

THE LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) REGULATIONS 2007

As the Minister confirmed in the announcement he gave to Parliament on 23 November, the intention is to come forward with two separate statutory instruments. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and The Local Government Pension Scheme (Administration) Regulations 2007. This note sets out the scope of the latter set of regulations and, in particular, describes the new elements that were carried forward by the Scheme Administration working group (paragraph 16.5 of “Where Next?” refers).

In general terms, the new Administration Regulations will comprise all those provisions of the extant 1997 Regulations, less those pertaining to the provisions on benefits and entitlements which now feature in the 2007 Benefit Regulations. In addition to the carry-over of existing provisions, the new Administration Regulations include new sections on Pension Administration Strategy documents; Governance; Pension Fund annual reports and ill-health retirement guidance. These are described in more detail below.

Pension Administration Strategy documents

The working group on scheme administration recommended that existing local agreements between administering authorities and their participating employers on administrative issues should be strengthened to ensure that all statutory requirements and locally agreed targets were complied with. In addition, steps should be taken to ensure that all scheme employers were able to communicate effectively with their administering authority and to have the necessary expertise and knowledge to perform effectively their statutory duties. Although the working group discussed the merits of centrally prescribed rules, Ministers have taken the view that local solutions to local problems, which are bound to vary from one authority to another, is the better way forward. The new regulations therefore grant administering authorities an enabling power to discuss, agree and publish local agreements, referred to in the regulations as “Pension Administration Strategy” documents. The intention is to allow individual administering authorities flexibility in the preparation of local agreements within a very broad regulatory framework. The new regulations therefore intend to set out, in general terms, the areas that a local agreement may include. Guidance to be issued at a later date by Communities will set this out in more detail, but in the meantime, these new regulations are intended to allow the following to feature as part of the new Pension Administration Strategy documents :-

- establishment of local focal points within scheme employers;
- setting local performance targets/benchmarks, and to publish performance against them;
- the issue of “improvement notices” where performance of individual employers persistently falls below agreed or statutory standards;
- publication of annual performance reports;
- recovery of administration costs from poorly performing employers, and

- duties and responsibilities of both administering authorities and scheme employers in scheme administration

To allow for innovative local solutions, the new regulations will allow an administering authority to introduce any other local measure, provided that it has consulted widely on the proposal with all scheme employers and other interested parties as it sees fit. For example, an administering authority may wish to include in their Pension Strategy document, the requirement that all scheme employers must send a standard joining letter to all new employees explaining their status in the scheme.

Under the new regulations, an administering authority may recover from any individual scheme employer, a contribution to offset costs they incur as a result of inefficiencies or the poor performance of individual employers. It is hoped that this power is used only as a matter of last resort after all other practical steps to remedy the poor performance has been exhausted. It is also important that the circumstances in which this power may be applied are clearly explained in the Pension Administration Strategy document itself. New regulations will provide important safeguards by requiring the administering authority to give written notice of any such recovery and for the Secretary of State to reach a determination in any case where the amount to be recovered is disputed. In reaching any such determination, the Secretary of State would hear representations from both parties to the dispute and would take into account all the relevant evidence, in particular, the terms and conditions of the local Pension Administration Strategy document.

Governance

Administering authorities are already required under regulation 73A of the 1997 regulations to prepare, publish and maintain statements of their local policy on governance arrangements. New regulations replicate this provision in the 2007 Regulations but, as confirmed by the Minister in his speech to the LAPFF on 30 November, a new provision has been added to require authorities to publish details of the extent to which they comply with a set of best practice principles on governance to be issued at a later date by the department, in conjunction with CIPFA. New regulations refer. There is also a requirement for authorities to give their reasons in cases where they differ from the best practice guidance. Under new regulations, the first statement must be published by 1 October 2007.

Pension Fund Annual Report

Earlier in the year, the Audit Commission proposed new measures to strengthen the pension fund audit process. Those discussions are still continuing, but early agreement was reached on the need to introduce consistency, both in terms of the content and coverage of annual pension fund reports, as a means of meeting the Commission's concerns. It is accepted that the a clear majority of administering authorities already produce annual reports of a very high standard but the purpose of new regulations featured in the 2007 regulations is to (a) require such reports to be published by all administering authorities in England and Wales and (b) to introduce a level of consistency in their content and coverage. The new regulation sets out the items to be included in the annual report and is referred to by the new regulations to

guidance on the preparation and publication of the report that the department will issue as soon as possible after the regulations have been made.

Ill-Health Pension Guidance

New regulations will replicate the “first instance decision” provisions of the 1997 Regulations. In particular, your attention is drawn to new regulations which specifically provide that in making any first instance decision regarding entitlement to an ill-health retirement pension, both the scheme employer and the independent registered medical practitioner, shall have regard to guidance issued by the Secretary of State.

Although guidance issued by the Employers’ Organisation in 2002 (Management of Ill-Health Handbook) has helped to improve the way in which ill-health retirement cases are processed, there is evidence to suggest that the manual is not being applied either by all LGPS employers and administering authorities, or consistently by those that are making use of it. In discussions with LGPS practitioners, ALAMA and those responsible for the independent certification of ill-health retirement cases, it is clear that there is a need for a shorter, more concise set of guidance that is geared primarily to the processes laid down in the regulations, supported by pro-forma documentation that all parties involved in the process will be expected to use. The aim will be to ensure greater consistency in the decision making process and application of the regulations governing the award of ill-health retirement pensions, as well as providing local authority managers and ALAMA with a means of auditing the validity and quality of decisions.

**Communities and Local Government
Local Government & Firefighters’ Pension Schemes Division
December 2006**