

PSA copies of the following:SI 2007/1561: Local Government Pension Scheme (Amendment) (No 3) Regulations 2007, and covering letter from Bob Holloway.

Hard copies will be sent to all local authority Chief Executives'. You may wish to contact your Chief Executives office, to alert them to their arrival next week and to ensure that they are passed to you.

Please note that a copy will be placed on the LG Pensions website at www.xoq83.dial.pipex.com. If you have any queries, please do not hesitate to contact me.

Richard McDonagh
Local Government & Firefighters' Pensions Schemes
Communities and Local Government

2007 No. 1561

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Amendment) (No.3)
Regulations 2007**

<i>Made</i> - - - -	<i>30th May 2007</i>
<i>Laid before Parliament</i>	<i>6th June 2007</i>
<i>Coming into force</i> - -	<i>30th June 2007</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 7 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.3) Regulations 2007 and shall come into force on 30th June 2007.

(2) These Regulations extend to England and Wales(b).

Amendment of Regulations

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

Governance compliance statement

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

“Governance compliance statement

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

(a) 1972 c.11.

(b) The Secretary of State’s functions under section 7 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 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(c) S.I. 1997/1612.

(d) Regulation 73A was inserted by S.I. 2005/3199.

- (a) whether they delegate their function, or part of their function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority;
 - (b) if they do so—
 - (i) the terms, structure and operational procedures of the delegation;
 - (ii) the frequency of any committee or sub-committee meetings;
 - (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, to the extent that it does not so comply, the reasons for not complying.
- (2) An administering authority must publish the first such statement on or before 1st March 2008.
- (3) An administering authority must—
- (a) revise their 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 their statement an administering authority must consult such persons as they consider appropriate.
- (5) When they publish their 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 (“the pension fund annual report”) which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
- (b) a report explaining the authority’s investment policy for each of those funds and reviewing 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 in accordance with regulation 77 (actuarial valuations and certificates), 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) an annual report dealing with—

(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.

- (i) the extent to which the authority and the employing authorities in relation to which they are the administering authority (“relevant employing authorities”) have achieved any levels of performance set out in the pension administration strategy in accordance with regulation 76C(2)(b); and
 - (ii) such other matters arising from their pension administration strategy as they consider appropriate;
- (h) the current version of the statement under regulation 76A (funding strategy statement);
- (i) 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);
- (j) 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
- (k) any other material which the authority considers appropriate.
- (2) The authority must publish the pension fund annual report on or before the 1st December following the year end.
- (3) In preparing and publishing the pension fund annual report 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 (“the pension administration strategy”) which contains such of the matters mentioned in paragraph (2) as they consider appropriate ; and, where they do so, paragraphs (3) to (8) apply.

(2) The matters are—

- (a) procedures for liaison and communication with their relevant employing authorities;
- (b) the establishment of levels of performance which the administering authority and the relevant 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 consider appropriate;
- (c) procedures which aim to secure that the administering authority and the relevant 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 the relevant 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 a relevant employing authority under regulation 81A(2) on account of that employer’s unsatisfactory performance in carrying out its functions under these Regulations when measured against levels of performance established under sub-paragraph (b);
- (f) such other matters as appear to the administering authority to be suitable for inclusion in that strategy.

(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.

(3) When an administering authority first publish a pension administration strategy they must send a copy of it to each of their relevant employing authorities and to the Secretary of State.

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

(5) In preparing or revising their pension administration strategy an administering authority must consult the relevant employing authorities and such other persons as they consider appropriate.

(6) Where an administering authority revise their pension administration strategy they must notify in writing to the relevant employing authorities and the Secretary of State—

- (a) the changes, and
- (b) where a copy of the revised strategy may be obtained.

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

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

Payments by employing authorities to appropriate administering authorities

5. In regulation 81—

- (a) in paragraph (1)(d), at the end add “, which shall include any amount specified in a notice given in accordance with regulation 81A(2)”;
- (b) in paragraph (2), for “regulation L4(3) of the 1995 Regulations”(a) substitute “regulation 5(6) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998”; and
- (c) after paragraph (3) insert—

“(3A) If the disagreement is about an amount specified in a notice given in accordance with regulation 81A(2), the Secretary of State shall have regard to—

 - (a) the provisions of the pension administration strategy prepared by the appropriate administering authority that 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.”.

Additional costs

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

“Additional costs incurred by employing authority’s level of performance

81A.—(1) This regulation applies where, in the opinion of the appropriate administering authority, they have incurred additional costs which should be recovered from an employing authority because of that employing authority’s level of performance in carrying out its functions under these Regulations.

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

(a) Regulation L4 of the Local Government Pension Regulations (S.I. 1995/1019) was revoked by the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (S.I. 1998/1831).

- (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 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 have 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).

Payments by administering authorities

81B.—(1) An administering authority must pay to the fund of which they are the administering authority their fair share of any contribution towards the cost of the administration of the fund in circumstances where they have required a contribution towards such cost from employing authorities as referred to in regulation 81(1)(d).

(2) An administering authority must also pay any additional costs due to the fund which are incurred because of their level of performance in carrying out their functions under these Regulations.”.

Interest

7. In regulation 82—

(a) after paragraph (1) insert—

“(1A) An administering authority must pay interest on any amount due to be paid by them as an employing authority payment of which is overdue by more than one month.”.

(b) in paragraph (2) for “paragraph (1)” substitute “paragraphs (1) or (1A)”.

Signed by authority of the Secretary of State

Phil Woolas
Minister of State

30th May 2007

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 their policies on delegating their 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 March 2008.

Regulation 4 inserts new regulations 76B and 76C. New regulation 76B requires an administering authority to publish an annual report about each of their 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 their funding strategy. The first report, in respect of the year beginning 1st April 2007, must be published not later than 1st December 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 their 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

decide to prepare such a strategy, they must provide their employing authorities and the Secretary of State with a copy and notify those parties of any changes.

Regulation 5 makes some consequential amendments to regulation 81 and also inserts a new paragraph (3A). This provides that if there is a disagreement about the amount specified in a notice given in accordance with regulation 81A(2), then the matter is referred to the Secretary of State for determination. 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.

Regulation 6 inserts new regulations 81A and 81B which supplement provision in regulation 81 enabling an administering authority to recover administration costs from their 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 costs incurred because of that authority's level of performance. New regulation 81B provides that the administering authority are also liable to contribute to administration costs.

Regulation 7 adds a new paragraph (1A) to regulation 82 (interest) to provide that an administering authority are also liable to pay interest on any overdue payments from 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.

6 June 2007

Addressees at Annex A

Our Ref:
Your Ref:

Dear Colleague,

**LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT)(No 3)
REGULATIONS 2007 SI 2007 No 1561**

1. With the agreement of Ministers, I enclose regulations made on 30 May 2007 under powers contained in section 7 of the Superannuation Act 1972 and laid before Parliament on 6 June. The regulations amend the Local Government Pension Scheme Regulations 1997 ("the 1997 regulations"). These regulations, which come into force on 30 June, add three new sections to the 1997 regulations on governance, pension fund annual reports and local administration strategy plans.

Governance compliance statement

2. Regulation 3 replaces existing regulation 73A of the 1997 regulations with a new section on governance compliance statements. In most respects, the requirements remain unaltered, except that under new regulation 73A(1)(c) and (d), an administering authority will be required to measure their governance arrangements against a set of best practice principles to be published by CLG later in the year as required by new regulation 73A(1)(c). The new regulations will also require an administering authority to state the reasons for not complying with any of the principles listed in the guidance.

3. In view of the comments from interested parties in response to the statutory consultation exercise earlier this year, it has been decided to delay the publication date of the first statement until 1 March 2008. This does not of course prevent an authority from publishing their statement before that date if they so wish.

4. A working draft of the best practice guidance has been prepared and issued to the CLG chaired working group on governance for their comments. The intention is that a final working draft will then be issued to all interested parties for further comment. The target date for publication is August 2007.

5. New regulation 73A(5) requires that copies of the statement (and any revised copy) must be sent to the Secretary of State. This will enable CLG to collate the responses, monitor experience and quality of results and publish its findings on the governance arrangements. It would help therefore if authorities could submit copies of their statement to the contact address below as soon as possible after they have been published.

Pension fund annual report

6. Regulation 4 inserts a new regulation 76B into the 1997 regulations by requiring the publication of pension fund annual reports and prescribing their content in legislation. The purpose of the new provision is to provide external auditors with the means to undertake separate audits of LGPS pension funds. In meeting this policy objective, care has been taken to ensure that as far as possible, the way in which administering authorities already prepare and publish fund annual reports can continue as before. With this in mind, although regulation 76B(1) will require an administering authority to prepare a document including the items listed in regulation 76(B)(a) to (k), primarily for the use of external auditors, new regulation 76(B)(2) also refers to the reports being published which, in the context of the regulation as a whole, will enable an authority to “signpost” the individual items in a simpler document, as an alternative to the hard copy report. Authorities are reminded that the use of the word “publish” in this regulation is to be given a wide import to mean to make accessible or available. It is also important to note that the final report may include items not listed in the regulation itself. The prescribed list should be seen as the minimum requirement, leaving authorities to add any other material as they see fit and to accord with local circumstances.

7. New regulation 76(B)(2) requires the report to be published on or before 1st December in the year following the year in relation to which it has been prepared and in accordance with guidance to be issued by CLG, in conjunction with CIPFA (new regulation 76(B)(3) refers). The first report will therefore be due by December 2008 in relation to the 2007/08 reporting period.

8. Although the final regulations no longer include the draft provision that would have required administering authorities to submit copies of their annual reports to the Secretary of State, authorities are encouraged to submit copies to the Department as previously.

Pension administration strategy

9. Regulation 4 also inserts into the 1997 regulations a new section (Regulation 76C) on the preparation and publication of local administration strategies.

10. Under new regulation 76(C)(1), an administering authority will have the discretion to formulate a local strategy plan to formalise the administrative arrangements between itself and participating employing authorities. The new regulations have been drafted to allow administering authorities as much flexibility as possible in formulating their local plans whilst, at the same time, giving participating employers and other interested parties, the opportunity to engage in its preparation.

11. In the light of comments received from consultees, several significant changes have been made to the draft regulations consulted on in January. Firstly, there is no longer any reference to the date by which the first plan has to be published. This will remove the anomaly whereby an authority who decided not to publish before the prescribed date would have been prevented from publishing any plan after that date. The provision now enables a local plan to be introduced at any time in the future. Although the new provisions still require the first local plan to be copied to the Secretary of State and relevant employing authorities, the requirement that copies of any revised plans should also be sent on the same basis has been deleted. Instead, the regulations will only require these parties to be notified of any changes and of where a copy of the revised plan can be obtained.

12. Given the local nature of these plans, the regulations make no reference to statutory guidance. However, it is recognised that administering and employing authorities, together with other interested parties, would find general guidance helpful, in particular, on the scope of the items listed in new regulation 76C(2). On this basis, the CLG chaired working group on scheme administration will commence work on such guidance as soon as possible after the regulations come into effect.

Additional costs

13. Regulation 5 includes a technical amendment to update existing regulation 81(2) which should have been amended when the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 were introduced and also amends existing regulation 81(1)(d) to extend the scope of administration costs paid by employing authorities to include any additional cost imposed on them under new regulation 81A(2). New regulation 81(3A) extends the existing right of appeal to the Secretary of State under regulation 81(3) to include disputes arising between administering and employing authorities by virtue of a notice for the payment of additional costs under new regulation 81A(2).

14. Regulation 6 introduces new regulation 81A which enables an administering authority to recover from one of its employing authorities, any additional costs it incurs because of that employing authority's level of performance in carrying out its functions under the scheme's regulations. Where an administering authority is of the opinion that such costs should be recovered, new regulation 81A(2) sets out the procedure for recovery.

15. The new regulations also have to provide for circumstances where the administering authority may have to recover additional costs from itself as an employing authority. Because these recovery costs are regarded as being additional to those regular payments for administration paid under existing regulation 81(1)(d), new regulation 81B has the effect of applying regulation 81(1)(d) to administering authorities.

17. During discussions with interested parties, a request was made that certain third party administrators and payroll providers who were not LGPS employing authorities, should fall within the scope of new regulation 81A. However, we are advised that we have no vires under the Superannuation Act 1972 to make such provisions and that the new power to extend the scope of existing regulation 81(1)(d) to include recovery costs for poor administration can only be applied to LGPS employing authorities. It

is, however, recognised that this situation is not ideal and CLG will shortly be inviting interested parties to a meeting to discuss how this particular issue can be resolved.

Contacts

The LGPS website is located at www.communities.gov.uk/lgps or www.xoq83.dial.pipex.com.

For enquiries on the content of this letter, please contact: -

Bob Holloway: robert.holloway@communities.gsi.gov.uk

Margaret Dunleavy: margaret.dunleavy@communities.gsi.gov.uk

or please telephone 020 7944 5998.

Yours sincerely,

Bob Holloway

Annex A

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 with public service pension interests:

GAD

DoE (NI)

SPPA