

# Scheme Advisory Board

## MEETING HELD ON 7<sup>th</sup> MARCH 2022

### ITEM 6 PAPER D

#### AMENDMENT TO THE PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES (PSPJO) BILL – INVESTING IN LINE WITH UK FOREIGN AND DEFENCE POLICY

##### Background

1. After failing to defend previous LGPS investment guidance in the Supreme Court ([see summary of judgment](#)) the government undertook to bring it before Parliament through legislation.
2. The [Boycotts, Divestment and Sanctions \(BDS\) Bill](#) was announced in the Queen's speech for this Parliament. Although no timetable for the Bill is available it was expected to be the primary measure to bring about the restrictions in the original guidance plus other measures to restrict expenditure and procurement decisions made by public bodies.

##### The current position on divestment

3. It is our understanding that it is for LGPS funds to make prudent divestment decisions based on an assessment of the financial consequence of a number of matters, including those relating to Environmental, Social and Governance (ESG) factors. Where such decisions are based on non-financial factors LGPS funds should follow the Law Commission's direction that any financial impact should not be significant and that the decision would likely be supported by scheme members.

##### PSPJO Bill

4. In advance of the BDS Bill Robert Jenrick MP raised, at second reading in the Commons, the possibility of amending the PSPJO Bill to include a power for the Secretary of State to make guidance in this area. Support from government was not forthcoming in terms of its own amendment, however he subsequently tabled an amendment (listed as NC1) which was debated on 22nd February at report stage.
5. Following a change of stance by the government to support the amendment it passed by 299 votes to 81. On the same day (22nd February) the Bill passed its third reading and will now return to the Lords for consideration of amendments prior to royal assent.

# Scheme Advisory Board

## The Amendment

*Guidance to public service pension scheme managers on investment decisions*

*(1) The Public Service Pensions Act 2013 is amended in accordance with subsection (2).*

*(2) In schedule 3, paragraph 12(a), at end insert “including guidance or directions on investment decisions which it is not proper for the scheme manager to make in light of UK foreign and defence policy.”*

*Member’s explanatory statement*

*This new clause would enable the Secretary of State to issue guidance to those authorities that administer public sector pension schemes, including the local government pension scheme, that they may not make investment decisions that conflict with the UK’s foreign and defence policy*

## Effect of the amendment

6. The amendment would alter the Public Service Pensions Act (PSPA) 2013 as follows – amendment in square brackets:

*3 Scheme regulations*

*(1) Scheme regulations may, subject to this Act, make such provision in relation to a scheme under section 1 as the responsible authority considers appropriate.*

*(2) That includes in particular—*

*(a) provision as to any of the matters specified in Schedule 3;*

*.....*

### **SCHEDULE 3**

*Scope of scheme regulations: supplementary matters*

*12 The administration and management of the scheme, including—*

*(a) the giving of guidance or directions by the responsible authority to the scheme manager (where those persons are different); [including guidance or directions on investment decisions which it is not proper for the scheme manager to make in light of UK foreign and defence policy].*

# Scheme Advisory Board

## Next steps

7. The above changes to the PSPA 2013 will not occur until the PSPJO Bill gains royal assent which is expected sometime in March. Prior to it gaining assent the Bill will return to the Lords for consideration of amendments ('ping pong') at which time the amendment may be subject to further debate.
8. Guidance under this provision, should it be forthcoming, would be expected to be drafted under LGPS Investment Regulation 7.

*7.—(1) An authority must, after taking proper advice, formulate an investment strategy which must be in accordance with guidance issued from time to time by the Secretary of State.*

9. Such guidance would also be expected to be subject to a period of consultation which would provide an opportunity for interested parties, including the SAB, to comment on its potential impact. Furthermore, as this will be guidance and not primary legislation further legal action cannot be ruled out. Although the courts could this time be assured it was the intention of Parliament to provide a power to the Secretary of State in this area, a challenge could still be made on the grounds that the guidance was seen to go beyond that intention.

## Potential issues

10. Examples of potential issues which could arise from the publication of directions or guidance include:
  - Will the guidance be specific in nature, for example, singling out a particular instance of divestment or be broader, for example banning divestment unless specific government sanctions are in place?
  - Will the guidance only cover decisions made for non-financial reasons?
  - Will the guidance require immediate divestment upon the imposition of government sanctions on a business or country?
  - Will pension funds still be able to make divestment decisions based on a prudent assessment of the impact on long term returns of ESG matters where no sanctions are in place?
  - How will 'in the light of' be interpreted by any guidance?

# Scheme Advisory Board

## **Action since the amendment was passed**

11. A briefing note based on the above text has been placed on the Board website in a new Boycotts, Divestment and Sanctions section of the site.
12. The Chair and Vice Chair were briefed on the matter by the secretariat on Wednesday 23<sup>rd</sup> February.
13. The Board's Secretary and Deputy Secretary met with HMT and DLUHC officials on 24<sup>th</sup> February to seek to clarify the government's intentions with regard to the amendment. A verbal update of the meeting will be provided at the Board meeting by the Board Secretary.
14. The matter will be considered by the LGA with a view to providing a briefing to peers when the Bill returns to the Lords for consideration of amendments.

## **Other amendments tabled**

15. There were two other amendments tabled (NC2 and NC3) which potentially would have had an impact on the LGPS in respect of investments to be made in line with the Glasgow 2021 Climate Pact and a requirement to divest from fossil fuels by 2030. Neither of these amendments were put before the House at report stage so they will not be included in the Bill.

**Recommendation – that the Board agree that the Chair liaises with LGA regarding the provision of any briefing to peers and determines if a separate briefing from the Board would be necessary.**