

21 February 2008

To : addressees below

Our Ref:  
Your Ref:

Dear Colleague,

**LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL PROVISIONS)  
REGULATIONS 2008 (SI No 238 2008)  
LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) REGULATIONS  
2008 (SI No 239 2008)**

With the agreement of Ministers, I enclose two sets of regulations made on 6 February 2008 under powers contained in section 7 of the Superannuation Act 1972 and laid before Parliament on 14 February 2008. The Administration and Transitional Regulations, which both come into effect on 1 April 2008, should be read in conjunction with the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 ("the Benefits Regulations").

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## **LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) REGULATIONS 2008, SI 2008/239 (“the Administration Regulations”)**

## **LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL PROVISIONS) REGULATIONS 2008, SI 2008/238 (“the Transitional Regulations”)**

### **Background**

1. These two sets of regulations complete the new look LGPS (“the 2008 Scheme”) that will come into operation on 1 April 2008. They represent the culmination of three years extensive work since the publication of “Facing the Future” in October 2004 and reflect the comments and views expressed by all interested parties in response to the options for the new look scheme design in “Where Next” published in June 2006.
2. The basis for the Government’s reforms of the scheme was initially announced on 23 November 2006 in a written statement to parliament. It emphasised that the long-term policy objective for the scheme reforms should be affordable, viable and fair to taxpayers. The key intention throughout this reform process has been to ensure that no additional costs are imposed on taxpayers who ultimately guarantee its security.
3. The statement also emphasised the central importance of the reforms having to meet the challenge of being attractive to existing and future employees, and to their employers. Flexibility and accessibility are seen as important components, as is the need to provide a range of modern, equality-proofed benefits. But central to the reform process has been the need to ensure an equitable and proportionate balance between the actual level of pension benefits provided by the scheme for its members, and the costs of providing those benefits incurred by employers.
4. Parts I and II of this letter describe the content and application of the Administration and Transitional Regulations respectively. In more general terms, Part III and Annex A list various issues that consultees have raised during the numerous statutory and informal consultation exercises, but which have not been carried forward into the provisions that are due to come into effect on 1 April 2008.
5. In the case of the Administration and Benefits Regulations, some provisions will be monitored and kept under review by the CLG chaired Policy Review Group. In addition to monitoring the general operation of the new regulations, in particular, the multi-stage ill-health retirement pension provisions, the Group’s remit also includes work on taking forward the commitment to introduce a cost sharing arrangement by March 2009.

### **The Administration Regulations**

6. A statutory consultation on draft regulations took place between 14 February and 23 March 2007.

7. Between 10 and 24 July 2007, Scheme interests were given a further informal opportunity to comment on an updated draft of the regulations.. We are grateful for the detailed responses that were received, and the final Regulations reflect various comments and suggestions made in those responses.
8. The Administration Regulations accompany the Local Government Pension Scheme (Benefits, Membership and Contributions) **Regulations 2007**, SI 2007/1166. They also reflect the contents of the **Transitional Regulations, details of which are given at Part II of this letter.**
9. At the time of writing, it has not been possible to include a **Destinations Table** showing where the provisions of the 1997 scheme regulations reside under the new administration and/or benefit regulations. We will endeavour to circulate the table as soon as possible after this letter.

### **The Transitional Regulations**

10. During the consultation exercise leading to the introduction of the LGPS (BMC) Regulations, a number of issues were identified as requiring transitional provisions - as a consequence of the policy decision to transfer all active members of the Scheme, as at 31 March 2008, to the new arrangements from 1 April 2008. A list of items was first issued in 2 February 2007, and this was followed up with Annex C to the CLG letter of 4 April 2007.
11. The approach subsequently taken in the draft copy of the Statutory Instrument<sup>1</sup> excludes the need for each of the items identified to be covered by a discrete regulatory provision. But it was recognised that the Transitional Provisions need to make clear that all rights established and arrangements entered into under earlier provisions were valid, and the necessary revocations and savings build on this basic premise.
12. This final version of the Statutory Instrument includes the specific points set out in the following paragraphs.

### **Part 1 - Content of the Administration Regulations**

#### **Nominated co-habiting partners**

13. They are now mentioned in :
  - a. regulation 47(2) on exclusion of rights to a return of contributions,
  - b. regulations 58(2)(a) and 60(9)(b) on the internal dispute resolution procedure,
  - c. regulation 76(4)(b) on the transfer of sums from the pension fund to compensate for a former member's misconduct,

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<sup>1</sup> A statutory consultation began on 22 June 2007.

- d. regulation 80(5)(a) on transfers out, and
- e. regulation 85(2)(b) on Community scheme transferees.

### **Refund of contributions, abatement and forfeiture**

14. As mentioned in the July consultation, provisions on these **are** included in the Regulations. They are :

Return of contributions – regulations 46 & 47. Paragraph 33 below refers.

Abatement – regulations 70 & 71. Paragraphs 42 to 48 below refer.

Forfeiture – regulations 72 to 76.

### **Chapter 1 Part 5 of the LGPS Regulations 1997**

15. This is partially replicated as shown below.

#### **Regulation 8 - Eligibility for membership of employees of other bodies not listed in Schedule 2 - *old 127(1), 128(1) & 128(7)***

16. This regulation applies to individuals who are, or become, an employee of one of the specified kinds of educational body on/after 1 April 2008.

#### **Regulation 10(1) - Supplementary provisions for certain members – *old regulation 131***

17. This replicates the still relevant parts of old regulation 131(9A), (9B) and (9D) concerning rent officers, and which authority is to be treated as their employer for Scheme purposes. It applies to officers who are members when the 2008 Scheme commences.

#### **Regulation 13 - Joining the scheme - *old regulation 7***

18. This regulation is arranged differently. The opening subparagraphs reflect the common use of joining procedures where a person is **deemed** to have applied to be a member (so-called “automatic enrolment”).

19. A person is only allowed to join the Scheme if he is employed under a contract of employment lasting at least 3 months as provided in regulation 2 of the Benefits Regulations. **Regulation 13(5)** is relevant where a contract of employment that was expected to last less than 3 months is extended, so that an otherwise ineligible employee of a Schedule 2 Part 1 Scheme Employer becomes eligible for membership after all. Subject to the conditions set out in regulation 13(5), the start of his membership can then be backdated to when the employment started.

20. **Regulation 13(6)** deals with joining by eligible admission body employees. (Regulations 5, 6 & 7 deal with admission body employees’ eligibility for

membership. Note regulation 7(1) and, for transferee admission bodies, regulation 6(10).)

21. The omission of an equivalent for old regulation 7(9) is deliberate. In **regulation 13(7)**, a person who previously left the Scheme or opted out of membership (a “former active member”) no longer has to meet extra conditions in order to be able to apply to rejoin. This change does remove an employer’s discretion on rejoining by a person who has previously given more than one notification to leave. But it fits with the general policy objective of maximising take-up of the opportunity to join the Scheme, and recognises the much changed nature of the LGPS workforce with much higher turnover and shorter average periods of membership.

### **Aggregation of membership – regulation 16(1) and regulation 6(2) of the Benefits Regulations**

22. Following consultation, a small number of amendments are expected to be made to the Benefits Regulations, including aligning regulation 6(2) of those Regulations with regulation 16(1) of the Administration Regulations. Aggregation will **not** be automatic. The re-employed and rejoining deferred member will have to choose to aggregate membership in a former employment.

### **Regulation 17 - Concurrent employments - old regulation 32A**

23. This provision, regarding the aggregation of membership in relation to concurrent employments, has been added since the statutory consultation. Note also **regulation 5 of the Transitional Regulations** (membership accrued before 1<sup>st</sup> April 2008 : concurrent employments).

### **Regulation 19 – Contributions during reserve forces leave – old regulation 17(4) to 17(8)**

24. The position is as explained in paragraph 13 of the July 2007 consultation letter :

CLG is sympathetic to the suggestion that scheme members who belong to the reserve forces should not be required to pay contributions, in order for any lost membership resulting from reserve forces leave to count towards their pension. However, this issue will also be of interest to those with responsibility for other public sector pension schemes, and it would not be appropriate for the LGPS to adopt a new approach without adequate prior consultation and consideration.

25. CLG will inform Scheme interests later of its decision on this issue.

### **Regulation 24(2) - Discontinuance of additional regular contributions (ARCs) for additional pension – old regulation 83**

26. Regulation 24(2) provides that a member who stops paying his ARCs before the end of the ARC payment period is nonetheless to be treated as having

paid his ARCs up to the end of that period, if he dies or if he leaves his employment because of ill health and is awarded ill health retirement benefits under regulation 20(2) or 20(3) of the Benefits Regulations.

27. In such cases, the difference in the level of increased benefits awarded under regulation 20(2) or 20(3) of the Benefits Regulations makes no difference to the treatment of the member under regulation 24(2) of the Administration Regulations. He is treated as having paid all of his ARCs up to the end of the ARC payment period, whichever level of ill health benefits has been awarded.

### **Additional pension from ARCs and AVCs**

28. A member may choose to pay additional regular contributions (ARCs) for additional pension, in units of £250 up to the permitted £5,000 maximum, to be paid with his normal benefits when he retires. This pension is indexed both pre- and post-retirement.

29. A member may also choose to pay additional voluntary contributions (AVCs). The accumulated value of a member's AVCs may be used for additional pension in accordance with the Regulations when he retires, or if he is awarded ill health retirement benefits under regulation 20 of the Benefits Regulations.

30. It is therefore possible for a member to accrue additional pension via both of these routes - ARCs and AVCs.

### **Electing to pay SCAVCs - regulation 25**

31. Consideration was given to whether there was a need for a separate provision about a member electing to pay this particular type of additional voluntary contribution. However, it was concluded that regulation 25 as drafted covers this situation too.

### **Regulation 26(5) - AVCs & SCAVCs - use of accumulated value – old regulations 66 & 70**

32. This regulation no longer provides that, where a person who is entitled to do so notifies his employing authority that he wants the accumulated value of his AVCs/SCAVCs to be used for additional pension, the relevant GAD guidance has to show the amounts of the additional pension in multiples of £250. Nor will the total value of the additional pension be limited to £5,000. The value of the AVCs would not be predictable enough to allow such restrictions on the GAD guidance.

### **Regulations 46 & 47 - Rights to return of contributions, and exclusions to that right – old regulations 87 & 88**

33. The differences between regulation 87(1) of the LGPS Regulations 1997 and regulation 46(1) of the Administration Regulations, and between regulation 88(1) of the 1997 Regulations and regulation 47(1), reflect the need to avoid unintended liability to tax. They aim to make it clearer that no refund of

contributions is possible once an underlying entitlement to benefits is established by virtue of regulation 5(1) of the Benefits Regulations in respect of any one period of membership<sup>2</sup>. And that the only times when a refund can be given after that are if the membership is subject to a Benefit Crystallisation Event, or if under regulation 79 a person's accrued rights are transferred out.

### **Regulation 53 - Non-assignability of pensions - old regulation 96**

34. This reflects recent changes to the law on insolvency.

### **Regulation 55(9) - Attributing members to pay bands for contribution purposes**

35. This provides that a member's employer must decide any question about what contribution rate he is liable to pay. Regulation 3(2) of the Benefits Regulations sets out the various pay bands and corresponding contribution rates.

36. (Regulation 8 of the Transitional Regulations deals with the attribution to contribution rates, before 1<sup>st</sup> April 2008, of active members of the 1997 Scheme who go on to be members of the 2008 Scheme.)

37. The rest of regulation 55 replicates *old regulation 97(1) to (8A)*, albeit with some rearrangement and consequential changes.

### **Regulation 56 - First instance determinations : ill health – old regulations 97(9A) & (10)**

38. Regulation 56(3) provides that, where the Secretary of State has issued related statutory guidance, the employer and independent doctor must have regard to it.

39. Regulation 56(2) mentions the choice of independent medical practitioner for the purposes of regulations 20 and 31 of the Benefits Regulations. The consultation which began on 21 November 2007<sup>3</sup> included, at paragraph 3(k) of Annex A, a proposal to amend regulation 31 to clarify that there is a need for certification by an independent doctor.

### **Regulation 68 - Annual benefit statements - old regulation 106A**

40. The date by which the first benefit statements under the new Scheme must be sent out is **on or before 1 April 2010**. These will be the statements relating to members' rights accrued in 2008/2009. (An earlier date was proposed in the July consultation.) As now, an authority may use a date other than 31<sup>st</sup> March as "the relevant date" – see regulation 68(3) to (5).

41. Statements relating to members' rights accrued up to 31 March 2008 are subject to the requirements of the LGPS Regulations 1997. A technical

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<sup>2</sup> BR 5(1) says "Membership of the Scheme only entitles the member to benefits under these Regulations if - (a) his total membership is at least three months; or (b) a transfer value is credited to him."

<sup>3</sup> "Draft proposals to amend Regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (the benefit regulations) to provide a third tier of ill health provision."

easement is being considered in relation to statements for the year 2007/2008.

**Regulation 70 - Statements of policy concerning abatement of retirement pension in new employment - *old regulation 109* & regulation 71 - Application of abatement policy to individual cases - *old regulation 110***

42. The statutory consultation version of the Regulations did not include any provisions on abatement. The relevant provisions from the 1997 Regulations are, however, replicated in the actual Administration Regulations.
43. While some consultees did not support the continuation of the facility to abate, others felt that administering authorities definitely should have this option, where a person draws an LGPS pension while simultaneously earning so much from new employment that his post-retirement income exceeds his pre-retirement local government salary.
44. Regulation 70 copies regulation 109 of the 1997 Regulations in not requiring an administering authority to have a policy that it **will** abate pensions. Regulation 70 only requires an authority to have and publish a policy, having regard to the points set out in subparagraph (5) of the regulation. It sets out how a policy must be consulted on, published and reviewed. Regulation 71 deals with the application of the policy in individual cases.
45. Note that regulation 70(3) does **not** require an administering authority which has a published policy on abatement that does not need reviewing at that time, to develop and publish a new policy statement within 3 months after 1<sup>st</sup> April 2008.
46. Regulation 12 of the Transitional Regulations preserves, for those who were members of the LGPS before 1 April 1998, the protection provided by regulation 110(5) of the LGPS Regulations 1997. Under regulation 110(5) no abatement of the pension of those who were Scheme members immediately before the commencement date of the 1997 Regulations, could exceed what would have applied under the 1995 Regulations.
47. Regulations 70(1) & 71(3) make special provision in respect of the new employment by a Scheme employer of a person who is eligible to belong to a teachers' scheme. Abatement will not apply to his LGPS pension. This exception provides for a situation where an individual is a teacher and a member of the teachers' pension scheme, but also entitled to belong to the LGPS because he is separately employed by a Scheme employer to carry out non-teaching functions (such as administration) for which the LGPS is the appropriate scheme. If he draws his LGPS pension from that non-teaching employment, but also continues to work as a teacher, his total income could exceed that from his previous local government employment. But his LGPS pension could not be abated.
48. Abatement is also relevant for other public sector pension schemes. It may be that a wider policy review at some future date could lead to changes. However, for now, the current approach continues.

### **Regulation 78(2) - Transfers - Application of Chapter 4 etc *old 116***

49. Regulation 78 concerns the application of Chapter 4 etc of the Pension Schemes Act 1993. Regulation 78(2) is a new provision, and deals with the right to a cash transfer sum of a member with less than 3 months membership.

### **Regulation 80 - Contracting-out requirements affecting transfers out – *old 118***

50. This is restructured in part. Regulation 80(3) substitutes for paragraphs (3) and (4) of old regulation 118; and the content of old regulation 118(3) is not included. Regulation 80(4) replaces old regulation 118(2).

### **Inward transfers of pension rights - regulation 83 - *old regulation 121***

51. CLG confirm that it is not our policy intention to allow transfers in or out of the LGPS by those aged over 64 and a half years, ie who are within 6 months of the normal pension age for the Scheme. However, the Pension Schemes Act 1993, and regulations under it, make clear provision on the issue. Consequently there is no need for detailed provision about this in the LGPS Administration Regulations.

### **Changes of fund - regulations 86 and 87 - *old regulation 125***

52. Regulation 86 now covers the situation where a member leaves a concurrent employment - while another employment in which he is a member continues - and aggregates his membership, ending up with one appropriate fund. Regulation 87 is new. It concerns changes of fund and variable time employees.

### **Schedule 2 Scheme Employers, Part 1 – Probation Trusts**

53. Paragraph 8 now includes a reference to probation trusts which are being established as a result of reorganisation within the probation service. They will be functioning in some areas by 1 April 2008.

### **Schedule 3 of the LGPS Regulations 1997 - Excluded membership**

54. It has not been necessary to replicate most of this. However, note :

- a. **paragraph 6 (forfeiture)** is replicated in **regulation 15(3)** of the Administration Regulations
- b. **paragraph 3 (no double counting)** will be replicated in the amended Benefits Regulations
- c. **paragraph 8** relates to councillors, albeit to their non-councillor membership. See **Annex A**.

### **Pension credit members**

55. Only regulation 68 and regulation 83(2) of the final Administration Regulations mention pension credit members.

**Regulation 68(1)** (annual benefit statements) requires administering authorities to send pension credit members an annual benefit statement. See also 68(4)(c).

**Regulation 83(2)** (inward transfer of pension rights) provides that “relevant pension rights” - those accrued rights that a person can transfer into the Scheme - do not include rights to benefits which are attributable, directly or indirectly, to a pension credit. This replicates regulation 121(2) of the LGPS Regulations 1997.

56. Most provisions in the 1997 Regulations about pension credit members have been saved in the Transitional Regulations. Pension credit members are not mentioned in regulation 55 (first instance decisions) and regulation 58 (applications to resolve disagreements) of the Administration Regulations. Appropriate provision will be made for the resolution of disputes involving such members that arise on/after 1<sup>st</sup> April 2008, and will be effective by that date.

## **Part II – The Transitional Regulations**

57. The consultation on the draft Statutory Instrument took the approach of a balance between specific items and the need to identify those areas which would be best served by saving or preserving rights and arrangements already entered into. As the covering letter of 4 April with the Benefits Regulations set out, nothing is being done to alter any of the provisions and protections in the 1997 Regulations.

58. The Transitional Regulations Statutory Instrument provides for the following:-

- regulation 1 the standard preambles and effective date for the SI along with common definitions;
- regulation 2 revokes the 1997 Regulations other than where specified in the regulations or in the saved provisions of Schedule 1;
- regulation 3 sets out how benefits are to be calculated for those continuous members of the Scheme who joined before 31 March and who will retire on or after 1 April 2008 having accrued membership under both arrangements;
- regulation 4 sets out similar arrangements for how current deferred members can be treated in like manner as continuous members if they rejoin the LGPS on or after 1 April 2008;
  - {By default these two provisions mean that if someone is not a continuous member or treated as a continuous member by virtue of their decision to aggregate on rejoining, then their rights at point of earlier departure from the Scheme will continue to apply.}

- regulation 5 deals with the calculation of membership for concurrent members as under current regulation 32A and regulation 17 of the Administration Regulations where the periods straddle 31 March and 1 April 2008.
- regulation 6 sets out how survivor benefits are to be dealt with for members covered by regulations 3 and 4 who die leaving dependants;
- regulation 7 sets the maximum amount of death grant payable to a continuous member who becomes a deferred member after 1 April, and whose death occurs before receiving pension at or after normal retirement age or receiving early release of pension. The total death benefit payable in such cases must not exceed five times pension as calculated under regulation 23 of the Benefit Regulations taking account of regulation 3 of the Transitional Provisions (eg £3,000 iro pre 2008 membership and £200 iro post 2008 results in a death benefit of £16,000, as opposed to the £9,000 lump sum payable under the 1997 Regulations;
- regulation 8 requires employers to attribute current members to a contribution payband effective from 1 April 2008.
- regulation 9 deals with the rates to be paid by protected ex-manual workers as their contributions come into line with other members over the period April 2008 to March 2011;
- regulation 10, together with Schedule 2, sets out how the transitional protection for those who would have been covered by the rule of 85 if they chose to retire early by 31 March 2020 will continue to operate;
- regulation 11 is a saving provision making clear that appropriate pension funds as set out under the 1997 Regulations still apply;
- regulation 12 continues to apply abatement provisions applicable under the 1997 Regulations for those who first took pension under the earlier provisions;
- regulation 13 sets out the steps taken to not revoke the 1997 provisions for elected members, so that they will continue in the CARE scheme with 1/80<sup>th</sup> and 3/80<sup>th</sup> accrual and contribute 6%.
- regulation 14 deals with a limited number of issues relating to pension sharing on divorce not covered by a simple saving provision; and
- Schedule 1 sets out provisions saved under the 1997 Regulations and the provisions now revoked.

Earlier correspondence explained that the TP Regulations would also cover:-

- how pensionable pay before 1 April 2008 can be used for the purposes of regulations 8-11 of the Benefit Regulations. It is now our view that this is not needed. A plain English reading of regulation 8-11 could only mean that periods before the coming into force can be used; and

- how added years contracts entered into before 31 March would be dealt with. This is now achieved by a limited saving provision in Schedule 1.

Any further queries or questions on these particular provisions should be sent in the first instance to Brian Town (email – [Brian.town@communities.gsi.gov.uk](mailto:Brian.town@communities.gsi.gov.uk)).

### **Part III – Consequential Issues**

59. Minor amendments will need to be made before 1 April 2008 to the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998, which will remain in force, to update cross references to the other Scheme regulations. These are likely to be included in a miscellaneous amendments SI.

### **Contacts**

The main LGPS website is located at :

[www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions/](http://www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions/)

Additional material can be found at :

[www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)

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Yours sincerely,

**Bob Holloway**

## **Annex A**

### **OUTCOMES ON CERTAIN TOPICS OR FUTURE INTENTIONS**

#### **AVCs - use of accumulated value**

1. CLG was asked if one option for using the accumulated value of a member's AVCs could be to move it from one LGPS fund's AVC arrangement to another fund's AVC arrangement - where the member changes fund/administering authority and an inter fund adjustment is being paid anyway. This seems a reasonable course of action, but we can see no need to prescribe about it in the LGPS Regulations.
2. Where an active member changes their appropriate fund and the same AVC provider is used by both funds, we would expect the member's records to be brought up to date by the new employer. Even if the new fund uses a different AVC provider, a suitable arrangement should be able to be made.

#### **AVCs & SCAVCs - Refund of contributions**

3. Regulation 66(7)(b) of the LGPS Regulations 1997 provided that AVC or SCAVC contributions could be refunded when a member received a repayment of their normal contributions. However now that refunds of any kind can only be paid to those with less than 3 months membership in the Scheme<sup>4</sup>, there will be few instances where - within 3 months - a person has joined the Scheme, chosen to pay AVCs or SCAVCs, started paying them, and then opted out or given notice that he wishes to leave the LGPS. Rather than have the LGPS Regulations prescribe about refunds in these few cases, the matter should be able to be dealt with on a common sense basis by the relevant parties.

#### **Ill health benefits**

4. A statutory consultation on proposals for a third tier of the ill health retirement benefits package began on 21 November 2007. Any future change to the ill health benefit provisions of the Benefit Regulations might necessitate limited consequential amendments to the Administration Regulations.

#### **Councillor members**

5. As explained in paragraph 58 above, regulation 13 of the Transitional Regulations deals with preserving existing arrangements under the LGPS Regulations 1997 for the time being. We are currently considering the best approach to manage the pension arrangements for elected members, especially in light of the Report of the Councillors Commission, published in December 2007, which contained recommendations relating to allowances and pension provision for Councillors. The Government will publish its response early in 2008. A consultation with stakeholders will be undertaken shortly after the Government's response, taking into account accepted

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<sup>4</sup> Originally under the 1997 Regulations refunds could be paid to those with less than 2 years membership.

recommendations from the Report and inviting comment on how pension provision should be shaped in the context of changes to the LGPS from April 2008.

## **IDRP**

6. The Pensions Act 2007 includes new provision enabling pension schemes to establish a single stage internal dispute resolution procedure if they wish to do so. No action is being taken before April 2008 to follow this up in respect of the LGPS. In due course, there will be a full statutory consultation in the usual way on any proposal to change Scheme regulations.