

29 January 2007

Addressees shown below

Our Ref:  
Your Ref:

Dear Colleagues,

**THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) (No.2)  
REGULATIONS 2007 : SI 2007/xx**

1. With Ministers' agreement, I enclose a copy of draft regulations which amend the Local Government Pension Scheme Regulations 1997. ("the scheme regulations"). The new regulations introduce various measures to improve the administration and governance of the scheme. The amendments will apply to LGPS fund authorities in England and Wales. The closing date for comments is **23 March 2007**.

**Background**

2. Annex B to the Department's letter of 22 December set out the background and policy objectives to new scheme provisions on governance compliance statements; pension fund annual reports and pension administration strategy documents. These policies have been formulated with the assistance of various CLG chaired working groups, and generally reflect the conclusions and recommendations made by those groups and the views of consultees in response to various discussion papers.

3. Although the letter of 22 December explained that the new Scheme Administration Regulations 2007 would cover both these new work streams and the carry over of all the extant provisions of the 1997 Regulations, work on the latter is taking longer than expected and the decision has therefore been taken to come forward with a separate SI, as an amendment to the 1997 regulations, on the three measures described in paragraph 2 above. Work will continue on the extant provisions of the 1997 Regulations and will be the subject of a further statutory consultation exercise very shortly.

## **Governance compliance statement (Draft Regulation 3/New regulation 73A)**

4. The intention is that this regulation will in part replicate the existing provisions of the 1997 Regulations which requires LGPS administering authorities to prepare, publish and maintain policy statements about their governance arrangements. On this basis, the proposed regulation will require administering authorities to prepare a written statement setting out whether it delegates its function, or part of its function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority; and, if it does so, to set out :-

- (i) the terms, structure and operational procedures of the delegation;
- (ii) the frequency of the meetings of any committee or sub-committee to which the function or part of the function is delegated;
- (iii) whether such a committee or sub-committee includes representatives of employing authorities (including authorities which are not Scheme employers) or members, and, if so, whether those representatives have voting rights.

5. But in addition to the continuation of these existing provisions, this regulation will also require the administering authority to publish details of the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State; and, where it does not do so, to give the reasons for not complying. The relevant additions are at regulation 73A(1)(c) and (d).

6. Administering authorities would be required to publish the first such statement on or before 1st October 2007 - regulation 73A(2) - and, as now, would continue to be under an obligation to revise the statement following a material change in respect of any of the matters mentioned above and to publish the statement as revised. In preparing or revising its statement, an administering authority will continue to be under a requirement to consult such persons as it considers appropriate.

7. When it publishes its statement, or the statement as revised, an administering authority will be required to send a copy of it to the Department - regulation 73A(5).

8. In the same way that administering authorities were required to measure their investment policies and arrangements against the ten Myners investment principles, the intention is that a similar set of best practice principles on governance will be issued. The Department will work closely with the CIPFA Pensions Panel, the trades unions, local government employers and other interested parties, in the preparation of this guidance which may, for example, include the items shown below

### **Aim/Purpose**

- basic principles - transparency, accountability, equality
- chosen system must reflect adequately the needs of relevant stakeholders while complying with nature of LGPS and local government law

### **Fiduciary Responsibility, Voting (where applicable), etc**

- committee member's fiduciary duty to act in best interests of pension fund beneficiaries and scheme beneficiaries, including participating local authorities and their taxpayers, other participating employers, scheme members
- responsibilities of a lay member given voting rights on a formal pensions committee
- general standards/conduct issues

### **Role of a scheme members' representative**

- responsibilities? reporting back to their constituents, "Members' Champion"?
- how should they be selected?
- skills/qualities they need
- support they need from their constituents
- trade unions

### **Training etc**

- training
- continuity
- facility time
- costs

### **Governance Structures**

- good quality options currently used by authorities
- using more than one body/arrangement : remit of each, communications & relationships
- informal participation/engagement by scheme members (eg forum, annual meeting)

### **Meetings - minimum frequency, quorum, etc**

### **Representatives'/scheme members' access to committee papers and information**

- generally
- on investment subject to local constitution

### **Publicising Representation Arrangements**

### **The Governance Compliance Report**

- minimum content
- publication how & where (eg in pension fund's annual report)

### **Pension fund annual report (Draft Regulation 4/New regulation 76B)**

9. To meet the Audit Commission's remarks about the auditing of LGPS pension funds, it was agreed last year that the scheme's regulations should be amended to require administering authorities to publish annual pension fund reports, and to stipulate their content to ensure consistency. In preparing the new provisions it is accepted that the overwhelming majority of administering authorities already publish annual reports to a very high standard, and so the new provision should not present a burden on authorities.

10. The regulations will require an administering authority, in relation to each year beginning on or after 1st April 2007, to prepare a document which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority, including a statement of the level of funding of the assets and liabilities of the fund as at the balance sheet date;
- (b) a report which explains its investment policy for each of those funds and reviews the performance during the year of the investments of each fund;
- (c) a report of the arrangements made during the year for the administration of each of those funds;
- (d) for each of those funds, a statement, by the actuary who carried out the most recent valuation of the assets and liabilities of the fund, of the level of funding disclosed by that valuation;
- (e) the current version of the statement under regulation 73A (governance policy statement);
- (f) for each of those funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices);
- (g) the current version of the statement under regulation 76A (funding strategy statement);
- (h) the current version of the statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (statement of investment principles);
- (i) the current version of the statement under regulation 106B (statements of policy concerning communications with members and employing authorities (including non-Scheme employers)); and
- (j) any other matters which the authority considers appropriate.

11. The authority will be required to publish the document on or before 1st October in the year following the year in relation to which it has been prepared. So the first report, in respect of the year beginning 1<sup>st</sup> April 2007, must be published not later than 1<sup>st</sup> October 2008. It is important to note that the above represents the minimum that the annual report must include. There would be nothing to prevent any pension fund authority from including in their report any items not described above.

12. In preparing and publishing the annual report, authorities will be required to have regard to guidance issued by the Department. We will work closely with the CIPFA Pensions Panel and other interested parties in preparing the guidance.

13. Although this new regulation would require administering authorities to publish a single report annually containing all the specified items, they will still be subject to the separate regulatory requirements to prepare and publish a governance policy statement, funding strategy statement, statement of investment principles and communications policy statement. The new regulation is not intended to complicate compliance with these pre-existing requirements. Authorities will be free to publish/circulate these individual documents as appropriate/convenient - for instance on a website. They will still revise each one, and publish the revised version, in accordance with the relevant regulation - this could obviously need to happen between annual report publication dates.

**Local Pension Administration Strategy Documents (Draft Regulation 4/New regulation 76C) and Administration Costs (draft Regulation 5/new regulation 81A)**

14. The rationale for conferring powers on administering authorities to establish local plans as a means of improving the flow of data, communications, and general performance of participating employers, was set out in Annex B to the Department's consultation letter of 22 December.

15. Under the proposed regulations, an administering authority will be given the discretion to prepare a document (to be known as a pension administration strategy) which contains the authority's policies in relation to the matters mentioned below :-

(a) procedures for liaison and communication with employing authorities in relation to which it is the administering authority;

(b) the establishment of levels of performance which the administering authority and those authorities are expected to achieve in carrying out their functions under the LGPS Regulations by —

(i) the setting of performance targets;

(ii) the making of agreements about levels of performance and associated matters; or

(iii) such other means as the administering authority considers appropriate;

(c) procedures which aim to secure that the administering authority and those authorities comply with statutory requirements in respect of their functions under the LGPS Regulations, and with any agreement about levels of performance;

(d) procedures for improving the communication by the administering authority and those authorities to each other of information relating to those functions;

(e) the circumstances in which the administering authority may consider giving written notice to a relevant employing authority under regulation 81A(2) on account of that authority's unsatisfactory performance in carrying out of its functions under the Regulations when measured against levels of performance established under sub-paragraph (b);

(f) the publication by the administering authority of annual reports dealing with—

(iv) the extent to which that authority and relevant employing authorities have achieved the levels of performance established under sub-paragraph (b); and

(v) other matters arising from the authority's pension administration strategy;

(g) such other matters as the authority considers appropriate, after consulting those authorities and such other persons as it considers appropriate.

Authorities' functions "under the LGPS Regulations" should be understood as administering authorities' and employing authorities' functions under (currently) the LGPS Regulations 1997, and (in the future) under the Regulations for the new-look Scheme which will come into force in April 2008.

16. In preparing or revising its strategy, an administering authority will be required to consult each relevant employing authority and such other persons as it considers appropriate. An administering authority will be under no obligation to have a pension administration strategy. But, where it does prepare one, it must publish its first strategy on or before 31st December

2007. Draft regulation 76C(7) requires the administering authority to send a copy of its published pension administration strategy to all its employing authorities, and to the Secretary of State. (It does not require the administering authority to send a copy of its draft strategy to the Secretary of State.)

17. For the purposes of these provisions, any reference to the functions of an administering authority includes, where applicable, its functions as an employing authority.

18. Administering authorities that are not local authorities are invited to let CLG know if they consider that regulation 76C (pension administration strategy documents) needs to include special provision to enable them to comply with it in a way that is also consistent with any other legislation to which they are subject.

19. The new regulations will also confer on administering authorities the power to recover certain costs associated with poor administrative performance, in particular where additional work has to be performed because essential data is persistently late or statutory deadlines are not being met (regulation 81A). In these circumstances the administering authority may give written notice to the employing authority concerned, stating the administering authority's reasons for making their decision and specifying in the notice the additional administration costs attributable to that authority's level of performance. The administering authority will also need to set out the basis on which the specified amount is calculated.

20. In cases of a dispute between an administering authority and an employer about the amount to be recovered, the matter may be referred to the Secretary of State for determination. In reaching such a determination, the Department will have regard to all the relevant evidence submitted by both parties and in particular, in relevant cases, to the terms and conditions of any local pension administration strategy document.

### **Next Steps**

21. The intention is that the amending regulations will come into force on 1<sup>st</sup> May 2007. During the consultation period, meetings of the scheme administration and governance working groups will be arranged to discuss these proposals in detail and, in particular, to establish the arrangements necessary for the completion of the various sets of guidance required by the regulations. In addition, meetings will be held with the Audit Commission, CIPFA and other relevant parties to discuss the new provisions on the publication of annual pension fund reports.

### **Ill-Health Guidance**

22. Annex B to CLG's letter of 22 December described four new provisions to be included in the Administration Regulations. However the LGPS (Amendment) (No. 2) Regulations 2007 will not include a provision on ill health guidance. It is still CLG's intention to take this measure forward. However we now consider that, to avoid any confusion etc, this should be done after the ill-health provisions of the new-look LGPS have been finalised.

### **Contacts**

23. Any queries should be addressed in the first instance to Margaret Dunleavy, (margaret.dunleavy@communities.gsi.gov.uk) or telephone 020 7944 6012. Written comments may be submitted to Margaret Dunleavy, Communities and Local Government,

Local Government and Firefighters' Pension Schemes Division, Zone 2/E6, Ashdown House,  
123 Victoria Street, London, SW1E 6DE.

Yours faithfully

**BOB HOLLOWAY**

## ADDRESSEES

### The Chief Executive of:

County Councils (England)  
District Councils (England)  
Metropolitan Borough Councils (England)  
Unitary Councils (England)  
County and County Borough Councils in Wales  
London Borough Councils  
South Yorkshire Pensions Authority  
Tameside Metropolitan Borough Council  
Wirral Metropolitan Borough Council  
City of Bradford Metropolitan District Council  
South Tyneside Metropolitan Borough Council  
Wolverhampton City Council  
London Pension Fund Authority  
Environment Agency  
Police Authorities in England and Wales  
Fire and Rescue Authorities in England and Wales.  
National Probation Service for England and Wales

Town Clerk, City of London Corporation

Clerk, South Yorkshire PTA

Clerk, West Midlands PTA

### The Secretaries of:

Local Government Association  
LGPC  
Employers' Organisation for Local Government (LGE)  
PPMA  
SOLACE  
ALACE  
CIPFA  
New Towns Pension Fund  
ALAMA  
UCEA  
NALC  
SLCC  
Society of County Treasurers  
Society of District Council Treasurers  
Society of Welsh Treasurers  
Association of Metropolitan Treasurers  
Society of London Treasurers  
Association of Consulting Actuaries  
Northern Ireland Public Service Alliance

Trades Union Congress

UNISON

TGWU

GMB

UCATT  
Aspect  
Amicus  
NAPO  
Association of Educational Psychologists

Audit Commission

NILGOSC

Confederation of British Industry  
Business Services Association

Other Government Departments:

GAD  
DoE (NI)  
SPPA  
DEFRA  
DfES



**2007 No. xxx**

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme (Amendment) (No.2)  
Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a).

In accordance with section 7(5) of that Act the Secretary of State consulted such associations of local authorities as appeared to her to be concerned; the local authorities with whom consultation appeared to her to be desirable; and such representatives of other persons likely to be affected by the Regulations as appeared to her to be appropriate.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) (No.2) Regulations 2007 and shall come into force on [     ].

(2) These Regulations extend to England and Wales.

**Amendment of Regulations**

2. The Local Government Pension Scheme Regulations 1997(b) are amended in accordance with the following regulations.

**Governance compliance statement**

3. For regulation 73A (governance policy statement)(c)substitute—

**“Governance compliance statement**

**73A.—(1)** An administering authority must prepare a written statement setting out—

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(a) 1972 c.11. The Secretary of State’s functions under sections 7 and 12 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998(c.46) and article 2 of, and Schedule 1 to, the Scotland Act (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I.1999/1750).  
(b) S.I.1997/1612.  
(c) Regulation 73A was inserted by S.I.2005/3199.

- (a) whether it delegates its function, or part of its function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority;
  - (b) if it does so—
    - (i) the terms, structure and operational procedures of the delegation;
    - (ii) the frequency of the meetings of any committee or sub-committee to which the function or part of the function is delegated;
    - (iii) whether such a committee or sub-committee includes representatives of employing authorities (including authorities which are not Scheme employers) or members, and, if so, whether those representatives have voting rights;
  - (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State; and
  - (d) if it does not do so, the reasons for not complying.
- (2) An administering authority must publish the first such statement on or before 1st October 2007.
- (3) An administering authority must—
- (a) revise its statement following a material change in respect of any of the matters mentioned in paragraph (1); and
  - (b) publish the statement as revised.
- (4) In preparing or revising its statement an administering authority must consult such persons as it considers appropriate.
- (5) When it publishes its statement, or the statement as revised, an administering authority must send a copy of it to the Secretary of State.”.

## Reports and strategies

### 4. After regulation 76A (funding strategy statement) (a)insert—

#### “Pension fund annual report

**76B.**—(1) An administering authority must, in relation to each year beginning on 1st April 2007 and each subsequent year, prepare a document which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority, including a statement of the level of funding of the assets and liabilities of the fund as at the balance sheet date;
- (b) a report which explains its investment policy for each of those funds and reviews the performance during the year of the investments of each fund;
- (c) a report of the arrangements made during the year for the administration of each of those funds;
- (d) for each of those funds, a statement, by the actuary who carried out the most recent valuation of the assets and liabilities of the fund, of the level of funding disclosed by that valuation;
- (e) the current version of the statement under regulation 73A (governance compliance statement);
- (f) for each of those funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices**(b)**;
- (g) the current version of the statement under regulation 76A (funding strategy statement);

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(a) Regulation 76A was inserted by S.I.2004/573.

(b) For “proper practices” see section 21 of the Local Government Act 2003 (c.26) and regulation 31 of S.I.2003/3146.

- (h) the current version of the statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (statement of investment principles)(a);
- (i) the current version of the statement under regulation 106B (statements of policy concerning communications with members and employing authorities (including non-Scheme employers))(b); and
- (j) any other material which the authority considers appropriate.

(2) The authority must publish the document on or before 1st October in the year following the year in relation to which it has been prepared.

(3) In preparing and publishing the document the authority must have regard to guidance given by the Secretary of State.

### **Pension administration strategy**

**76C.**—(1) An administering authority may prepare a document which contains the authority’s policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“pension administration strategy”); and, where it does so, paragraphs (3) to (8) apply.

(2) The matters are—

- (a) procedures for liaison and communication with employing authorities in relation to which it is the administering authority;
- (b) the establishment of levels of performance which the administering authority and those employing authorities are expected to achieve in carrying out their functions under these Regulations by —
  - (i) the setting of performance targets;
  - (ii) the making of agreements about levels of performance and associated matters;
  - or
  - (iii) such other means as the administering authority considers appropriate;
- (c) procedures which aim to secure that the administering authority and those employing authorities comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
- (d) procedures for improving the communication by the administering authority and those employing authorities to each other of information relating to those functions;
- (e) the circumstances in which the administering authority may consider giving written notice to such an employing authority under regulation 81A(2) on account of that authority’s unsatisfactory performance in carrying out its functions under these Regulations when measured against levels of performance established under sub-paragraph (b);
- (f) the publication by the administering authority of annual reports dealing with—
  - (i) the extent to which that authority and those employing authorities have achieved the levels of performance established under sub-paragraph (b); and
  - (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
- (g) such other matters as appear to the administering authority, after consulting those employing authorities and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.

(3) An administering authority must revise its pension administration strategy following a material change in its policies in relation to any of the matters contained [in the strategy].

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(a) S.I.1998/1831. Regulation 9A was inserted by S.I. 1999/3259 and amended by S.I. 2002/1852.

(b) Regulation 106B was inserted by S.I.2005/3199.

(4) In preparing or revising its pension administration strategy an administering authority must consult those employing authorities and such other persons as it considers appropriate.

(5) An administering authority must publish its first pension administration strategy on or before 31st December 2007.

(6) Where an administering authority revises its pension administration strategy it must publish the strategy as revised.

(7) When an administering authority publishes a pension administration strategy, or a that strategy as revised, it must send a copy of it to each of those employing authorities and to the Secretary of State.

(8) An administering authority and those employing authorities must have regard to the current version of any pension administration strategy when carrying out their functions under these Regulations.

(9) In this regulation a reference to the functions of an administering authority includes, where applicable, its functions as an employing authority.”.

### **Administration costs**

5. After regulation 81 (payments by employing authorities to appropriate administering authorities)—

#### **“Administration costs increased by employing authority’s level of performance**

**81A.**—(1) Paragraph (2) applies where, in the opinion of the appropriate administering authority, it has incurred additional administration costs in respect of the fund to which regulation 81(1)(d) refers because of an employing authority’s level of performance in carrying out its functions under these Regulations.

(2) The appropriate administering authority may give written notice to the employing authority stating—

- (a) the administering authority’s reasons for forming the opinion mentioned in paragraph (1);
- (b) the authority’s opinion that the employing authority’s contribution under regulation 81(1)(d) should include an amount specified in the notice in respect of the additional administration costs attributable to that authority’s level of performance;
- (c) the basis on which the specified amount is calculated; and
- (d) where the administering authority has prepared a pension administration strategy, the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraph (a), (b) or (c).

(3) Paragraph (4) applies where, in a case falling to be determined by the Secretary of State under regulation 81(3), an appropriate administering authority which has prepared such a strategy contends that the amount payable by an employing authority should include an amount in respect of the additional administration costs attributable to that authority’s level of performance.

(4) Where paragraph (3) applies, the Secretary of State shall have regard to—

- (a) the provisions of that strategy which are relevant to the case; and
- (b) the extent to which the appropriate administering authority and the employing authority have complied with those provisions in carrying out their functions under these Regulations.”.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Parliamentary Under Secretary of State  
Department for Communities and Local Government

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Local Government Pension Scheme Regulations 1997 (“the 1997 Regulations”).

Regulation 3 substitutes a new regulation 73A which requires an administering authority to publish a statement of its policies on delegating its function of maintaining a pension fund and to include the extent to which the policies comply with guidance given by the Secretary of State. The first statement must be published not later than 1st October 2007.

Regulation 4 inserts new regulations 76B and 76C. New regulation 76B requires an administering authority to publish an annual report about each of its pension funds, dealing with matters such as the performance and management of the fund, the administration arrangements for the fund, the authority’s investment policies and its funding strategy. The first report, in respect of the year beginning 1st April 2007, must be published not later than 1st October 2008. New regulation 76C makes provision for the preparation and publication by an administering authority of a pension administration strategy to deal with matters relating to the performance by the authority and its employing authorities of their functions under the 1997 Regulations. The strategy may include provision about any of the matters in new regulation 76C(2). If an administering authority decides to prepare such a strategy, it must be published not later than 31st December 2007.

Regulation 4 inserts a new regulation 81A which supplements provision in regulation 81 enabling an administering authority to recover administration costs from its employing authorities. New regulation 81A(1) and (2) enables the administering authority to serve notice on an employing authority that the amount payable by that authority should include an amount in respect of additional administration costs incurred because of that authority’s level of performance. If the authorities cannot agree on the amount of administration costs which are payable, the matter is referred to the Secretary of State for determination under regulation 81(3). New regulation 81A(3) and (4) provide that, in making the determination, the Secretary of State must have regard to relevant provisions of any pension administration strategy prepared under new regulation 76C and the extent to which the authorities concerned have complied with them.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies and does not have a significant financial impact on any public bodies.