

The Local Government Pension Scheme Advisory Board - England and Wales

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Boycotts Divestment and Sanctions

Details

 Last Updated: 11 March 2022



11 March 2022 Public Service Pensions and Judicial Offices Bill – Amendment on investment in line with UK foreign and defence policy

The amendment was accepted in the Lords and will now form part of the Act which will in turn amend the Public Service Pensions Act 2013 as follows:

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.

Following questions raised by peers (some of which resulted from briefings drafted by the secretariat) during the debate the minister (Viscount Younger of Leckie) provided a number of clarifications which are set out below and summarised in the questions and answers shown.

All extracts taken from [Lords Hansard 9th March 2022](#)

Q. Does the amendment change anything for LGPS Funds after Royal Assent of the Bill?

A. No nothing is required from funds at that point

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“It is important to note that the amendment would place no immediate duty on scheme managers to take any such investment or divestment decisions.”

“As I set out in opening, Commons Amendment 54 does not put a requirement on schemes to make any immediate decisions regarding their investments.”

Q. What would be required to change the position for LGPS funds?

A. A formal 12-week consultation process is promised

If the responsible authority were to issue guidance or directions, this would be subject to the usual 12-week consultation.”

“I reiterate that this would involve extensive engagement with the LGPS community over the usual 12-week consultation period, during which time all views and concerns would be considered. Any guidance or directions produced would set the parameters out in detail.”

Q. Would the guidance impact on consideration of ESG matters in investment decisions?

A. It would appear to be aimed at ‘political decisions’ which don’t meet the Law Commission tests and there is a conflict with UK foreign and defence policy

“Administering authorities can of course make decisions based on sound environmental, social and governance—so-called ESG—considerations. For example, funds may well choose to not invest based on legitimate concerns over a company’s polluting activities or its poor governance.”

“... any parameters related to this amendment would involve extensive engagement with the LGPS community over a number of months, during which time all views and concerns would be considered, so as to ensure they do not inadvertently restrict proper account of ESG matters.”

“Any guidance or directions issued would not seek to restrict decisions that meet the Law Commission’s test for investment decisions influenced by non-financial considerations except in a very narrow area concerned with UK foreign and defence policy.”

“If issued, such guidance would seek to provide protection to LGPS funds by preventing decisions which would otherwise have been subject to challenge under the aforementioned Law Commission tests. To reiterate, this power would not be used to restrict the proper account of ESG matters in investment decisions.”

Q. When might a direction be issued under this power?

A. It seems under the same conditions as the current power to direct as set out in Investment regulation 8

“Administering authorities must have regard to guidance issued by the responsible authority. Directions allow responsible authorities to direct specific action by a scheme manager. For example, direction may be considered appropriate if the responsible authority is satisfied that the administering authority is failing to act in accordance with guidance.”

“A power to issue directions is part of the existing statutory framework regarding investments, as set out in LGPS investment regulations in 2016. As was set out in guidance on the regulations, before issuing any directions the Secretary of State must consult the administering authorities concerned and, before reaching a decision, must have regard to all relevant evidence, including reports under Section 13 of the Public Service Pensions Act 2013, reports from the scheme advisory board or from the relevant local pension board, and any representations made in response to the consultation with the relevant administering authority. I can therefore assure the House that any directions or guidance issued under the new power relating to BDS in the LGPS would be subject to the same safeguards.”

11th March 2022

[9 March 2022 Letter from the Secretary of State to Pension Committee Chairs](#)

[4 March 2022 Note on LGPS Investments in Russia](#)

[23 Feb 2022 Amendment to Public Service Pensions and Judicial Offices \(PSPJO\) Bill briefing](#)

[11th May 2021 Boycotts Bills in Queen’s speech](#)

[8th June 2020 - Summary of Supreme Court Boycotts judgment](#)

[11th May 2020 - SAB issues statement on Supreme Court boycotts judgment](#)

[29th April 2020 - Supreme Court Judgment on LGPS boycotts](#)