

This response is made on behalf of East Sussex Pension Fund (ESPF, the Fund) in its capacity as scheme manager of an LGPS Fund.

Our response to the call for evidence is set out below and we would be pleased to expand, clarify or discuss any of the comments made.

Where this response uses the term LGPS fund the term should be taken to refer to the administering authority (scheme manager) as set out in the Local Government Pension Regulations 2013.

Question 1

Do you have any comments on the drafting of regulations 1 and 2?;

No

Question 2

Are there any further types of investment that should be included in Regulation 3, or any that are no longer considered relevant?

No

Question 3

Is there any scenario where an authority would still need to borrow to meet the type of commitment outlined in Regulation 5(2)(b) once all assets are pooled?

While we would expect this to be rarely utilised, it would be helpful for Funds to have the flexibility to have borrowing powers (on a clear and time defined basis).

Question 4

Do you have any other comments on Regulations 3-6?

No

Question 5

Are the activities listed in the schedule ones that all LGPS asset pools would reasonably be expected to need in order to carry out the activities expected of them?

Yes

Question 6

Do you have any other comments on Regulations 7-9?

For Regulation 8, while the activities stated appear to be reasonable, we would question whether listing these in the regulations is future proofed (both for future changes in Financial Service regulation given the ongoing initiative to simplify FCA regulatory activities, and that operating models may change in the future, changing which permissions are needed). An alternative may be to be more explicit about the services you expect the pool to carry out (and then the FCA will agree which permissions are required).

Regulation 9 – a direction to a pool to accept an authority should perhaps include reference to this being subject to any Regulatory provisions. This may be the intent behind 9(2)(c) but it could put FCA-regulated pools in a very difficult position if the FCA was not supportive of further expansion (for whatever reason). It also runs the risk of impacting the rights of existing shareholders; we would welcome an amendment that explicitly provides a level of protection for existing shareholders, e.g. with shareholder consent consistent with its shareholder agreement.

Question 7

Do you agree that the requirements in Regulation 11(2), for the financial objectives in the investment strategy statement to be consistent with the funding strategy statement and to have regard to the requirement to maintain consistent primary employer contribution rates, are helpful?

Yes

Question 8

In relation to regulation 12, does a deadline of 30th September 2026 allow sufficient time to allow AAs to publish an investment strategy in line with the new requirements?

While this would be helpful, given the scale of activity required it might be helpful for the deadline to be extended to 31 March 2027. This is particularly pertinent given it remains unclear when the Act and associated Regulations and Guidance will be finalised and implemented. A challenge for the LGPS will be that all Funds will be attempting to undertake the same activity in a short space of time whilst relying on the same finite pool of advisor capacity.

Question 9

Are there any other persons (including organisations) in addition to those currently listed in Regulation 12(3) that all AAs should always be required to consult on the contents of their investment strategy?

No. We note the current regulations include “and any other relevant stakeholders”. It would be helpful to retain this as part of 12(4).

Question 10

Is the wording of Regulation 13(1) sufficiently clear that the responsibility for implementing the investment strategy is fully on the asset pool company, while giving sufficient scope for flexibility where market conditions or other factors make it impracticable to fully realise all the aims of the investment strategy?

Yes, it makes clear the responsibility for implementing investment strategies rests with the Asset Pool Company, with the flexibility to deviate from an authority’s strategy. To uphold transparency East Sussex suggests the inclusion of a requirement for the Asset Pool Company to notify the administering authority whenever such a deviation occurs.

This requirement would foster constructive dialogue, enable the Asset Pool Company to deliver strategies as effectively as possible, and provide valuable feedback to authorities. It would also help authorities assess the practicality of their strategies and improve them over time.

Question 11

In relation to Regulation 14, do you agree it is appropriate to link the three-yearly review of the investment strategy to the triennial valuation?

Yes

Question 12

Is 18 months from the valuation date an appropriate timescale for AAs to review, revise, and publish their investment strategy?

Yes

Question 13

Do you have any other comments on Regulations 10-15?

Regulation 11- The Fit for the Future consultation sets out that the authority should be responsible for strategy and set out the authority's investment objectives. To be consistent with the consultation language East Sussex suggests that Investment Objectives is included within regulation 11. (1)

We would question whether 11(3) – requiring the authority to “have regard to the local economic priorities of the relevant strategic authority” - creates a dependency that might delay progress of ISSs.

East Sussex questions if the restriction in 11.(6) is relevant. Considering both the need for the investment strategy to set out objectives for local investment and that it will be the asset pool company making the investment decisions around local investments. The Asset pool company also has the flexibility to implement the investment strategy as it sees fit and is able to make an investment outside the investment strategy and therefore outside this restriction. It is not clear how authorities are able to enforce this restriction.

From the 2016 regulations there was a requirement that is not replicated in the 2026 regulations:

(b)the authority's assessment of the suitability of particular investments and types of investments;

Should the regulations require the Investment Strategy to include a statement from its Asset Pool company on its assessment of the suitability of particular investments and types of investments?

Question 14

Is 21 days an appropriate time period for an asset pool company to be managing AA assets?

No, This is incredibly tight given the legal process required to achieve this. A 3-month window would be more appropriate. Nonetheless we welcome the flexibility contained Para 2 & 3.

Question 15

Do you have any other comments on Regulation 16?

*Regulation 16 states that assets should be “**held** and managed by the asset pool company”. As the pool company may not hold the assets (e.g. legacy private markets will continue to be held by the AA but managed by the pool). As such it should state assets should be “**held or managed**” by the pool.*

We welcome the flexibility provided in 16 (2) and 16 (3).

Question 16

Do you have any comments on Regulation 17?

No

Question 17

Do you agree with the list of issues that the Secretary of State can issue guidance about in Regulation 18?

Yes

Question 18

Do you have any other comments about Regulations 18 or 19?

No

Question 19

Is there anything in the 2016 regulations that needs to be replicated here in some form to allow the scheme to operate as intended?

No

Question 20

Is 28 days an appropriate length of time to allow an AA to participate in both its ‘old’ and ‘new’ pool to allow transitional processes to take place?

No. While we appreciate the desire for a time limited period, 28 days is insufficient and not reasonable. As with our comments above, we would propose a period of three months.

It would be helpful to have a similar framing as is proposed for Regulation 16, paragraphs 2 & 3.

Question 21

Do you have any other comments about Regulations 20-22?

No

Question 22

Is there anything else that should be included in these Regulations to allow them to deliver their intended impact? Are there any additional provisions in the 2016 Regulations that need to be replicated here in some way?

No

Question 23

The government collected views on whether the reforms would benefit or disadvantage protected groups when consulting on the Fit for the Future policy proposals in autumn 2024. Is there anything in these regulations that you think will disproportionately impact groups with protected characteristics relative to other groups?

No

Question 24

Do you agree that new Regulation 55A delivers the government's intent for the governance strategy, training strategy and conflict of interest policy, in line with the Fit for the Future consultation and response?

Yes – policies already in place – keep separate or combine – knowledge requirement applies to Senior Officer and Committee,

Question 25

Do you agree that new Regulation 53A delivers the government's intent for the senior LGPS officer in line with the Fit for the Future consultation and response?

Yes. However the current wording fails to account for all LGPS structures and may damage how single purpose authorities operate (which are likely to become a more common feature in the LGPS). The intent can still be achieved by changes along the following lines:

Amend 53 A (4) to read: Where an administering authority is a principal local authority [or appropriate legislative term] the senior LGPS officer must not be any person who is at the same time –

Add new 53 A (5)

Where an administering authority is a single purpose authority established under the Local Government Act 1985 [add other legislation or use a different framing like for the purpose of administering an LGPS pension fund] the senior LGPS officer –

(a) Must be the Head of Paid Service where an employee of the single purpose authority, [Caters for the eventuality of the HoPS being an officer of a constituent council which is possible, if unlikely in the current world]

(b) Must not be the s151/s73/s6 Officer or the Monitoring Officer.

Question 26

Do you agree that new Regulation 53A delivers the government's intent for the independent person in line with the Fit for the Future consultation and response?

Given the scope of support required (across Governance, Administration and Investments, it may be appropriate to appoint more than one Independent Advisor. As such, amend (and other subsequent references):

*(5) If an administering authority delegates its functions, or part of its functions, under these regulations to a committee or sub-committee of the authority, it must appoint an **independent person** as a non-voting member of that committee or sub-committee to advise on investment strategy, governance and administration.*

to:

*(5) If an administering authority delegates its functions, or part of its functions, under these regulations to a committee or sub-committee of the authority, it must appoint an **independent person(s)** as a non-voting member of that committee or sub-committee to advise on investment strategy, governance and administration.*

The October deadline for appointment of a LGPS Senior Officer and Independent Person(s) may be challenging given the need for an appropriate recruitment process and because Funds will all be procuring the same advisors from the same finite pool of capacity at the same time. A deadline of 31 March 2027 would be welcomed.

Question 27

Do you agree that new Regulation 55B delivers the government's intent for the knowledge and understanding requirements in line with the Fit for the Future consultation and response?

Yes – but there doesn't appear to be as much detail as expected there.

Question 28

Do you agree that Regulation 59 delivers the government's intent for the administration strategy in line with the Fit for the Future consultation and response?

Yes – at least once every valuation period

Question 29

Do you agree that new Regulation 117 delivers the government's intent for the independent governance reviews in line with the Fit for the Future consultation and response?

Yes. While we welcome strong governance in the LGPS, we would welcome further discussion on how this can be delivered in a robust, sustainable and cost-effective manner.