or

(b) by any other local authority.

(1A) A local authority may not under subsection (1)(b) above arrange for the discharge of any of their functions by another local authority if, or to the extent that, that function is also a function of the other local authority and is the responsibility of the other authority’s executive.

(1B) Arrangements made under subsection (1)(b) above by a local authority (“the first authority”) with respect to the discharge of any of their functions shall cease to have effect with respect to that function if, or to the extent that,—

(a) the first authority are operating or begin to operate executive arrangements, and that function becomes the responsibility of the executive of that authority; or





(b) the authority with whom the arrangements are made (“the second authority”) are operating or begin to operate executive arrangements, that function is also a function of the second authority and that function becomes the responsibility of the second authority’s executive.

(1C) Subsections (1A) and (1B) above do not affect arrangements made by virtue of section 19 of the Local Government Act 2000 (discharge of functions of and by another authority).

(1D) A combined authority may not arrange for the discharge of any functions under subsection (1) if, or to the extent that, the function is a mayoral function of a mayor for the area of the authority.

(1E) “Mayoral function” has the meaning given by section 107G(7) of the Local Democracy, Economic Development and Construction Act 2009.

(2) Where by virtue of this section any functions of a local authority may be discharged by a committee of theirs, then, unless the local authority otherwise direct, the committee may arrange for the discharge of any of those functions by a sub-committee or an officer of the authority and where by virtue of this section any functions of a local authority may be discharged by a sub-committee of the authority, then, unless the local authority or the committee otherwise direct, the sub-committee may arrange for the discharge of any of those functions by an officer of the authority.

(3) Where arrangements are in force under this section for the discharge of any functions of a local authority by another local authority, then, subject to the terms of the arrangements, that other authority may arrange for the discharge of those functions by a committee, sub-committee or officer of theirs and subsection (2) above shall apply in relation to those functions as it applies in relation to the functions of that other authority.

(4) Any arrangements made by a local authority or committee under this section for the discharge of any functions by a committee, sub-committee, officer or local authority shall not prevent the authority or committee by whom the arrangements are made from exercising those functions.

(5) Two or more local authorities may discharge any of their functions jointly and, where arrangements are in force for them to do so,—

(a) they may also arrange for the discharge of those functions by a joint committee of theirs or by an officer of one of them and subsection (2) above shall apply in relation to those functions as it applies in relation to the functions of the individual authorities; and

(b) any enactment relating to those functions or the authorities by whom or the areas in respect of which they are to be discharged shall have effect subject to all necessary modifications in its application in relation to those functions and the authorities by whom and the areas in respect of which (whether in pursuance of the arrangements or otherwise) they are to be discharged.

(5A) Arrangements made under subsection (5) above by two or more local authorities with respect to the discharge of any of their functions shall cease to have effect with respect to that function if, or to the extent that, the function becomes the responsibility of an executive of any of the authorities.

(5B) Subsection (5A) above does not affect arrangements made by virtue of section 20 of the Local Government Act 2000 (joint exercise of functions).

(5C) Arrangements under subsection (5) by two or more local authorities with respect to the discharge of any of their functions cease to have effect with respect to that function if, or to the extent that, the function becomes a general function of a mayor for the area of a combined authority.

(5D) Subsection (5C) does not prevent arrangements under subsection (5) being entered into in respect of that function by virtue of section 107E of the Local Democracy, Economic Development and Construction Act 2009 (joint exercise of general functions).

(5E) In subsection (5C), "general functions" has the meaning given in section 107D(2) of that Act.

(6) A local authority's functions with respect to levying, or issuing a precept for, a rate shall be discharged only by the authority.

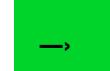
(6A) Community Infrastructure Levy under Part 11 of the Planning Act 2008 is not a rate for the purposes of subsection (6).

(7) .....

(7A) .....

(8) Any enactment, except one mentioned in subsection (9) below, which contains any provision—





(a) which empowers or requires local authorities or any class of local authorities to establish committees (including joint committees) for any purpose or enables a Minister to make an instrument establishing committees of local authorities for any purpose or empowering or requiring a local authority or any class of local authorities to establish committees for any purpose; or

(b) which empowers or requires local authorities or any class of local authorities to arrange or to join with other authorities in arranging for the exercise by committees so established or by officers of theirs of any of their functions, or provides that any specified functions of theirs shall be discharged by such committees or officers, or enables any Minister to make an instrument conferring such a power, imposing such a requirement or containing such a provision; shall, to the extent that it makes any such provision, cease to have effect.

(9) The following enactments, that is to say—

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....are exempted from subsection (8) above.

(10) This section shall not authorise a local authority to arrange for the discharge by any committee, sub-committee or local authority of any functions which by any enactment mentioned in subsection (9) above are required or authorised to be discharged by a specified committee, but the foregoing provision shall not prevent a local authority who are required by or under any such enactment to establish, or delegate functions to, a committee established by or under any such enactment from arranging under this section for the discharge of their functions by an officer of the local authority or committee, as the case may be.

(11).....

(12) References in this section and section 102 below to the discharge of any of the functions of a local authority include references to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of those functions.

(13 In this Part of this Act "local authority" includes the Common Council, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple, any joint authority, an economic prosperity board, a combined authority, sub-national transport body, a joint board on which a local authority within the meaning of this Act or any of the foregoing authorities are represented and, without prejudice to the foregoing, any port health authority.

(13A) In this section "local authority" includes the London Fire Commissioner; but nothing in this section authorises functions of the Commissioner to be discharged by a committee or sub-committee of the Commissioner.

(14) Nothing in this section affects the operation of section 5 of the 1963 Act or the M1Local Authorities (Goods and Services) Act 1970.

(15) Nothing in this section applies in relation to any function under the Licensing Act 2003 of a licensing authority (within the meaning of that Act).]

102 Appointment of committees.

(1) For the purpose of discharging any functions in pursuance of arrangements made under section 101 above or section 53 of the Children Act 1989—

- (a) a local authority may appoint a committee of the authority; or
- (b) two or more local authorities may appoint a joint committee of those authorities; or
- (c) any such committee may appoint one or more sub-committees.

(1A) For the purpose of discharging any function in pursuance of arrangements made under section 9E(2)(b)(iv), (3)(b), (4)(a) or (5)(a)] of the Local Government Act 2000 or under regulations made under section 18 of that Act (discharge of functions by area committees)—





(a) a local authority may appoint a committee of the authority; or

(b) any such committee may appoint one or more sub-committees.]

(2) Subject to the provisions of this section, the number of members of a committee appointed under subsection (1) or (1A) above, their term of office, and the area (if restricted) within which the committee are to exercise their authority shall be fixed by the appointing authority or authorities or, in the case of a sub-committee, by the appointing committee.

(3) A committee appointed under subsection (1) or (1A) above, other than a committee for regulating and controlling the finance of the local authority or of their area, may, subject to section 104 below, include persons who are not members of the appointing authority or authorities or, in the case of a sub-committee, the authority or authorities of whom they are a sub-committee.

(4) A local authority may appoint a committee, and two or more local authorities may join in appointing a committee, to advise the appointing authority or authorities or, where the appointing authority or each of the authorities operate executive arrangements, any executive of that or those authorities, or a committee or member of that executive, on any matter relating to the discharge of their functions, and any such committee—

(a) may consist of such persons (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities; and

(b) may appoint one or more sub-committees to advise the committee with respect to any such matter.

(5) Every member of a committee appointed under this section who at the time of his appointment was a member of the appointing authority or one of the appointing authorities shall upon ceasing to be a member of that authority also cease to be a member of the committee; but for the purposes of this section a member of a local authority shall not be deemed to have ceased to be a member of the authority by reason of retirement if he has been re-elected a member thereof not later than the day of his retirement.

(6) Subsection (7) applies in relation to—

(a) a committee or sub-committee appointed by a local authority in England wholly or partly for the purposes of discharging functions of a fire and rescue authority,



(b) a joint committee appointed by two or more local authorities in England wholly or partly for the purposes of discharging such functions, or

(c) a sub-committee appointed by any such committee or joint committee wholly or partly for the purposes of discharging such functions.

(7) A relevant police and crime commissioner may only be appointed to a committee or sub-committee to which this subsection applies in response to a request made by the commissioner to the appointing authority or authorities or, in the case of a sub-committee, to the appointing committee.

(8) If a request under subsection (7) is made to an appointing authority or authorities or an appointing committee, they must—

(a) consider the request,

(b) give reasons for their decision to agree to or refuse the request, and

(c) publish those reasons in such manner as they think appropriate.

(9) A relevant police and crime commissioner may attend, speak at and vote at a meeting of a committee to which the commissioner is appointed in accordance with this section only if and to the extent that the business of the meeting relates to the functions of a fire and rescue authority.

(10) Subsection (11) defines “relevant police and crime commissioner” for the purposes of this section in relation to—

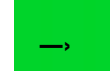
(a) a committee or sub-committee appointed by a local authority,

(b) a joint committee appointed by two or more local authorities, or

(c) a sub-committee appointed by a committee of a local authority or a joint committee of two or more local authorities.

(11) For those purposes “relevant police and crime commissioner” means a police and crime commissioner—





- (a) whose area is the same as, or contains all of, the area of that local authority or (as the case may be) one or more of those local authorities, or
- (b) all or part of whose area falls within the area of that local authority or (as the case may be) one or more of those local authorities.]

**LG&H Act 1989**

13 Voting rights of members of certain committees: England and Wales.

(1) Subject to the following provisions of this section, a person who—

(a) is a member of a committee appointed under a power to which this section applies by a relevant authority and is not a member of that authority;

(b) is a member of a joint committee appointed under such a power by two or more relevant authorities and is not a member of any of those authorities; or

(c) is a member of a sub-committee appointed under such a power by such a committee as is mentioned in paragraph (a) or (b) above and is not a member of the relevant authority, or one of the relevant authorities, which appointed that committee, shall for all purposes be treated as a non-voting member of that committee, joint committee or, as the case may be, sub-committee.

(2) The powers to which this section applies are—

(a) the powers conferred on any relevant authority by subsection (1) of section 102 of the Local Government Act 1972 (ordinary committees, joint committees and sub-committees);

(b).....

c).....

(3) Nothing in subsection (1) above shall require a person to be treated as a non-voting member of a committee or sub-committee falling within subsection (4) below; but, except—

- (a) in the case of a sub-committee appointed by a committee falling within paragraph (e) of that subsection; and
  - (b) in such cases as may be prescribed by regulations made by the Secretary of State, a person who is a member of a sub-committee falling within that subsection shall for all purposes be treated as a non-voting member of that sub-committee unless he is a member of the committee which appointed the sub-committee.
- (4) A committee or sub-committee falls within this subsection if it is—
- (a) .....
  - (b) .....
  - (c) a committee established in accordance with any regulations made by virtue of section 7 of the Superannuation Act 1972 (regulations making provision for the superannuation of persons employed in local government service etc.);
  - (d) .....
  - (e) a committee appointed under section 102(4) of the Local Government Act 1972 (appointment of advisory committees by local authorities);
  - (f) a committee constituted in accordance with [F6Part I of Schedule 33 to the Education Act 1996 (constitution of appeal committees for admission appeals etc.)];
  - (fa) an inshore fisheries and conservation authority for a district established under section 149 of the Marine and Coastal Access Act 2009;]
  - (fb) a committee of a relevant authority which is the scheme manager (or scheme manager and pension board) of a scheme under section 1 of the Public Service Pensions Act 2013;]
  - (g) a committee established exclusively for the purpose of discharging such functions of a relevant authority as may be prescribed by regulations made by the Secretary of State;





(h) a sub-committee appointed by a committee falling within any of [F9paragraphs (b) to (g)] above or such a sub-committee as is so prescribed.

(5) Nothing in this section shall prevent the appointment of a person who is not a member of a local authority as a voting member of—

(a) any committee or sub-committee appointed by the local authority wholly or partly for the purpose of discharging any education functions of the authority,

(b) any joint committee appointed by two or more local authorities wholly or partly for the purpose of discharging any education functions of the authorities, or

(c) any sub-committee appointed by any such committee or joint committee wholly or partly for the purpose of discharging any of that committee's functions with respect to education, where that appointment is required either by directions given by the Secretary of State under section 499 of the Education Act 1996 (power of Secretary of State to direct appointment of members of committees) or pursuant to regulations under subsection (6) of that section.

(5ZA) Nothing in this section shall prevent the appointment of a police and crime commissioner as a voting member of—

(a) any committee or sub-committee appointed by a local authority in England wholly or partly for the purposes of discharging functions of a fire and rescue authority,

(b) any joint committee appointed by two or more local authorities in England wholly or partly for the purposes of discharging such functions, or

(c) any sub-committee appointed by any such committee or joint committee wholly or partly for the purposes of discharging such functions.

(5ZB) In subsection (5ZA) "local authority" does not include—

(a) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,

(b) a joint authority which is a metropolitan county fire and rescue authority, or

(c) the London Fire Commissioner.

(5A) Nothing in this section shall prevent the appointment of a council manager of a local authority, or one other officer of that local authority in his place, as a voting member of a joint committee, or a sub-committee of such a committee, where—

(a) that local authority have a mayor and council manager executive and

(b) the joint committee or the sub-committee has been appointed for the purpose of discharging functions which, as respects that local authority, are the responsibility of that executive.

(6) The Secretary of State may, if it appears to him appropriate to do so in consequence of the preceding provisions of this section, withdraw any approval given before the coming into force of this section in relation to any arrangements for the purposes of paragraph 1 of Part II of Schedule 1 to the said Act of 1944.

(7) Where a person is treated by virtue of this section as a non-voting member of any committee, joint committee or sub-committee, he shall not be entitled to vote at any meeting of the committee, joint committee or sub-committee on any question which falls to be decided at that meeting; and the reference in subsection (5) above to a voting member, in relation to any committee, joint committee or sub-committee appointed for the purpose mentioned in that subsection, is a reference to a person who is entitled to vote at any meeting of that committee or sub-committee on any question which falls to be decided at that meeting.

(8) In subsection (3) of section 102 of the Local Government Act 1972, the words from “but at least” onwards (which require at least two-thirds of certain committees to be members of the appointing authority or authorities) shall be omitted.

(9) In this section—

“council manager”, “executive” and “mayor and council manager executive” have the same meaning as in Part II of the Local Government Act 2000 (arrangements with respect to executives etc.);

“education functions” has the meaning given by section 579(1) of the Education Act 1996; and





“relevant authority” means a local authority of any of the descriptions specified in paragraphs (a) to (f), (h) to (jc)] or (n) of section 21(1) below or any parish or community council;

and references in this section to voting include references to making use of a casting vote.

15 Duty to allocate seats to political groups.

(1) It shall be the duty of a relevant authority having power from time to time to make appointments to a body to which this section applies to review the representation of different political groups on that body—

(a) where the members of the authority are divided into different political groups at the time when this section comes into force, as soon as practicable after that time;

(b) where the authority hold annual meetings in pursuance of paragraph 1 of Part I of Schedule 12 to the Local Government Act 1972 (annual meeting of principal councils) and the members of the authority are divided into different political groups at the time of any such meeting, at or as soon as practicable after the meeting;

(c) where, at the time of the meeting required by paragraph 1 of Schedule 7 to the Local Government (Scotland) Act 1973 to be held in an election year within twenty-one days of the election, the members of the authority are divided into different political groups, at or as soon as practicable after the meeting;

(d) as soon as practicable after any such division as is mentioned in paragraphs (a) to (c) above occurs; and

(e) at such other times as may be prescribed by regulations made by the Secretary of State.

(2) Except in such cases as may be prescribed by regulations made by the Secretary of State, it shall be the duty of every committee of a relevant authority which is a committee having power from time to time to make appointments to a body to which this section applies to review the representation of different political groups on that body—

(a) where the members of the authority are divided into different political groups at the time when this section comes into force, as soon as practicable after that time; and

(b) as soon as practicable after any occasion on which the members of the committee are changed in consequence of a determination under this section.

(3) Where at any time the representation of different political groups on a body to which this section applies falls to be reviewed under this section by any relevant authority or committee of a relevant authority, it shall be the duty of that authority or committee, as soon as practicable after the review, to determine the allocation to the different political groups into which the members of the authority are divided of all the seats which fall to be filled by appointments made from time to time by that authority or committee.

(4) Subject to subsection (6) below, it shall be the duty of a relevant authority or committee of a relevant authority—

(a) in performing their duty under subsection (3) above; and

(b) in exercising their power, at times not mentioned in subsection (3) above, to determine the allocation to different political groups of seats on a body to which this section applies, to make only such determinations as give effect, so far as reasonably practicable, to the principles specified in subsection (5) below.

(5) The principles mentioned in subsection (4) above, in relation to the seats on any body which fall to be filled by appointments made by any relevant authority or committee of a relevant authority, are—

(a) that not all the seats on the body are allocated to the same political group;

(b) that the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership;

(c) subject to paragraphs (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority; and

(d) subject to paragraphs (a) to (c) above, that the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority.





(6) Where any relevant authority or committee of a relevant authority are required, in determining the allocation to different political groups of seats on a body to which this section applies, to give effect to the principles specified in subsection (5) above—

(a) any seats which, in accordance—

(i) with provision made by virtue of subsection (5) of section 13 above; or

(ii) with subsection (6) of section 14 above, are to be or may be filled by the appointment of persons who are not members of the authority shall be taken into account for the purpose of determining how many seats constitute a majority of the seats on a body mentioned in either of those subsections; but

(b) that authority or committee shall, in making that determination, disregard for all other purposes any seats which, in accordance with any such provision, the said subsection (6) or otherwise, are to be or may be so filled; and for the purposes of this subsection a seat on an advisory committee of a relevant authority or on a sub-committee appointed by such an advisory committee shall not be treated as one which may be so filled unless the authority have determined that it must be so filled.

(7) Schedule 1 to this Act shall have effect for determining the bodies to which this section applies and for the construction of this section and sections 16 and 17 below.

17 Exceptions to and extensions of political balance requirements.

(1) Subject to subsection (2) below, sections 15 and 16 above shall not apply in relation to appointments by a relevant authority or committee of a relevant authority to any body in so far as different provision is made by arrangements approved by the authority or committee—

(a) in such manner as may be prescribed by regulations made by the Secretary of State; and

(b) without any member of the authority or committee voting against them.

(2) Arrangements approved under subsection (1) above in relation to any body shall not affect any duty imposed by virtue of section 15(1)(c), (d) or (e) or (2) above on a relevant authority or committee to review the representation of different political groups on that body; and, accordingly, such arrangements shall cease to have effect when any such duty arises.



(3) The Secretary of State may, for the purpose of securing what appears to him to be the appropriate representation of different political groups on any sub-committee falling within subsection (4) below, by regulations make such provision as he thinks fit.

(4) The sub-committees that fall within this subsection are those to which appointments may be made by bodies to which section 15 above applies but which are not themselves such bodies.

(5) Without prejudice to the generality of subsection (3) above, regulations under that subsection may contain provision applying, with or without modifications, any provision made by or under section 15 or 16 above, subsections (1) and (2) above or Schedule 1 to this Act.

### **LG Act 1999**

16 Power of Secretary of State to modify enactments and confer new powers.

(1) If the Secretary of State thinks that an enactment prevents or obstructs compliance by best value authorities with the requirements of this Part he may by order make provision modifying or excluding the application of the enactment in relation to—

- (a) all best value authorities,
- (b) particular best value authorities, or
- (c) particular descriptions of best value authority.

(2) The Secretary of State may by order make provision conferring on—

- (a) all best value authorities,
- (b) particular best value authorities, or
- (c) particular descriptions of best value authority which he considers necessary or expedient to permit or facilitate compliance with the requirements of this Part.

(3) An order under this section may—





- (a) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval);
- (b) amend an enactment;
- (c) include consequential, incidental and transitional provision;
- (d) make different provision for different cases.

(3A) The power under subsection (3)(d) includes, in particular, power to make different provision in relation to different authorities or descriptions of authority.

(3B) In exercising a power under this section, the Secretary of State must not make provision which has effect in relation to Wales unless he has consulted the Welsh Ministers.

(3C) In exercising a power under this section, the Secretary of State—

(a) must not make provision amending, or modifying or excluding the application of, Measures or Acts of the National Assembly for Wales without the consent of the National Assembly for Wales;

(b) must not make provision amending, or modifying or excluding the application of, subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998) without the consent of the Welsh Ministers.

(3D) Subsection (3C) does not apply to the extent that the Secretary of State is making incidental or consequential provision.

(4) Subject to subsection (4A), no order shall be made under this section unless a draft has been laid before, and approved by resolution of, each House of Parliament.

(4A) An order under this section which is made only for the purpose of amending an earlier order under this section—

(a) so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or

(b) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In exercising a power conferred under subsection (2) a best value authority shall have regard to any guidance issued by the Secretary of State.

(6) In this section—

(a) “enactment” includes subordinate legislation (within the meaning of section 21 of the Interpretation Act 1978);

(b).....

**Localism Act 2011**

1. Local authority’s general power of competence

(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.

(3) In this section “individual” means an individual with full capacity.

(4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections 2 to 4) to do it in any way whatever, including—

(a) power to do it anywhere in the United Kingdom or elsewhere,

(b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and





(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(5) The generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

(6) Any such other power is not limited by the existence of the general power (but see section 5(2)).

(7) Schedule 1 (consequential amendments) has effect.

## 2 Boundaries of the general power

(1) If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.

(2) The general power does not enable a local authority to do—

(a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or

(b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—

(i) to the general power,

(ii) to all of the authority’s powers, or

(iii) to all of the authority’s powers but with exceptions that do not include the general power.

(3) The general power does not confer power to—

(a) make or alter arrangements of a kind which may be made under Part 6 of the Local Government Act 1972 (arrangements for discharge of authority’s functions by committees, joint committees, officers etc);

(b) make or alter arrangements of a kind which are made, or may be made, by or under Part 1A of the Local Government Act 2000 (arrangements for local authority governance in England);

(c) make or alter any contracting-out arrangements, or other arrangements within neither of paragraphs (a) and (b), that authorise a person to exercise a function of a local authority.

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in an Act passed after the end of the Session in which this Act is passed, or

(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 1;

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1;

“pre-commencement power” means power conferred by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1.

Sch 2

9B Permitted forms of governance for local authorities in England

(1) A local authority must operate—

(a) executive arrangements,

(b) a committee system, or

(c) prescribed arrangements.





(2) Executive arrangements must conform with any provisions made by or under this Part which relate to such arrangements (see, in particular, Chapter 2).

(3) A committee system must conform with any provisions made by or under this Part which relate to such a system (see, in particular, Chapter 3).

(4) In this Part—

“a committee system” means the arrangements made by a local authority, which does not operate executive arrangements or prescribed arrangements, for or in connection with the discharge of its functions in accordance with—

(a) Part 6 of the Local Government Act 1972, and

(b) this Part;

“executive arrangements” means arrangements by a local authority—

(a) for and in connection with the creation and operation of an executive of the authority, and

(b) under which certain functions of the authority are the responsibility of the executive;

“prescribed arrangements” means such arrangements as may be prescribed in regulations made by the Secretary of State under section 9BA.

#### 9BA Power of Secretary of State to prescribe additional permitted governance arrangements

(1) The Secretary of State may by regulations make provision prescribing arrangements that local authorities may operate for and in connection with the discharge of their functions.

(2) In particular, the regulations—

(a) must include provision about how, and by whom, the functions of a local authority are to be discharged, and

(b) may include provision enabling functions to be delegated.

(3) Regulations under this section may, in particular, include provision which applies or reproduces (with or without modifications) any provisions of, or any provision made under, Chapters 2 to 4 of this Part.

(4) In considering whether or how to exercise the power in this section, the Secretary of State must have regard to any proposals made under subsection (5).

(5) A local authority may propose to the Secretary of State that the Secretary of State make regulations prescribing arrangements specified in the proposal if the authority considers that the conditions in subsection (6) are met.

(6) The conditions are—

(a) that the operation by the authority of the proposed arrangements would be an improvement on the arrangements which the authority has in place for the discharge of its functions at the time that the proposal is made to the Secretary of State,

(b) that the operation by the authority of the proposed arrangements would be likely to ensure that the decisions of the authority are taken in an efficient, transparent and accountable way, and

(c) that the arrangements, if prescribed under this section, would be appropriate for all local authorities, or for any particular description of local authority, to consider.

(7) A proposal under subsection (5)—

(a) must describe the provision which the authority considers should be made under subsection (2) in relation to the proposed arrangements, and

(b) explain why the conditions in subsection (6) are met in relation to the proposed arrangements.

## Power to create a Combined Authority or Combined County Authority

### 2009 Act







