

LGPS Leavers and Retirements



Local Government Pension Scheme

A Guide for Scheme Employers

Issue 4 : February 2022

Check the Norfolk Pension Fund website for the latest version of this guide.

You can print or download interactive Forms and Guides from our website:
<https://www.norfolkpensionfund.org/about/employers/>

Only Norfolk Pension Fund forms will be accepted.

www.norfolkpensionfund.org

This guide is based on our understanding of the current legislation and background information, including any guidance from the Department for Levelling Up, Housing and Communities (DLHC) and the Local Government Association (LGA). However, nothing contained in them can override the LGPS legislation.

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LGPS Leavers & Retirements

When a member leaves the scheme or an employment, we will need to update our records and calculate what benefits are due.

The reason membership ended, how old the member was etc, will affect the amount and type of benefits.

The reasons for leaving are categorised into these sections on the **Member Leaving Scheme (L45)** form:

- R – Entitled to Immediate Retirement Benefits
- S - Separate Benefits
- V - Voluntary Leaver (not entitled to immediate benefits)
- C - Compulsory Leaver (contract terminated by employer)
- D - Death

 LOCAL GOVERNMENT PENSION SCHEME
Member Leaving Scheme

Employers should submit this form to NPF via i-Connect
(NCC send to PenDocs)

Employers not yet onboarded, post paper copy to:
Norfolk Pension Fund, County Hall, Martineau Lane, NORWICH, NR1 2DH

Name of Employer		
Member's Surname	Title	
First Names		
NI Number	Payroll Reference	
Home Address		
	Post Code	

**** LEAVING DETAILS ****

Last Day of Membership (Official Date of Leaving)	Reason Membership Ended
Entitled to Immediate Retirement Benefits	Voluntary Leaver (not entitled to Immediate Benefits)
R1 Left employment: age 60+	V1 Left employment to take another job (under age 55)
R2 Left employment: age 55-59	V2 Opted Out of LGPS (still employed)
R3 Employment terminated: Redundancy (age 55+)	V3 Left employment following period of parental leave (under age 55)
R4 Employment terminated: Business Efficiency (age 55+)	V4 Left employment (under age 55) – other reasons
R5 Employment terminated: Entitled to ill health pension (any age)	Compulsory Leaver (contract terminated by employer)
R6 Flexible Retirement (age 55+)	C1 Redundancy (under age 55)
R7 Age 75 attained – benefits payable	C2 Unsatisfactory Probation
	C3 End of Temporary Contract
Death	C4 Gross Misconduct
D1 Death in service	C5 Compulsory Transfer of employment (TUPE)
Separate Benefits	C6 EmployER has withdrawn from LGPS
S1 Still a member of LGPS but has opted to keep benefits separate	C7 Employment terminated by employer for other reason

**** FURTHER DETAILS ****

(C5) Name of New Employer

Further Details/Comments/Next of Kin

Further Forms Needed:
Actuarial Reductions
Additional Pension
Early Retirement (R1)
Ill Health Retirement

[S1] Pensions/Form/L45

It is important the **Member Leaving Scheme (L45)** is completed correctly. If it has any omissions, it will be returned.

This form needs to be completed in respect of a member leaving the scheme for **any** reason.

(Norfolk Pension Fund would not be able to calculate or pay any benefits due to a member until a correctly completed form has been received.)

** LEAVING DETAILS **

Last Day of Membership (Official Date of Leaving)	Reason Membership Ended
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Entitled to Immediate Retirement Benefits	Voluntary Leaver (not entitled to Immediate Benefits)
R1 Left employment: age 60+	V1 Left employment to take another job (under age 55)
R2 Left employment: age 55-59	V2 Opted Out of LGPS (still employed)
R3 Employment terminated: Redundancy (age 55+)	V3 Left employment following period of parental leave (under age 55)
R4 Employment terminated: Business Efficiency (age 55+)	V4 Left employment (under age 55) – other reasons
R5 Employment terminated: Entitled to ill health pension (any age)	Compulsory Leaver (contract terminated by employer)
R6 Flexible Retirement (age 55+)	C1 Redundancy (under age 55)
R7 Age 75 attained – benefits payable	C2 Unsatisfactory Probation
	C3 End of Temporary Contract
Death	C4 Gross Misconduct
D1 Death in service	C5 Compulsory Transfer of employment (TUPE)
Separate Benefits	C6 EmployER has withdrawn from LGPS
S1 Still a member of LGPS but has opted to keep benefits separate	C7 Employment terminated by employer for other reason

LGPS Retirements

What do you need to do?

As soon as you know a member is leaving and may be entitled to immediate payment of retirement benefits submit form [Advance Warning of Member Retiring \(R25\)](#).

If you would like an estimate of the benefits payable, which will include any additional employer costs, please complete form [Request for Estimate of Benefits \(MISC89\)](#). (Refer to [Completion of Member leaving scheme \(L45\) / \(MISC89\)](#) in this guide on how to complete this form.) If you are considering a bulk costing exercise or need several estimates, please contact us to discuss your requirements.

Complete the [Member Leaving Scheme \(L45\)](#) form as soon as possible or, at the latest, within one month leaving. (Refer to Completion of [Member leaving scheme \(L45\) / \(MISC89\)](#) in this guide on how to complete this form.) It is important the [Member Leaving Scheme \(L45\)](#) is completed in a timely manner to ensure your scheme members are fully informed of any options available to them.

Ensure any additional forms requested on [Member Leaving Scheme \(L45\)](#) form are also submitted at the same time:

- [Employer Authorisation \(R16\)](#).
 - Refer to [Employer Authorisation \(R16\)](#) in this guide.
- [Ill Health Certificate : Current Member \(R18\)](#)
 - Refer to Ill Health Retirements in this guide.
- [Ill Health Retirement : Employer's Decision Notice \(R45\)](#)
 - Refer to Ill Health Retirements in this guide.
- [Notice to Opt out of Pension Saving \(SR97\)](#)
 - Refer to the **Pension Handbook for Scheme Employers (G001)** for further guidance on how to complete this form.
- [Employer Notification of Employee Opting Out \(SR88\)](#)
 - Refer to the **Pension Handbook for Scheme Employers (G001)** for further guidance on how to complete this form.
- [Pension Option : Reduced or Restricted Pay \(for current members with pre 2014 membership\) \(SR90\)](#)
 - Refer to **Pension Handbook for Scheme Employers (G001)** for further guidance on how to complete this form.

Maybe entitled to Immediate Retirement Benefits

When a member leaves for any of the reasons below, immediate scheme benefits could be payable. There is likely to be a capital cost for the immediate release of scheme benefits where the member is dismissed by the employer from an employment on the grounds of redundancy or business efficiency.

R1 Left Employment: Age 60+

- An immediate retirement benefit is payable, subject to the member having qualifying membership/CARE entitlement.

R2 Left Employment: Age 55-59

- An immediate retirement benefit is payable, subject to the member having qualifying membership/CARE entitlement.

R3 Employment Terminated: Redundancy (Age 55+)

- An immediate retirement benefit is payable, subject to the member having qualifying membership/CARE entitlement.
- An employer is likely to incur additional costs for release of early retirement benefits.

R4 Employment Terminated: Business Efficiency (Age 55+)

- An immediate retirement benefit is payable, subject to the member having qualifying membership/CARE entitlement.
- An employer is likely to incur additional costs for release of early retirement benefits.

R5 Employment Terminated : Entitled to Ill Health Pension (any age)

- For further details see [Ill Health Retirements](#) in this guide

R6 Flexible Retirement (Age 55+)

- An active may elect to receive immediate payment of all or part of their retirement benefits if:
 - there is a reduction in their hours, or grade.
 - and the employer consents.

Benefits taken under the flexible retirement provisions will be subject to reduction if drawn earlier than the member's Critical Retirement Age. However, the employer can choose to waive all or part of the reduction by paying the extra strain on the fund cost.

R7 Age 75 attained - Benefits Payable

- An immediate retirement benefit is payable.

How do you tell us?

Fill in the [Member Leaving Scheme \(L45\)](#) form and any additional forms requested on the L45 (e.g [Employer Authorisation \(R16\)](#) ; [Ill Health Certificate : Current Member \(R18\)](#) ; [Ill Health Retirement : Employer's Decision Notice \(R45\)](#)) and send to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the forms must be downloaded from our website and attached to the member record via i-Connect.

Please refer to our **Employer Guide to i-Connect File Uploads (G052)** or **Employer Guide to i-Connect Online Returns (G053)** for further guidance.

III Health Retirements

R5 Employment Terminated : Entitled to Ill Health Pension (any age)

A member can be retired on ill-health grounds if they're medically certified as being 'permanently incapable of discharging efficiently the duties of his or her current employment'. There are no age restrictions for an ill health retirement.

The LGPS provides three levels of ill-health retirement benefit; depending on how likely it is that the member will be able to find work again before their normal retirement age.

Tier 1 and 2 benefits are payable for life. Tier 3 benefits are payable for a maximum of three years and must be reviewed after eighteen months.

There are normally no immediate costs to employers for ill health retirements. However, if there are more ill health retirements than anticipated then additional costs may be charged to the employer. The Fund Actuary sets the anticipated level of ill health retirements, if you require further information speak to our Finance Team.

What do you need to do?

In order to initiate an ill-health retirement, complete the front page of our [Ill-Health Retirement Certificate \(form R18\)](#) and arrange for an approved occupational health doctor to complete the rest of it and return it to you.

The employer decides if a member qualifies for ill-health retirement and which tier applies; but in doing so, must have regard to the advice of a doctor qualified in occupational health medicine.

The 3 Tiers of Ill-Health Retirement

Tier 1 - This tier applies to the more serious cases of ill health, where the member has little prospect of obtaining gainful employment before their normal pension age (minimum age 65).

Immediate benefits would be payable. In calculating them, the member's scheme membership would be made up to their normal pension age (minimum age 65).

Tier 2 - This tier applies to members who have little prospect of obtaining gainful employment within the next three years but are likely to be able to do so before their normal pension age (minimum age 65).

Immediate benefits would be payable. In calculating them, the member's scheme membership would be made up by 25% of their remaining service to their normal pension age (minimum age 65).

Tier 3 - This tier applies to members who have little prospect of obtaining gainful employment straight away but are likely to be able to do so within the next three years.

Immediate benefits would be payable but there would be no award of extra membership.

The employer should allocate the member to one of these 3 tiers, depending on their likely capability of obtaining gainful employment.

This decision should be made only on medical considerations, based on a doctor's certificate. Economic considerations (e.g. the availability of work) should not be taken into account.

- **Gainful employment** means paid employment for at least 30 hours per week for at least a year.
- **The doctor** used must be qualified in occupational health medicine (as defined in the LGPS Regulations) and must be someone approved by the Norfolk Pension Fund.

When you've received the doctor's certificate, complete our [ill-health decision form \(R45\)](#). [Send it to us with Member Leaving Scheme \(L45\)](#) form and the doctor's certificate. (Refer to Completion of Member leaving scheme (L45) / (MISC89) in this guide on how to complete this form.)

If a member was paying into the LGPS on 31st March 2008 and was aged 45 or over on that date and had been in continuous membership of the LGPS, the benefits payable on **Tier 1** and **Tier 2** grounds are based on enhanced membership. Protections apply to ensure the ill health retirement benefits now would not be less than what they would have been under the scheme before 1 April 2008.

Where the member is awarded **Tier 3** ill-health retirement, the benefits are payable for three years at the most and must be monitored. For further information see [Tier 3 Ill Health Review](#) in this guide.

For further guidance concerning Ill Health Retirements refer to the [Ill Health Retirement flow diagram \(page 25\)](#) and [Appendix A, DCLG Ill Health Guidance \(page 26\)](#).

How do you tell us?

Fill in the [Member Leaving Scheme \(L45\)](#) form and any additional forms requested on the L45 (e.g [Ill Health Certificate : Current Member \(R18\)](#) ; [Ill Health Retirement : Employer's Decision Notice \(R45\)](#)) and send to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the forms must be downloaded from our website and attached to the member record via i-Connect.

Please refer to our **Employer Guide to i-Connect File Uploads (G052)** or **Employer Guide to i-Connect Online Returns (G053)** for further guidance.

Death

D1- Death in Service

Where a member dies in service, we would need to update our records and calculate any benefits due to a next of kin.

For us to provide information to any next of kin as quickly as possible, it is of vital importance there is communication between the employer and Norfolk Pension Fund. Spouses, Partners and/or Children's benefits may be payable.

What do you need to do?

Complete **Member Leaving Scheme (L45)** form. Refer to Completion of Member Leaving Scheme (L45) / (MISC89) in this guide

Ensure the "Further Details/Comments/Next of Kin" part of Member leaving Scheme (L45) is completed. Please let us know of any circumstances we may need to be aware of including any requests not to contact the next of kin direct.

(L45 Member Leaving Scheme)

Further Details/ Comments/ Next of Kin	
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How do you tell us?

Telephone or email us as soon as you become aware and let us have next of kin details.

Fill in the **Member Leaving Scheme (L45)** form and send to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the forms must be downloaded from our website and attached to the member record via i-Connect.

Please refer to our **Employer Guide to i-Connect File Uploads (G052)** or **Employer Guide to i-Connect Online Returns (G053)** for further guidance.

Separate Benefits

****Only for current members with pre 1 April 2014 membership****

S1 Separate Benefits

If a member's rate of pay has been reduced (e.g. taken a drop in the **rate** of pay) a member may elect to keep benefits accrued on the higher rate of pay separate. They would then start a separate pension record in respect of the lower paid post.

A **Pension Option : Reduced or Restricted Pay (SR90)** form is completed by the member and sent to the employer.

What do you need to do?

Where you have received a **Pension Option : Reduced or Restricted Pay (for current members with pre 2014 membership) (SR90)** part completed by the employee (refer to **Pension Handbook for Scheme Employers (G001)** for further guidance), complete the employer part of the SR90 together with the **Member Leaving Scheme (L45)** form. Refer to Completion of Member Leaving Scheme (L45) / MISC89 in this guide.

How do you tell us?

Fill in the **Member Leaving Scheme (L45)** form and **Pension Option : Reduced or Restricted Pay (for current members with pre 2014 membership) (SR90)** and send to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the forms must be downloaded from our website and attached to the member record via i-Connect.

Please refer to our **Employer Guide to i-Connect File Uploads (G052)** or **Employer Guide to i-Connect Online Returns (G053)** for further guidance.

Voluntary Leaver (not Entitled to Immediate Benefits)

This is where a member has voluntarily ceased pensionable employment.

V1 Left employment to take another job (under age 55)

V2 Opted Out of LGPS (still employed)

- Members may opt out of the Scheme at any time. However, a member who opts out of the scheme with less than three months membership after being brought into the Scheme is treated as never having been a member so an L45 is not required.

Refer to **Pension Handbook for Scheme Employers (G001)** for further guidance:

- SR97 Notice to Opt out of Pension Saving form
- SR88 Employer Notification of Employee Opting Out form

V3 Left employment following a period of parental Leave (under age 55)

V4 left Employment (under age 55) - other reasons

- Member leaves for other reasons not accounted for on **Member Leaving Scheme (L45)** form.

What do you need to do?

Complete **Member Leaving Scheme (L45)** form. Refer to Completion of Member Leaving Scheme (L45) / (MISC89) in this guide.

If you have received a **Notice to Opt out of Pension Saving (SR97)** completed by the employee, ensure an **Employer Notification of Employee Opting Out (SR88)** is completed. Refer to our **Pension Handbook for Scheme Employers (G001)** for further guidance.

How do you tell us?

Fill in the [Member Leaving Scheme \(L45\)](#) form and [Employer Notification of Employee Opting Out \(SR88\)](#) and send to us with the employees [Notice to Opt out of Pension Saving \(SR97\)](#) by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the forms must be downloaded from our website and attached to the member record via i-Connect.

Please refer to our **Employer Guide to i-Connect File Uploads (G052)** or **Employer Guide to i-Connect Online Returns (G053)** for further guidance.

Compulsory Leaver (Contract Terminated by Employer)

Where a member has ceased pensionable employment because of their contract being terminated by the Employer.

C1 Redundancy (under age 55)

C2 Unsatisfactory Probation

- Please add a note to **Member Leaving Scheme (L45)** form stating whether any “monies” are outstanding. There are provisions within the LGPS to recoup amounts from scheme benefits on payment.

C3 End of Temporary Contract

C4 Gross Misconduct

- Please confirm on the **Member Leaving Scheme (L45)** stating whether any “monies” are outstanding. There are provisions within the LGPS to recoup amounts from Scheme benefits on payment. For further advice, please contact us.

C5 Compulsory Transfer of employment (TUPE)

- Complete the **Member Leaving Scheme (L45)** form.
- Ensure the “Name of New Employer” is completed in the
- **** FURTHER DETAILS **** section of **Member Leaving Scheme (L45)** form

(L45 Member Leaving Scheme)

**** FURTHER DETAILS ****

Name of New Employer	
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- Scheme benefits may be automatically transferred to the New Employer (if the New Employer is part of the Local Government Pension Scheme.)
- We will also require form **TUPE Transfers Leavers List (SR105)** to be completed to ensure all members in the transfer are accounted for.

C6 Employer has withdrawn from the LGPS

- For example, where an Admitted Body ceases membership

C7 Employment terminated by employer for other reason

- Member leaves for other reasons not accounted for on **Member Leaving Scheme (L45)** form.

What do you need to do?

Complete [Member Leaving Scheme \(L45\)](#) form. Refer to Completion of Member Leaving Scheme (L45) / (MISC89) in this guide.

How do you tell us?

Fill in the [Member Leaving Scheme \(L45\)](#) form and if applicable the [TUPE Transfers Leavers List \(SR105\)](#) and send to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the [Member Leaving Scheme \(L45\)](#) must be downloaded from our website and attached to the member record via i-Connect.

If the [TUPE Transfers Leavers List \(SR105\)](#) is also being completed, this needs to be sent via secure email to pensions.technical@norfolk.gov.uk.

Please refer to our **Employer Guide to i-Connect File Uploads (G052)** or **Employer Guide to i-Connect Online Returns (G053)** for further guidance

Request for an Estimate of Benefits (MISC89)

An employer or member may request an estimate of benefits at any time before retirement.

The [Estimate of Benefits \(MISC89\)](#) form is used so we can provide an idea of the potential scheme benefits and potential strain costs payable by the employer. The estimate is based on the information we are holding for the member and the information you provide.

We would normally return an estimate to you within 10 working days of receipt of the request provided the information on the MISC89 is correct. If you are considering a bulk costing exercise or need several estimates, please contact us to discuss your requirements.

We will not provide an estimate of retirement benefits direct to a scheme member in the case of redundancy, business efficiency or flexible retirement - unless you ask us to (see [Employer Authorisation \(R16\)](#)).

What do you need to do?

Complete the [Estimate of Benefits \(MISC89\)](#). Refer to Completion of Member Leaving Scheme (L45) / (MISC89) in this guide.

Where a member contacts you for an estimate of benefits payable, please complete the [Estimate of Benefits \(MISC89\)](#). Ensure the appropriate sections of the form are completed and are accurate as any inaccuracies could lead to the member being 'over quoted' benefits.

How do you tell us?

Fill in the [Estimate of Benefits \(MISC89\)](#) form and send to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the [Estimate of Benefits \(MISC89\)](#) can be downloaded from our website and attached to the member record via i-Connect.

Completion of Member Leaving Scheme (L45) / (MISC89)

The **Estimate of Benefits (MISC89)** form is used so we can provide an idea of the potential scheme benefits payable and any additional employer costs at a proposed date. We would normally return an estimate to you within 10 working days of receipt of the request provided the information on the MISC89 is correct. If you are considering a bulk costing exercise or need several estimates, please contact us to discuss your requirements. For further guidance refer to **Request for an Estimate of Benefits (MISC89)** in this guide.

The **Member Leaving Scheme (L45)** form is used to tell us of a member retiring or leaving employment.

The “Last Day of Membership” is the last day the member was part of the LGPS.

These forms are similar, so please make sure you complete them carefully.

What do you need to do?

Review [LGPS Leavers and Retirements](#) section for further guidance concerning the type of leaver options available. Complete the **Member Leaving Scheme (L45)** form and ensure all parts are completed as fully as possible.

(L45 Member Leaving Scheme)

** LEAVING DETAILS **

Last Day of Membership (Official Date of Leaving)	Reason Membership Ended
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Entitled to Immediate Retirement Benefits		Voluntary Leaver (not entitled to Immediate Benefits)	
R1	Left employment: age 60+	V1	Left employment to take another job (under age 55)
R2	Left employment: age 55-59	V2	Opted Out of LGPS (still employed)
R3	Employment terminated: Redundancy (age 55+)	V3	Left employment following period of parental leave (under age 55)
R4	Employment terminated: Business Efficiency (age 55+)	V4	Left employment (under age 55) – other reasons
R5	Employment terminated: Entitled to ill health pension (any age)	Compulsory Leaver (contract terminated by employer)	
R6	Flexible Retirement (age 55+)	C1	Redundancy (under age 55)
R7	Age 75 attained – benefits payable	C2	Unsatisfactory Probation
Death		C3	End of Temporary Contract
D1	Death in service	C4	Gross Misconduct
Separate Benefits		C5	Compulsory Transfer of employment (TUPE)
S1	Still a member of LGPS but has opted to keep benefits separate	C6	EmployER has withdrawn from LGPS
		C7	Employment terminated by employer for other reason

Ensure any additional forms requested on the L45 are also completed.

(L45 Member Leaving Scheme form)

Further Forms Needed	Form(s)	Submitted	To Follow
Actuarial Reductions waived	R16	<input type="checkbox"/>	<input type="checkbox"/>
Additional Pension awarded	R16	<input type="checkbox"/>	<input type="checkbox"/>
Early Retirement (R3, R4 or R6)	R16	<input type="checkbox"/>	<input type="checkbox"/>
Ill Health Retirement (R5)	R18 and R45	<input type="checkbox"/>	<input type="checkbox"/>

For further guidance concerning completion of these forms refer to the appropriate section in this guide:

- [Employer Authorisation \(R16\)](#)
- [Ill Health Certificate : Current Member \(R18\)](#)
- [Ill Health Retirement : Employer's Decision Notice \(R45\)](#)

It is important the **** PAY DETAILS **** on page two of the **Member Leaving Scheme (L45)** are completed as fully as possible. Any omissions will be returned for full completion.

**** PAY DETAILS ****

Full-time Equivalent (FTE) Final Pay (Pre 2014 definition)	Date	Amount £.pp
Year Ending with last day of membership		
Year Ending 1 year prior to last day of membership		
Year Ending 2 year prior to last day of membership		
Year Ending with day before Normal Pension Age (65) where last day of membership after this date		

Pensionable Pay (tax years from 2014/15 onwards)	Tax-Year	Main section £.pp	50/50 Section £.pp
Tax Year Before Leaving			
Tax Year of Leaving			
Tax Year after Leaving			

Assumed Pensionable Pay as at Last Day of Membership £ p.a.

For further guidance on how to complete **** Pay Details**** see our **Pensionable Pay Guide (G010)**. However, if you require any assistance, please contact us.

[See notes on page 4 for help in completing this form]

**** HOURS DETAILS ****

	PT Hours	WT Hours
Contractual Weekly Hours (as at Last Day of Membership) (Averaged hours if works term-time)		

Where no set contractual hours

	PT Hours	WT Hours
Average Contractual Weekly Hours – during tax-year of leaving		
Average Contractual Weekly Hours – during tax-year prior to leaving		

**** FURTHER PAY DETAILS ****

Question	Answer	Action
Has member taken drop in full-time pay during 10 years prior to date of leaving		
Was member issued with a Certificate of Protection (prior to 2008) because pay was reduced		

	Period From	Period
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		

Wet signature if paper copy otherwise
I confirm on behalf of the employer these details are correct.

Signed: _____

Contact Name: _____

[See notes on page 4 for help in completing this form]

This form should be submitted via i-Connect

NOTES TO HELP YOU COMPLETE THIS FORM

If you need assistance completing this form, please contact our Member Services Team on 01603 495923

**** LEAVING DETAILS ****
Ensure you complete the correct official leaving date and "reason membership ended" from the list provided.

**** FURTHER DETAILS ****
It's important you provide the name of new employer where the member has been TUPE transferred (C5) to ensure pension rights are protected.

**** PAY DETAILS ****
Full-time Equivalent Final Pay (FTE Final Pay): This figure is used to calculate pre-April 2014 benefits. The definition remains the same as that in place before April 2014 and therefore does not include non-contractual overtime. Pay lost due to periods of sickness or reduced pay in respect of child related leave should be added in. Where an employee works part-time the full-time equivalent amounts should be shown. Where there is less than a year in the period the figure should be grossed up to an annual amount.

Pensionable Pay: This is the new definition of pay (including any non-contractual overtime) on which pension contributions are payable. Where a member has a period of reduced or nil pay due to sickness or reduced pay in respect of child-related leave then Assumed Pensionable Pay (APP) should be included here instead of actual pay received for that period. Do not include APP for any period of additional unpaid child-related leave as this is treated as unpaid leave of absence.

Assumed Pensionable Pay (APP): This is pay in the last 3 months (or 12 weeks) pay up to the date of leaving – uprated to an annual amount. Where any pay has been lost due to sickness or child-related leave on reduced pay then appropriate amount of APP for that period should be included.

Main section / 50/50 Section: Pensionable Pay should be split between the Main section and 50/50 section depending on the rate of employee contributions payable.

**** CONTRIBUTION DETAILS ****
Ensure you complete all relevant sections and the appropriate tax year is also entered.

**** HOURS DETAILS ****
For most members you will only need to complete the contractual hours as at last day of membership box. Ensure you show the averaged out figure for those staff who work term-time only. Also show the WT hours (e.g. 37.00).

**** FURTHER PAY DETAILS ****
Where the member has suffered a drop in pay in the last 10 years to date of leaving or was issued with a Certificate of Protection (prior to April 2008) because pay was reduced please provide the further FTE Final Pay details.

This form should be submitted via i-Connect

Pensions/Form/L45 Page 4 of 4 Issue 3: (Nov 2021)

Further help can be found on the back of the **Member Leaving Scheme (L45)**

Employer Authorisation (R16)

Awarding Additional Pension, Early Retirement and Waiving Benefit Reductions

This form gives authorisation from the employer to award additional pension, early retirement or waive benefit reductions to a member on retirement. The employer can also confirm how any direct employer cost, from the retirement, is to be repaid back to the Fund.

There are normally no immediate costs to employers for ill health retirements. However, if there are more ill health retirements than anticipated then additional costs may be charged to the employer. The Fund Actuary sets the anticipated level of ill health retirements, if you require further information speak to our Finance Team.

Where a member is retired early with entitlement to immediate benefits there is a cost implication to the pension fund and the employer – this is referred to as the “strain on the fund”. To have a better idea of the potential cost of a retirement, request an [Estimate of Benefits \(MISC89\)](#). See Completion of [Member Leaving Scheme \(L45\) / \(MISC89\)](#) section in this guide.

What do you need to do?

Complete the relevant section of the [Employer Authorisation \(R16\)](#) form. Refer to the third column in the table below, “R16 - is this form needed?”.

Leaver Codes from L45	Reason for Retirement from L45	R16 - Is this form needed?
R1	Member aged 60+	Only if additional pension is being awarded or reduction is being waived
R2	Member aged 55 to 59	Only if additional pension is being awarded or if a reduction is being waived
R3	Redundancy (age 55+)	Yes
R4	Business efficiency (age 55+)	Yes
R5	Ill Health (forms R18 & R45 also needed)	Only if additional pension is being awarded
R6	Flexible retirement (age 55+)	Yes
R7	Age 75 attained – benefits payable	Only if additional pension is being awarded

Section A Award of Additional Pension:

- An employer may increase a member's scheme benefits by awarding additional Pension. There are limits to how much pension may be awarded, which are reviewed annually; further guidance should be sought from Norfolk Pension Fund. There is a direct cost for awarding additional pension to the employer payable in one instalment or over 36 months.

Section B Employers Waiver Early Retirement

- An employer may waive any reductions to the scheme member's benefits (because of the benefits being paid "early"). There is a direct cost to the employer known as the "strain on the Fund". The employer will be invoiced for the strain costs and may elect to pay this in one instalment or over 36 months.

Section C Employers Consent and Waiver Flexible Retirement

- Where a member takes flexible retirement, the employer must consent to the retirement. An employer may waive any reductions in payment of the retirement benefits. There is a direct cost to the employer known as the "strain on the Fund". The employer will be invoiced for the strain costs and may elect to pay this in one instalment or over 36 months.

Section D Capital costs Additional pension awards or fund strain costs.

- Strain costs are calculated in accordance with guidance from the Scheme Actuary and are based on a members' age, sex, the amount of pension payable and the period between the retirement date and the earliest retirement date. The employer will be invoiced for the strain costs and may elect to pay this in one instalment or over 36 months.

How do you tell us?

Fill in the [Employer Authorisation \(R16\)](#) form and send it to us by:

If you are using NCC payroll services, the forms will be completed by the NCC payroll team on your behalf.

If you are **not** using NCC payroll services, the [Employer Authorisation \(R16\)](#) can be downloaded from our website and attached to the member record via i-Connect.

Tier 3 Ill Health review

When a member is retired on Ill Health grounds on Tier 3, these are payable for three years at the most and must be monitored.

Where they have retired on Ill Health grounds on Tier 3 and their condition worsens (even after their tier 3 pension has ceased) they may request for their case to be reviewed.

What do you need to do?

The member is legally required to inform the employer if he obtains employment. If this happens, the employer must decide if it's gainful employment. If it is, the pension payment will cease.

If a tier 3 pension is still in payment after eighteen months, the employer must review it. To help with this, we'll ask the member to complete a review form shortly beforehand and return it to the employer.

If the form shows that the member is now in gainful employment, the tier 3 pension will cease. The employer must decide whether or not to backdate this to when the employment started (i.e. whether or not any benefits should be recovered).

If it shows the member is not in gainful employment, the employer must get a doctor's certificate (from an approved occupational health doctor), form R18(IH3), as to whether the conditions for tier 3 ill-health retirement still apply. If they do, the pension will continue up to the three years maximum payment period unless the member obtains gainful employment. If they don't, it will cease.

Either way, the pension would be reinstated at normal pension age.

If the condition worsens, the employer may (on medical advice) reallocate the member from tier 3 to tier 2 (but not to tier 1). Any increase in benefits would not be backdated. This can be done even after the tier 3 benefit has ended using R18 (Review).

The employer should send us a **third tier review certificate (R46)** in the following situations:

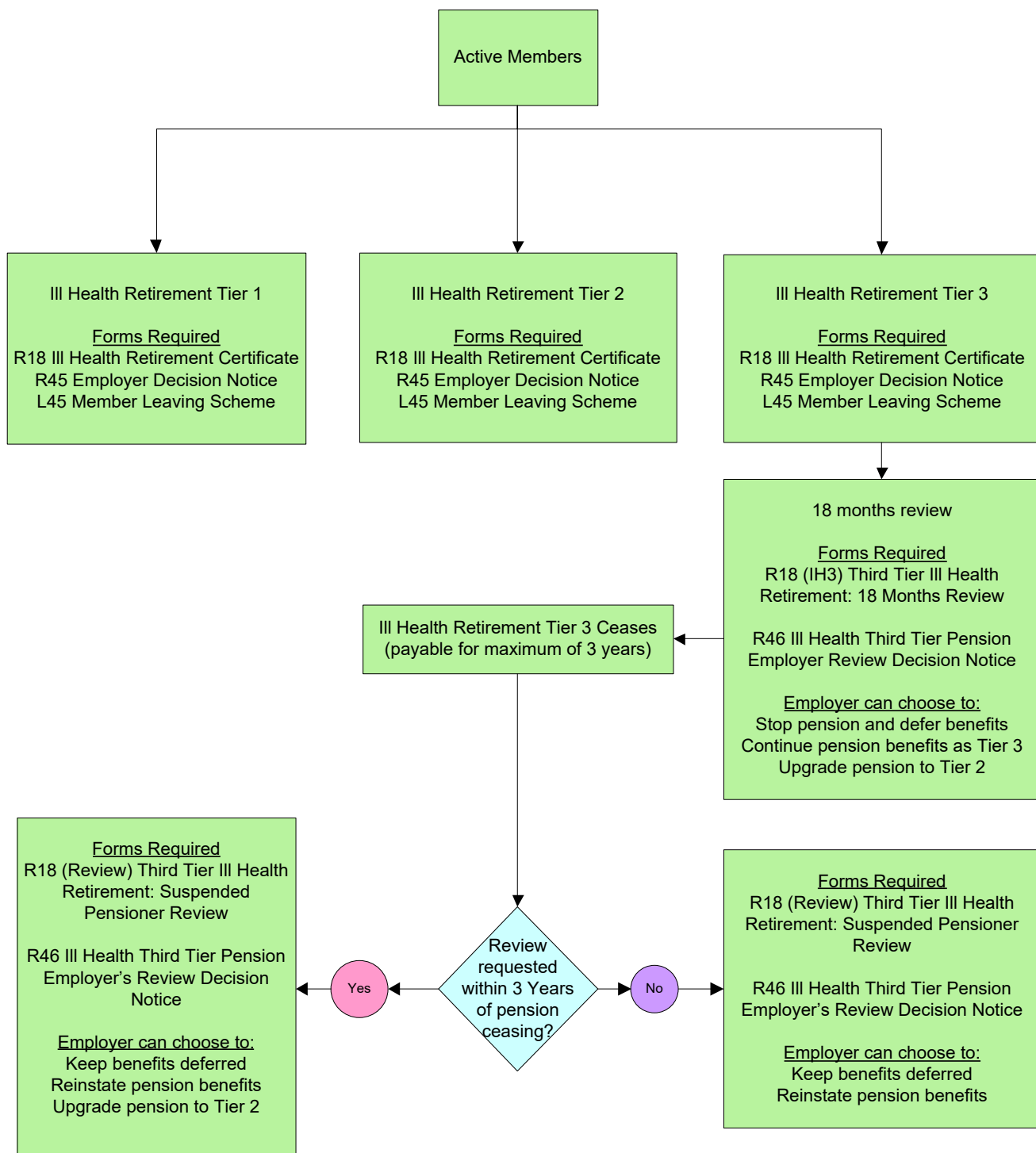
- The member has obtained gainful employment during the three-year payment period
- The member has been certified by a doctor as capable of obtaining gainful employment
- The member has been certified by a doctor as still qualifying for a tier 3 pension
- The member has been reassessed by a doctor as now qualifying for ill-health tier 2

For further guidance concerning Ill Health Retirements refer to the [Ill Health Retirement flow diagram \(page 25\)](#) and [Appendix A, DCLG Ill Health Guidance \(page 26\)](#)

How do you tell us?

Fill in the [third tier review Certificate \(R46\)](#) form (and [Third Tier Ill-Health Retirement : Suspended Pensioner Review \(R18 Review\)](#) form if required) and send them to us by downloading from our website and attach to the member record via i-Connect.

III Health flow diagram



Appendix A – DCLG III Health Guidance



Department for
Communities and
Local Government

LOCAL GOVERNMENT PENSION SCHEME STATUTORY ILL HEALTH RETIREMENT GUIDANCE TO ACCOMPANY THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013

September 2014

Department for Communities and Local Government Sept 2014

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LOCAL GOVERNMENT PENSION SCHEME (LGPS)

**STATUTORY LGPS ILL HEALTH RETIREMENT GUIDANCE TO ACCOMPANY
THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013 – SI
2013/2356 FROM 1 APRIL 2014**

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THIS GUIDANCE IS ISSUED UNDER REGULATION 36(4) OF THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013 (STATUTORY INSTRUMENT 2013/2356 (“the 2013 Regulations”)) FOR ALL ILL HEALTH RETIREMENTS ON OR AFTER 1 APRIL 2014. IT IS AIMED AT SCHEME EMPLOYERS AND INDEPENDENT REGISTERED MEDICAL PRACTITIONERS (IRMPs) WHEN CARRYING OUT THEIR FUNCTIONS UNDER REGULATIONS 36, 37 AND 38 OF THESE REGULATIONS.

The Statutory Ill Health Guidance of June 2011 is no longer applicable – except in so far as it is still required in connection with the Local Government Pension Scheme Provisions saved by Regulation 12 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (Statutory Instrument 2014/525 (“the Transitional Regulations”)); and members with deferred pensions who ceased active membership of the Local Government Pension Scheme on or after 1 April 2008 and before 1 April 2014 and who make an application under regulation 31 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (Statutory Instrument 2007/1166 (“The Benefits Regulations”)) for early payment of their deferred pension or early payment of their suspended Tier Three ill health pension on the grounds of permanent ill health.

This Guidance can be found on the LGPS Regulations website at <http://www.lgpsregs.org/index.php/dclg-publications/dclg-stat-guidance>.

The June 2011 Guidance has been updated to take on board the Local Government Pension Scheme (Miscellaneous) Regulations 2012 (Statutory Instrument 2012/1989) in respect of regulation 31 of the Benefits Regulations and regulation 12 of the Transitional Regulations. A copy of that Guidance can be found at: <http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/statguide.htm>.

GUIDANCE ON THE LOCAL GOVERNMENT PENSION SCHEME ILL HEALTH RETIREMENT PENSION PROVISIONS

Introduction

1. This guidance is issued, under Regulation 36(4) of the 2013 Regulations 2013, to all Scheme employers and independent registered medical practitioners in England and Wales with regulatory responsibilities under the Local Government Pension Scheme which came into effect on 1 April 2014. While Regulation 36(4) does not apply to administering authorities directly, regulations 37(12), 38(2), (5) and (6) confer certain functions on administering authorities where an employer has ceased to be a Scheme employer. Therefore, administering authorities need to have regard to this Guidance particularly where it is acting as a Scheme employer in this respect.
2. Scheme employers and independent registered medical practitioners must have regard to this guidance when carrying out their functions under regulations 36-38 of “the 2013 Regulations”.
3. In this guidance, the term ‘Scheme employer’ relates to local authorities and other employers participating in the Scheme (as defined in Schedule 1 to the 2013 Regulations).
4. This guidance includes details of the relevant regulatory provisions and an explanation of the operation of the ill-health retirement benefit provisions as they apply from 1 April 2014. The Local Government Association (LGA) has updated the suite of ill health retirement certificates and these can be downloaded from the Circulars page of the Local Government Association website at <http://www.local.gov.uk/web/workforcelibrary/lgpc-circulars> (see Circular 277 of March 2014 and Circular 282 of June 2014).

Section 1 - The Legal Framework

5. The regulatory provisions governing ill health retirements under the Local Government Pension Scheme with effect from 1 April 2014 are set out in regulations 35 to 39 of the 2013 Regulations and regulation 12 of the Transitional Regulations. For completeness and to help practitioners, the relevant regulations are set out below, although this Guidance relates to regulations 36 to 38.

Local Government Pension Scheme Regulations 2013 – (Statutory Instrument 2013/2356)

Early payment of retirement pension on ill-health grounds: active members

35. (1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

(2) The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives, is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39 (calculation of ill-health pension amounts).

(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

(4) The second condition is that the member, as a result of ill-health infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

(5) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before normal pension age.

(6) A member is entitled to Tier 2 benefits if that member—

(a) is not entitled to Tier 1 benefits; and

(b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment; but

(c) is likely to be able to undertake gainful employment before reaching normal pension age.

(7) Subject to regulation 37 (special provision in respect of members receiving Tier 3 benefits), if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful employment, up to a maximum of three years from the date the member left the employment.

Role of the IRMP

36. (1) A decision as to whether a member is entitled under regulation 35 (early payment of retirement pension on ill-health grounds: active members) to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's Scheme employer after that authority has obtained a certificate from an IRMP as to—

- (a) whether the member satisfies the conditions in regulation 35(3) and (4); and if so,
- (b) how long the member is unlikely to be capable of undertaking gainful employment; and
- (c) where a member has been working reduced hours and had reduced pay as a consequence of the reduction in working hours, whether that member was in part time service wholly or partly as a consequence of ill-health or infirmity of mind or body.

(2) An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

(3) If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

(4) The Scheme employer and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 (special provision in respect of members receiving Tier 3 benefits) and 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members).

Special provision in respect of members receiving Tier 3 benefits

37. (1) A member in receipt of Tier 3 benefits who attains normal pension age continues to be entitled to receive retirement pension and ceases to be regarded as being in receipt of Tier 3 benefits from that date, and nothing in the remainder of this regulation applies to such a person.

(2) A member who receives Tier 3 benefits shall inform the former Scheme employer upon starting any employment while those benefits are in payment and shall answer any reasonable inquiries made by the authority about employment status including as to pay and hours worked.

(3) Payment of Tier 3 benefits shall cease if a member starts an employment which the Scheme employer determines to be gainful employment, or fails to answer inquiries made by the employer under paragraph (2), and the employer may recover any payment made in respect of any period before discontinuance during which the member was in an employment it has determined to be gainful employment.

(4) A Scheme employer may determine that an employee has started gainful employment for the purposes of paragraph (3) if it forms the reasonable view that the employment is likely to endure for at least 12 months and it is immaterial whether the employment does in fact endure for 12 months.

(5) A Scheme employer must review payment of Tier 3 benefits after they have been in payment for 18 months.

(6) A Scheme employer carrying out a review under paragraph (5) must make a decision under paragraph (7) about the member's entitlement after obtaining a further certificate from an IRMP as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment.

(7) The decisions available to a Scheme employer reviewing payment of Tier 3 benefits to a member under paragraph (5) are as follows—

(a) to continue payment of Tier 3 benefits for any period up to the maximum permitted by regulation 35(7) (early payment of retirement pension on ill-health grounds: active members);

(b) to award Tier 2 benefits to the member from the date of the review decision if the authority is satisfied that the member—

(i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either

(ii) is unlikely to be capable of undertaking gainful employment before normal pension age, or

(iii) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age; or

(c) to cease payment of benefits to the member.

(8) A member whose Tier 3 benefits are discontinued under paragraph (3) or (7)(c) is a deferred pensioner member from the date benefits are discontinued and shall not be entitled to any Tier 3 benefits in the future.

(9) A Scheme employer which determines that it is appropriate to discontinue payment of Tier 3 benefits for any reason shall notify the appropriate administering authority of the determination.

(10) A Scheme employer may, following a request for a review from a member in receipt of Tier 3 benefits or within 3 years after payment of Tier 3 benefits to a member are discontinued, make a determination to award Tier 2 benefits to that member from the date of the determination, if the employer is satisfied after obtaining a further certificate from an IRMP, that the member is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either—

(a) is unlikely to be capable of undertaking gainful employment before normal pension age; or

(b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age.

(11) The IRMP who provides a further certificate under paragraphs (6) or (10) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

(12) Where the member's former employer has ceased to be a Scheme employer, the references in paragraphs (5) to (7), (9) and (10) are to be read as references to the member's appropriate administering authority.

Early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members

38. (1) A deferred member who, because of ill-health or infirmity of mind or body—

(a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member, and

(b) is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is the sooner,

may ask to receive payment of a retirement pension whatever the member's age.

(2) A request under paragraph (1) must be made in writing to the deferred member's former Scheme employer or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member is suffering from a condition that renders the member—

(a) permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so,

(b) whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age, or for at least three years, whichever is the sooner.

(4) A deferred pensioner member who, because of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age, may ask to receive payment of a retirement pension at any time before the member's normal pension age.

(5) A request under paragraph (4) must be made to the deferred pensioner member's former Scheme employer, or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(6) Before determining whether to agree to a request under paragraph (4), the deferred pensioner member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member, as a result of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age.

(7) If the Scheme employer is not the deferred or deferred pensioner member's appropriate administering authority, it must obtain that authority's consent to the appointment of an IRMP under this regulation.

(8) An IRMP appointed under paragraph (6) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

Calculation of ill-health pension amounts

39. (1) Subject to paragraphs (5) to (7), Tier 1 benefits are calculated by adjusting the active member's pension account as follows—

(a) an amount is added to the balance in the account for the year in which the member's employment was terminated, equivalent to the amount of earned pension the member would have accrued between the day following the date of termination and normal pension age, if that member had been treated as receiving assumed pensionable pay, calculated in accordance with regulation 21(5) (assumed pensionable pay) for each year and fraction of a year in that period and treating any election under regulation 10 (temporary reduction in contributions) as lapsed at the date of the termination of the member's employment; and

(b) retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.

(2) Subject to paragraphs (5) to (8), Tier 2 benefits are calculated by adjusting the active member's pension account as follows—

(a) for the year in which the member's employment was terminated, one quarter of the sum calculated in accordance with paragraph (1)(a) is added; and

(b) retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.

(3) Tier 3 benefits are the retirement pension that would be payable to the member if that member had reached normal pension age on the date the active member's employment was terminated.

(4) Benefits payable under regulation 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) are the retirement pension that would be payable to the member if that member had reached normal pension age on the date from which benefits are awarded.

(5) Where a member entitled to Tier 1 benefits subsequently becomes an active member, no addition is to be made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership.

(6) Where a member entitled to Tier 2 benefits ("the initial ill-health retirement") subsequently becomes an active member, the addition made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2

benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with paragraph (7).

(7) The number of years for which a member to whom paragraph (6) applies is treated as having received assumed pensionable pay for the purposes of paragraph (1)(a) or (2)(a) shall not exceed—

(a) the number of years at the date of the initial ill health retirement up to the member's normal pension age at that time, less

(b) a quarter of the number of years calculated in accordance with sub-paragraph (a), less

(c) the number of years during which the member has been an active member after the initial ill-health retirement.

(8) Paragraph (2) applies in the case of a member entitled to Tier 2 benefits following a review under regulation 37(5) or (10) with the following modifications—

(a) the references to the date on which the member's employment terminated are to be read as references to the date on which the review under regulation 37(5) was carried out or the determination under regulation 37(10) was made; and

(b) the account that the member has on the date of the review decision under regulation 37(5) or the date of the determination under regulation 37(10), is treated as if it were an active member's pension account for the purposes of the calculation of the benefits to which the member is entitled.

(9) For the purposes of this regulation—

(a) in calculating assumed pensionable pay in accordance with regulation 21(5) (assumed pensionable pay), account is only taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body; and

(b) no adjustment is to be made to any sum by virtue of regulation 21(7) for any period after the date of termination of employment under regulation 35 (early payment of retirement pension on ill-health grounds: active members).

Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 – (Statutory Instrument 2014/525)

Ill-health retirement

12. (1) A member who qualifies for Tier 1 or Tier 2 benefits under the 2013 Regulations who would have benefited from the protection in regulation 20(13) of the Benefits Regulations (transitional protection for those aged 45 before 1st April 2008) if those Regulations had applied on the date the member's employment was terminated, is entitled to benefits equalling the higher of—

(a) the Tier 1 or Tier 2 benefits, as the case may be, calculated under the 2013 Regulations and these Regulations; or

(b) the benefits the member would have received under sub-paragraph (a) if the amount to be added under regulation 39(1) or (2) of the 2013 Regulations (calculation of ill-health pension amounts) were calculated by reference to the period that would have been added had regulation 28 of the 1997 Regulations (amounts of ill-health pension and grant) applied and if—

(i) the period of membership the member had accrued under the Earlier Schemes and the 2014 Scheme had counted as a period of membership of the 1998 Scheme,

(ii) the amount added under regulation 39(1) or (2) of the 2013 Regulations were calculated by reference to a 1/60th accrual rate.

(2) The 2013 Regulations apply to a person in respect of whom benefits are paid under regulation 20(2) of the Benefits Regulations (early leavers: ill-health) as if that person were in receipt of Tier 1 Benefits under the 2013 Regulations.

(3) The 2013 Regulations apply to a person in respect of whom benefits are paid under regulation 20(3) of the Benefits Regulations as if that person were in receipt of Tier 2 Benefits under the 2013 Regulations.

(4) A person in respect of whom benefits are, or have been paid under regulation 20(4) of the Benefits Regulations is not entitled to Tier 3 benefits under the 2013 Regulations.

(5) Where a member is in receipt of benefits under regulation 20(4) of the Benefits Regulations on or before 31st March 2014, notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), regulations 20(6) to (11) of the Benefits Regulations continue to have effect in relation to those benefits and regulation 37 of the 2013 Regulations (special provision in respect of members receiving Tier 3 benefits) does not apply.

(6) A certificate produced by an IRMP under the 2008 Scheme may be used for the purposes of making determinations under the 2014 Scheme.

(7) A person who has received an ill-health pension and grant under the Earlier Schemes, which for the purposes of this paragraph does not include the 2008 Scheme, is to be treated as if that person were in receipt of Tier 1 Benefits under the 2013 Regulations.

Section 2 - General Guidance

Part I - Role of the employer

6. In the context of ill health retirements, the role of the Scheme employer begins a long time before employment has been terminated and the question of entitlement to an ill health retirement benefit arises. The management of ill health in the work force and, in particular, during the period leading up to termination of employment, is outside the scope of this guidance. However, the "Prevention and Management of Sickness Absence" version 3 published by the Local Government Employers in August 2013 provides helpful advice which can be downloaded from - <http://www.local.gov.uk/web/guest/employment-relations/-/journal/content/56/10180/3915367/ARTICLE>. It would not be appropriate to consider the release of ill health retirement benefits for a reason other than when the member was genuinely medically incapacitated from undertaking their current employment or any other employment at the point of departure.

Termination of employment on ill health grounds

7. Responsibility for deciding the grounds on which the employment of a Scheme member has been terminated still rests solely with the Scheme employer (regulation 36 (1)). But a Scheme employer cannot make a determination under regulation 36 unless they have obtained a certificate from an independent registered medical practitioner qualified in occupational health medicine (see regulation 36(1)(a) to (c) and Schedule 1 for independent registered medical practitioner definition). Regulation 36 only requires one certificate from one independent registered medical practitioner.

8. It is also important to note that all the regulations referred to in this guidance are subject to the civil law burden of proof. As such, the determination of questions is based on the "balance of probabilities" test and not on the stricter criminal law test of "beyond reasonable doubt".

Part II - Questions for the employer to determine

9. Under regulation 35, the appropriate Scheme employer is required to consider and decide a number of questions before entitlement to an ill health retirement benefit under that regulation can be awarded. These include:-

- a) does the member meet the 2 years vesting period? (Regulations 3(7) and 35(1)); and
- b) does an independent registered medical practitioner consider that the member's ill health or infirmity of mind or body render him or her permanently incapable of discharging efficiently the duties of the employment the member was engaged in? (Regulation 35(3)). For example, would the member ever be able to do the old/former job?; and
- c) does the independent registered medical practitioner consider that the member's ill health or infirmity of mind or body render him or her not immediately capable of undertaking any gainful employment? (Regulation 35(4)). For example, would the member, at the time of the medical

assessment, be able to do a different job which satisfies the definition of “gainful employment”?

10. If the answers to all three questions are in the affirmative, there is a prima facie entitlement to payment of an ill-health benefit under regulation 35. To decide the level of benefit, the employer must further decide which of the following three tiers applies:-

a) Tier One: is the member unlikely to be capable of undertaking gainful employment before reaching his normal pension age?

b) Tier Two: is the member unlikely to be capable of undertaking any gainful employment within three years of leaving local government employment, but it is thought likely that he or she would be able to do so before reaching his normal pension age?

c) Tier Three: is the member likely to recover sufficiently from the incapacity to enable him or her to be capable of undertaking gainful employment within three years of leaving local government employment or before reaching normal pension age if earlier?

11. Additional questions concerning part time employment and the protection of rights of certain members fall to be considered by virtue of regulations 36(1)(c) and 39(9) of the 2013 Regulations and regulation 12 of and Schedule 2 to the Transitional Regulations (in respect of a deferred pensioner member). As regards part time employment, such questions could include:-

- Has the member been in part time service as a consequence of ill health or infirmity of mind or body?;
- How long has the member been in part time employment?; and
- How many hours are being worked?

Entitlement to early payment of retirement pension on the grounds of ill health: deferred and deferred pensioner members

12. Regulation 38 provides the early release of unenhanced ill health retirement benefits in respect of the following:-

- (a) a deferred member (who left local government employment with an entitlement to a deferred benefit); and
- (b) a member who has left his or her employment and becomes a “deferred pensioner member” by virtue of regulation 37(8). (Regulation 37(8) is where Tier Three ill health benefits are discontinued because they are found, following a review, to be fit for gainful employment again before normal pension age).

13. In respect of 12(a), the member can ask for the early payment of retirement benefits where the member becomes permanently incapable of discharging efficiently the duties of their former employment and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least 3 years whichever is the sooner, as certified by an independent registered medical practitioner.

14. In respect of 12(b), the member can apply for the early payment of normal retirement benefits where the member is suffering from any medical condition which renders the member unlikely to be capable of undertaking gainful employment before normal pension age, as certified by an independent registered medical practitioner.

15. In each case, the member would need to apply to their former Scheme employer (or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer) for the early release of the deferred benefit. The Scheme employer should notify the administering authority to release unenhanced benefits from the date the Scheme employer made the determination that the member meets the conditions in regulation 38 (see regulation 32(10)).

Payments

16. Ill health retirement benefit payments are made by the relevant Local Government Pension Scheme administering authority following notification of the determination by the Scheme employer.

Part III - The role and status of the independent registered medical practitioner

17. The certification of ill health retirements by an independent registered medical practitioner qualified in occupational medicine has been a feature of the Scheme regulations for a number of years and is carried forward into the new Scheme arrangements in regulations 36(1), 37(6) and (10) and 38(3) and (6). These regulations set out the questions that the independent registered medical practitioner must address in his or her certificate.

18. In a recent maladministration case, the Deputy Pensions Ombudsman ruled that use of two independent registered medical practitioners from the same occupational health provider in the same case could not be considered independent. The Department disagrees and is of the view that the Deputy Pensions Ombudsman's ruling should not be followed. When medically assessing a member for ill health retirement, a Scheme employer may use an independent registered medical practitioner in a particular case, even if an occupational health doctor from the same practice has previously seen or considered the member. Individual practitioners have an individual obligation to act professionally and independent of other occupational health colleagues in the practice. The 2013 Regulations are to be amended to clarify this point. A Scheme employer must use an independent registered medical practitioner who has been approved by the relevant administering authority (see regulation 36(3)). Such administering authorities should take note of the relevant qualifications (see Schedule 1 for definition of independent registered medical practitioner) Administering authorities that limit the numbers of authorised independent registered medical practitioners and ensure they meet relevant quality standards are more likely to ensure that the advice and opinion given is appropriate and fair.

19. Additionally, independent registered medical practitioners should also note that:-

(a) in respect of a Tier Three member, the independent registered medical practitioner who provides a further medical certificate either at the review stage or within 3 years after the payment of Tier Three benefits have been discontinued, may be the same independent registered medical practitioner who provided the initial certificate. Regulation 37(11) refers; and

(b) where a deferred pensioner member seeks early payment of retirement pension due to ill health, the independent registered medical practitioner may be the same independent registered medical practitioner who provided the initial certificate. Regulation 38(8) refers.

20. Further, the independent registered medical practitioner may be asked to sign the certificate required under regulations 36(1), 37(6) and (10) or 38(3) and (6) and it is recommended that the independent registered medical practitioner complies with this request. The Scheme employer will need to understand the reasoning of the independent registered medical practitioner when making their decision. So it is, therefore, recommended that the independent registered medical practitioner provides a narrative report to accompany the certificate. Further, where the independent registered medical practitioner is of the opinion that the applicant could work in their current role with adjustments, or in an alternative role that is likely to be available with that employer, it is appropriate to include advice on this in the narrative report if such advice has not already been given to the Scheme employer previously.

Part IV - Questions for the independent registered medical practitioner

21. In many respects, these reflect the questions that the employer is ultimately responsible for deciding but it is important to bear in mind that the independent registered medical practitioner is not being asked to confirm the termination or otherwise of the member's employment. Under regulation 36(1), the role of the independent registered medical practitioner is to certify whether or not, in his or her opinion, on the balance of probabilities, the criteria for entitlement to an ill health benefit are satisfied in any individual case. On this basis, the questions to be considered by the independent registered medical practitioner are:-

a) is the member permanently incapable of discharging efficiently the duties of the local government employment the member was engaged in because of ill health or infirmity of mind or body (**regulation 35(3)**) and, if so –

b) whether this has resulted in the member not being immediately capable of undertaking any gainful employment (**regulation 35(4)**) and, if so -

- whether the member is unlikely to be capable of undertaking gainful employment before normal pension age (**regulation 35(5)** when read in conjunction with **regulation 35(3)** and **(4)**),

or

- whether the member is unlikely to be capable of undertaking any gainful employment within 3 years of leaving his employment but is likely to be able to undertake gainful employment before reaching normal pension age (**regulation 35(6)** when read in conjunction with **regulation 35(3)** and **(4)**); or

- whether the member is likely to be capable of undertaking gainful employment within 3 years of leaving the employment or before normal pension age, if earlier (**regulation 35(7)** when read in conjunction with **regulation 35(3) and (4)**); and

c) in the case of a member who has been working reduced contractual hours and had a reduction in pay as a consequence of the reduction in working hours, whether that member was in part time service wholly or partly as a consequence of ill health or infirmity of mind or body? (Regulations 36(1)(c) and 39(9)(a)).

Part V – Definitions and terms used

22. It is important that all parties are clear about the meanings behind the terms used in either the regulations or this guidance. The examples given below expand on the definitions given in Schedule 1 to the 2013 Regulations, or others refer to words or phrases that are not defined but which merit explanation.

23. The term “**permanently incapable**” is defined in Schedule 1 as meaning “that the member will, more likely than not, be incapable until, at the earliest, the member’s normal pension age”. In addressing questions about permanent incapacity, whether in terms of the local government employment or gainful employment elsewhere, consideration must, therefore, be given not to the immediate or foreseeable future, but to the date when the member attains their normal pension age. The independent registered medical practitioner should also consider whether the member would be capable following further treatment. Consideration should include whether that treatment is readily available and appropriate for the member and whether, with treatment, the member is likely to become capable before normal pension age. The fact that the member might choose not to accept such treatment should not be a relevant factor. Treatment can include lifestyle changes such as weight loss and stopping the use of harmful substances such as tobacco and alcohol. It would not be appropriate to consider the release of ill health retirement benefits for a reason other than when the member was genuinely medically incapacitated from undertaking their current employment or any other employment at the point of departure.

24. The term “**gainful employment**” is defined by Schedule 1 as “paid employment for not less than 30 hours in each week for a period of not less than 12 months”. The independent registered medical practitioner is required to judge the member’s capability of undertaking any gainful employment and not the type of local government post formerly held by the member. This reflects government policy whereby public service ill health pensions are to be paid not only on the basis of ability to undertake the member’s current employment, but also other employment in the general workforce. The “gainful employment” test is applied regardless of whether the member has worked full or part-time. The assessment being made is whether the member is likely or unlikely to be capable of undertaking gainful employment and not whether the member would actually want to. The independent registered medical practitioner is encouraged to give an assessment of the type of gainful employment the member is likely to be capable of, in the narrative report.

25. **Significance of ‘3 years’.** The level of benefits payable under regulations 35 and 39 are dependent upon how long the member is unlikely to be capable of

undertaking gainful employment, having taken into account the medical condition at the time when the employer decides to terminate a member's employment. Three years represents a "reasonable period" for the purposes of considering either a Tier Two or Tier Three award (respectively regulation 35(6) and (7)). The regulations also provide for a limit of 3 years for payment of Tier Three benefits (regulation 35(7)).

26. "capable of undertaking". It is important to highlight the fact that regulation 35(4) and (5) (6) and (7) restrict entitlement considerations to medical factors, taking into account the full medical effects of the condition which gave rise to the retirement on the grounds of permanent ill health.

27. Non-medical factors, such as the general availability of gainful employment in a particular area or the attitude to certain conditions, would not be material factors and should not be part of the independent registered medical practitioner's consideration, while the effect a medical condition would have on their practical ability to undertake gainful employment would. The same would apply to the individual's own attitude towards their condition, which could be a limiting factor to undertaking gainful employment, although it is recognised that in some cases, the member's attitude may constitute a medical condition in itself and the independent registered medical practitioner could be asked to make a comment on this.

Section 3 – The Regulations in practice

28. For any of the following to be awarded, the member must have satisfied the following conditions:-

- (a) the two year vesting period as set out in regulation 3 (7);
- (b) the member is, as a result of ill health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in; and
- (c) the member, as a result of ill health or infirmity of mind or body is not immediately capable of undertaking any gainful employment.

Part VI – Tier One Benefits

29. Regulation 35(5) provides for payment of a Tier One ill-health retirement pension where:-

- a) the member meets the conditions in regulations 35 (1) to (4)
- b) a certificate has been obtained under regulation 36(1)(a) to (c); and
- c) based on that certificate, the employer has decided to terminate the member's employment on the grounds that their ill health or infirmity of mind or body renders them permanently incapable of discharging efficiently the duties of their current employment and, because of that condition, the member is unlikely to be capable of undertaking gainful employment before normal pension age (regulation 35(1), (3), (4) and (5)).

30. Where a Tier One pension is awarded under regulation 35(5), an amount is added to the balance in the member's pension account for the year in which the member's employment was terminated equivalent to the amount of earned pension the member would have accrued between date of termination of

employment and normal pension age based on an assumed pensionable pay calculation undertaken in accordance with regulation 21(4) and 39(9); (Also see regulations 35(5) and 39(1)(a) and (b)).

31. Regulation 39(5), (6) and (7) places a cap on the amount of enhancement a member who retires having met the criteria for an ill health retirement pension may receive if the member has previously retired with a Tier One or Tier Two pension under the 2008 or 2014 Schemes, or with an enhanced ill health pension under an earlier Local Government Pension Scheme (see Transitional Regulation 12(7)).

32. The enhancement adjustments would be as follows:-

a) where a member entitled to Tier One benefits under the initial determination subsequently becomes an active member, no additional enhancement is awarded to any Tier One or Tier Two benefits that the member becomes entitled to after that subsequent period of membership (regulation 39(5));

b) where a member entitled to Tier Two benefits under the initial determination subsequently becomes an active member, the additional enhancement to any Tier One or Tier Two benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with regulation 39(7); and

c) no enhancement can be added if the member received an ill health retirement pension under any earlier Scheme (excluding the 2008 and 2014 Schemes).

33. Regulation 39(9) provides that, in calculating the assumed pensionable pay upon which the amount of Tier One enhancement is to be calculated, the employer can base the assumed pensionable pay calculation on the pensionable pay the member would have received if the independent registered medical practitioner certifies that the member was working reduced contractual hours as a consequence of ill health (also see regulation 21(4)). A Tier One pension is not subject to any review mechanism.

Part VII – Tier Two Benefits

34. Regulation 35(6) provides for payment of a Tier Two ill health retirement pension where:-

- a) the member meets the conditions in regulations 35(1) to (4);
- b) a certificate has been obtained under regulation 36(1)(a) to (c); and
- c) based on that certificate, the Scheme employer has decided to terminate the member's employment on the grounds that their ill health or infirmity of mind or body renders them permanently incapable of discharging efficiently the duties of their current employment and, because of that condition, the member is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment but is likely to be able to undertake gainful employment before reaching normal pension age.

35. Where a Tier Two pension is awarded under regulation 35(6), the member's pension account is adjusted so that one quarter of the sum calculated in accordance with regulation 39(1)(a) is added. (Also see regulations 35(6)(a) to (c), 39(2)(a) and (b) and 21(4)). Regulation 39(9) provides that, in calculating the assumed pensionable pay upon which the amount of Tier Two enhancement is to be calculated, the employer can base the assumed pensionable pay calculation on the pensionable pay the member would have received if the independent registered medical practitioner certifies that the member was working reduced contractual hours as a consequence of ill health (Also see regulation 21(4)). Further, regulation 39(5), (6) and (7) place a cap on the amount of enhancement a member who retires having met the criteria for a Tier Two ill health pension may receive if the member has previously retired with a Tier One or a Tier Two pension under the 2008 or 2014 Schemes, or with an enhanced ill health pension under an earlier Local Government Pension Scheme. A Tier Two pension is not subject to any review mechanism.

Part VIII – Tier Three Benefits

36. Regulation 35(7) provides for payment of Tier Three ill health retirement pension where:-

- a) the member meets the conditions in regulation 35(1) to (4);
- b) the certificate has been obtained under regulation 36(1)(a) to (c); and
- c) based on that certificate, the Scheme employer has decided to terminate the member's employment on the grounds that their ill health or infirmity of mind or body renders them permanently incapable of discharging their employment but is medically considered capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier.

37. Where a Tier Three pension is awarded under regulation 35(7), the member would be entitled to their accrued Local Government Pension Scheme pension benefits, with no enhancement. Payments would be discontinued if, following a review under regulation 37(5) and (6), the independent registered medical practitioner certified that the member is now capable of gainful employment and the Scheme employer (or appropriate administering authority if the member's former Scheme employer has ceased to be a Scheme employer) decides to cease the payment at that time.

38. Tier Three payments cannot, in any event, continue beyond three years (regulation 35(7)) and must cease if the member undertakes gainful employment or fails to answer any reasonable enquiries made by the Scheme employer (or the administering authority, where appropriate) about employment (regulation 37(2) and (3)). A member who has previously retired with a Tier Three pension cannot subsequently, following a further period of membership of the Scheme, become entitled to a further Tier Three pension (regulation 37 (8)).

The Severe Ill Health Test

39. In addition to regulation 35(5), where a Tier One award is made, there can be tax implications and penalties unless Her Majesty's Revenue and Customs' 'severe ill health' test is met. Therefore, for administrative purposes, the

independent registered medical practitioner is asked to give an opinion on this test in addition to the requirements for an opinion under the Local Government Pension Scheme Regulations. The test is whether the individual is suffering from ill-health which makes the individual unlikely to be able (otherwise than to an insignificant extent) to undertake gainful work (in any capacity) before reaching pensionable age.

40. All ill health payments are made by the relevant Local Government Pension Scheme administering authority following notification of the determination by the employer (regulation 80 of the 2013 Regulations).

Deferred Pensioner Members and Rule of 85 rights

41. Regulation 18 of and Schedule 2 to the Transitional Regulations permit a deferred pensioner member to have the same opportunity as a deferred member to receive an unreduced pension provided they meet the transitional “rule of 85” and that they were an active member of the 1997 Local Government Pension Scheme.

Requirement to obtain a certificate from an Independent Registered Medical Practitioner qualified in occupational health medicine

42. Regulations 36(1), 37(6), (10), 38(3) and (6) requires a Scheme employer or administering authority as the case may be to obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine.

Return to gainful employment

43. The member with Tier Three benefits is required to notify the previous Scheme employer when employment is obtained and provide details, including the pay and working hours of that employment. The Scheme employer considers the details regarding that employment and, if they decide this is gainful employment as defined in Schedule 1 to the 2013 Regulations (or if the member fails to answer any reasonable enquiries made by the Scheme employer or the administering authority, where appropriate, about employment) payments are discontinued. Regulation 37(3) and (4) sets out what constitutes ‘starting gainful employment’. The Scheme employer should notify the relevant administering authority without delay when payments are to be stopped, and payments should be stopped from the date when gainful employment commenced (see regulation 37(9)).

The Review mechanism

44. Tier One and Tier Two ill health benefits are not subject to a review but Tier Three ill health benefits are subject to a review. Under regulation 37(5), the former employer needs to undertake a review when Tier Three payments have been in payment for 18 months. The employer should write to the Tier Three member asking for details of their employment status. If, from the information provided, the Scheme employer decides that gainful employment had been obtained, the Tier Three payments are discontinued.

Repayment of overpaid payments

45. The date of return to gainful employment will determine the date payments should be stopped and the Scheme employer is required to notify the relevant administering authority without delay when Tier Three payments should be discontinued and from what date (regulation 37(9)). If payments have continued when gainful employment has been found, the employer has powers to recover any overpayment from the Tier Three member under regulation 37(3). Employers are recommended to pass the amount of the recovered tier three payments, without delay, to the relevant pension fund.

Status of member when payments cease

46. The status of a Tier Three member whose benefits are stopped is 'a deferred pensioner member', and he or she is not eligible to receive Tier Three payments in the future (regulation 37(8)).

Seeking a further opinion from an independent registered medical practitioner

47. If, as a result of the Scheme employer's enquiry at the review, it is found that a Tier Three member has not found gainful employment, the employer is required by regulation 37(6) to seek a further opinion from an independent registered medical practitioner as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment, unless the member has already attained normal pension age (see regulation 37(1), (5) and (6)).

48. The same independent registered medical practitioner who signed the certificate that resulted in the first determination can sign the certificate at the Tier Three review (regulation 37(11)). There is no requirement that the independent registered medical practitioner has to be able to certify at a Tier Three review that they have not previously advised, given an opinion on, or otherwise been involved in the case.

Decisions available to the Scheme employer following the 18 month review

49. Following the 18 month review the Scheme employer can:-

- continue payment of Tier Three benefits for any period up to a maximum of 3 years from the date the member left employment, or
- cease payment of the Tier Three benefit, or
- uplift the benefits to Tier Two benefits upon the certification by the independent registered medical practitioner.

Scheme Employers' ability to uplift the member from Tier Three to Tier Two following the review (regulation 37(7) and (10))

50. At the 18 month review or, at the request of the Scheme member either whilst Tier Three benefits are in payment or at any time up to 3 years after the payment of the Tier Three benefit has been discontinued, the Scheme employer can uplift the member to Tier Two benefits. To achieve this, regulation 37(7) and (10) specifies that a member would need to satisfy either the Tier One or Tier Two test first before an upgrade of benefits is awarded. Payment of Tier Two benefits

would commence on the date of the review decision under regulation 37(7)(b) (when reviewing Tier Three benefits) and on the date of the determination under regulation 37(10) (when an uplift of benefits is being sought up to 3 years after Tier Three benefits have ceased) where a medical certificate justifies this. (See regulation 32(9)). The enhancement is calculated as for that of a Tier One except that the member's pension account is adjusted so that a quarter of the sum calculated in accordance with regulation 39(1)(a) is added. As a consequence, the member's pension account will need to be adjusted and regulation 39(8)(a) and (b) sets out how this should be applied.

51. There is no provision to make a determination for a Tier One payment at the review or a subsequent occasion. If at the Tier Three review or subsequently, the independent registered medical practitioner judges that the member is, because of the condition resulting in Tier Three benefits, now permanently incapable of their local authority employment and is unlikely to be capable of undertaking gainful employment before normal pension age or is unlikely to be capable of undertaking any gainful employment within 3 years of leaving employment but is likely to be able to undertake gainful employment before normal pension age, the employer only has powers to award a Tier Two pension.

Part IX – Special considerations**Assumed Pensionable Pay (APP) and ill health retirement**

52. Scheme employers are required to calculate assumed pensionable pay and notify this to the administering authority to enable the administering authority to calculate the amount of enhancement to add into a member's pension account upon retirement with a Tier One or Tier Two tier ill health pension. Assumed pensionable pay for this purpose is calculated as follows for an employee paid other than monthly:

- a) calculate the average of the pensionable pay for the 12 complete weeks prior to pay period in which the ill health retirement occurred after removing any "lump sums" but including any assumed pensionable pay already credited in those 12 weeks.
- b) gross up to an annual figure.
- c) if 12 complete pay periods do not exist, use whatever number of complete periods are available.

For a monthly paid employee three complete pay periods should be used instead of 12 but the calculation methodology is the same.

53. The assumed pensionable pay, as calculated above, may be increased at the time of calculation where the Scheme employer, determines to add back in any regular lump sum payment made in the last 12 months and in respect of which the Scheme employer decides there is a 'reasonable expectation' the lump sum would have been paid again on a regular basis. (Regulations 21(4) and (5))

54. However, if the independent registered medical practitioner certifies that the member's pay during the period used to calculate the assumed pensionable pay was reduced because the member's contractual hours of employment had, since joining the Scheme, been reduced as a consequence of the member's ill health, the Scheme employer can calculate the assumed pensionable pay as if the member's contractual hours had not been reduced. This sort of assessment should be routinely provided by independent registered medical practitioners or it is specifically requested by the member where they are working reduced contractual hours. (Regulation 39(9)(a)).

The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 – as regards ill health retirement**Treatment of those aged 45 before 1 April 2008 - Tier One and Tier Two determination – Transitional Protection**

55. Transitional regulation 12 provides continued protection for those who would have benefited from the age 45 protection in regulation 20(13) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (transitional protection for those who were active members before 1st April 2008, were aged 45 before that date, have had continuous membership since that date and have not drawn any benefits prior to ill health

retirement e.g. on flexible retirement). This protection ensures the benefits are not less than the member would have received if the member had remained a member of the 1998 Scheme (i.e. the member should be in no worse a position than they would have been had regulation 28 of the Local Government Pension Scheme Regulations 1997 applied and the conditions of that regulation were met).

Transitional protections

56. Transitional regulation 12 also provides that, if a person who is a member of the 2014 Scheme has previously been awarded Tier One or Tier Two ill health benefits under the Benefits Regulations, those previous ill health benefits are treated as if they were benefits awarded under the 2013 Regulations. However, where a Tier Three ill health pension was awarded under the Benefits Regulations, Transitional regulation 12 stipulates that where there is a need to make an adjustment to that pension (i.e. such as an uplift to Tier Two) it would need to be dealt with under the Benefits Regulations and also that the member would not be entitled to any Tier Three benefits under the 2013 Regulations.

57. Transitional regulation 12 also deals with the situation whereby some ill health retirements may be in the process of being assessed just prior to the commencement of the 2014 Scheme on 1st April 2014 and allows a certificate obtained from the independent registered medical practitioner prior to 1st April to remain valid under the regulatory framework with effect from 1 April 2014.

How to assess 'gainful employment' if a member in receipt of a Tier Three pension informs the employer, prior to the 18 month review, that they have a short term contract

58. It would be unreasonable for a Scheme employer to assume that a person is in gainful employment having notified them, prior to the 18 month review, that they have just entered a short term contract of employment for, say, six months. Whether that contract will be renewed or not, would be pure conjecture and should not, therefore, fall to be considered. Even if a Tier Three member had served two months of the six month contract, it follows that the definition of gainful employment has not been satisfied. Neither would it be reasonable to make any assumption that four months on, the contract might be reviewed for a further six months which could arguably bring it within the gainful employment definition.

59. Where the Scheme employer is notified of a member's employment showing contract details of 30 hours or more in each week, for a period less than 12 months, the Tier Three payments should not be stopped but the employer should check the current employment status with the member at the point the contract is due to end. If it is found that a further contract has been obtained (i.e. the period of employment has been extended) and this was again for 30 hours or more in each week and the Scheme employer forms the reasonable view that the continuous employment period, in total, is likely to endure for at least 12 months, it can stop payments as the gainful employment test will have been satisfied. It is immaterial whether the employment does in fact endure for 12 months. (Regulation 37(4)).

60. Under some contracts, the hours may be variable and this may cause some difficulty in deciding whether, over the future, the 30 hour test is satisfied over a 12 month period. If employment was obtained some time ago, it should be possible to ascertain a pattern of working from the variable hours worked up to that point and to base a decision on that evidence. A better way forward would be to defer any decision until later in the employment when evidence about working hours has been established.

61. In other words, taking short term contracts may avoid the Tier Three pension being suspended in the short term, but once the employment in individual contracts for 30 hours or more in each week have been undertaken and the Scheme employer forms the reasonable view that the continuous employment period, in total, is likely to endure for at least 12 months, the definition of gainful employment would be satisfied. Regulation 37(4) refers.

62. In any event, if it is clear from the outset that the member has obtained employment with a specified period of less than 12 months, the Scheme employer will wish to ask the member in receipt of a Tier Three pension, to let them know their employment status at the end of the period of the first short term contract, and subsequent contracts until the gainful employment test is likely to be met.

63. The view is also taken that the words “in each week” where they appear in the definition of “gainful employment” in Schedule 1 means in each week throughout the 12 month period, rather than in each week where there is a contract of employment. Otherwise, the definition would be satisfied by a person taking just a one month contract of employment for 35 hours a week.

64. Where a member notifies the previous employer that they have obtained employment, for example, 37 hours a week on an open contract i.e. one that has no specified end date, it would be reasonable for the employer to take the view that the gainful employment test was met and to discontinue payment of the Tier Three benefits.

Resolution of disagreements and Internal Dispute Resolution Procedure (IDRP)

65. Regulations 72-78 of the 2013 Regulations enable a Scheme member to make an application for the resolution of any disagreement between themselves and a Scheme employer or an administering authority about a matter in relation to the Scheme. This includes any decision taken by a Scheme employer or administering authority under the Local Government Pension Scheme Regulations regarding entitlement to an ill health retirement benefit at the date employment was terminated, or the early payment of deferred benefits or early payment of benefits to a deferred pensioner member on ill health grounds (regulation 38). The Internal Dispute Resolution Procedure arrangements also apply in cases where a Scheme employer or administering authority has failed to make a decision within any period prescribed by the Scheme's regulations.

66. Other decisions which fall within the Scheme's Internal Dispute Resolution Procedure provisions include:-

- a) any disagreement with the entitlement level of Tier One, Two or Three pension (regulation 35(5), (6) and (7));
- b) whether a certificate has been obtained from an independent registered medical practitioner in compliance with the Scheme's regulations (regulations 36(1), 37(6) and (10) and 38(3) and (6));
- c) whether the Scheme employer has had regard to this guidance in carrying out their functions under regulations 36-38; and
- d) whether a Tier Three pension should be suspended because the member has obtained gainful employment or, if not, is judged to be capable of undertaking such employment (regulation 37(3) and (4)).

67. This list is by no means exhaustive and is only given as an illustration of some of the main decisions on ill health retirement pensions that fall within the Scheme's Internal Dispute Resolution Procedure arrangements. It is also important to note that these arrangements do not apply directly to the opinions given by the independent registered medical practitioner because their role is to give an opinion on whether or not the medical criteria for entitlement to an ill health pension is satisfied. It is the Scheme employer that has the regulatory responsibility to decide the entitlement question based on the certificate and/or report submitted by the independent registered medical practitioner and against whom any Internal Dispute Resolution Procedure dispute regarding entitlement to benefit rests.

68. Detailed guidance for both Scheme employers and Scheme members on the Scheme's Internal Dispute Resolution Procedure arrangements will be available from relevant Local Government Pension Scheme administering authorities. The guides also refer to the role of the Pensions Advisory Service and the Pensions Ombudsman.

Section 4 – Documentation

69. The regulations themselves do not prescribe the precise format of the certificate that the independent registered medical practitioner is required to provide under regulations 36(1), 37(6) and (10) and 38(3) and (6) although the overall content is set out in the regulation itself. To assist practitioners in this process, examples of pro-forma certificates can be downloaded from the Circulars page of the Local Government Association (LGA) website at <http://www.local.gov.uk/web/workforcelibrary/lgps-circulars> (see Circular 277 of March 2014 and Circular 282 of June 2014). Individual Scheme employers, in consultation with their administering authority, medical advisers, and independent registered medical practitioner, may wish to adapt the certificates to reflect local circumstances and procedures provided that the content complies fully with the Scheme's regulatory requirements.



Department for Communities and Local Government

FREQUENTLY ASKED QUESTIONS – ILL HEALTH RETIREMENT – 2014 SCHEME – EDITION 1

THIS SET OF ANSWERS TO FREQUENTLY ASKED QUESTIONS DEALS WITH THE REGULATORY PROVISIONS OF THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013 (SI 2013/2356). IT AIMS TO SUPPORT LGPS PRACTITIONERS AND INDEPENDENT REGISTERED MEDICAL PRACTITIONERS.

This replaces earlier FAQ Editions which are now obsolete

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Ill Health benefits for Local Government Pension Scheme members

Main questions answered

This DCLG aide-memoir is intended to help Local Government Pension Scheme (“LGPS”) practitioners and Independent Registered Medical Practitioners (“IRMPs”) apply the current ill health retirement provisions contained in the LGPS Regulations 2013 and should be read in conjunction with the 2014 LGPS Statutory Ill Health Retirement Guidance. This Guidance is published at: <http://www.lgpsregs.org/images/SecStateGuidance/IIIHealthGuidance.pdf>.

In respect of members who became deferred or deferred pensioner members prior to 1 April 2014 and who make an application for ill health retirement benefits, their application should be considered under the relevant Earlier Scheme Regulations. Additionally, the refreshed 2008 Guidance also makes it clear that where a member who was in receipt of Tier Three benefits on or before 31 March 2014, Regulation 20(6) to (11) of the Benefit Regulations 2007 (as amended) continues to have effect in relation to those benefits.

The FAQs in this document relate to the ill health retirement regime in the LGPS Regulations 2013 and do not replace the Regulations. Practitioners and IRMPs will want to seek their own legal advice as necessary.

Q1. Can ill health benefits be awarded if the member resigns?

No. Ill health retirement benefits can only be awarded to a member who has 2 years qualifying service when:

- a) the Scheme employer terminates the member’s employment (before the member’s normal pension age) on the grounds that the member’s ill health or infirmity of mind or body renders him/her permanently incapable of discharging efficiently the duties of his/her current employment, and
- b) as a result of that ill health or infirmity of mind or body, the member is not immediately capable of undertaking any gainful employment (whether in local government or elsewhere) before his/her normal pension age.

Q2. Who makes the decision to award ill health retirement benefits?

It is the Scheme employer who makes the decision to terminate a member’s employment on the grounds of ill health but they cannot make this decision without having first obtained a certificate from an independent registered medical practitioner (IRMP) qualified in occupational health medicine and who is registered with the General Medical Council.

If the Scheme employer decides to terminate a member’s employment on the grounds of ill health, it is also for them to decide whether to award Tier One, Tier Two or Tier Three ill health retirement benefits.

Tier Three framework**Q3. Why is a Tier Three needed?**

All employees who are members of the LGPS and whose employment is terminated because they are permanently incapable of their current job and are not immediately capable of undertaking any gainful employment after they leave their current job are entitled to an ill health retirement pension.

The ill health retirement Regulations provide a pension for those employees whose Scheme employer terminates their employment because they are permanently incapable of that employment and either:

- are unlikely to be capable of undertaking gainful employment before their normal pension age (Tier One), or
- are unlikely to be capable of undertaking any gainful employment within 3 years of leaving but are likely to be capable before their normal pension age (Tier Two).

Tier Three provides a reviewable pension for a member whose Scheme employer terminates their employment because they are permanently incapable of their current job but are likely to be capable of undertaking gainful employment within 3 years or before their normal pension age, if earlier.

Q4. How is the Tier Three benefit paid?

It is a pension made up of the member's accrued benefits to the point that their employment was terminated on the grounds of ill health with no enhancement.

The Tier Three Review**Q5. Why is there a review for the Tier Three?**

A Tier Three benefit is an interim pension as the member is considered capable of returning to other work and is not payable if gainful employment is found. The Tier Three member is required to inform their former Scheme employer if work is found and payments will stop if the Scheme employer considers that this is gainful employment as defined in the Regulations (or if the member fails to answer inquiries made by their former Scheme employer about that work). The Scheme employer needs to check the Tier Three member's employment status when payments have continued for 18 months. These payments will stop if gainful employment has been obtained. If it is found that the member is not in gainful employment at the review, there is a requirement for the Scheme employer to check the latest medical position.

Q6. How many times does the Scheme employer undertake a Tier Three review?

The Scheme employer is only required to undertake a review once when payments have continued for 18 months. The Scheme employer is not required to undertake a further review but they are not prevented from looking at the case again in the light of the medical assessment at the review.

Q7. Is there a review for Tier One or Tier Two?

No.

Q8. Who does the review?

The previous Scheme employer, or successor body, has to check the Tier Three member's employment / medical status if payments have continued for 18 months. If the former employer has ceased to be a Scheme employer and there is no successor body, the relevant administering authority must undertake the review.

Q9. Why does a Scheme employer need to ask about the terms of a member's contract at the review?

A member in receipt of a Tier Three pension, who notifies their former Scheme employer that they have started paid employment, is not expected to work out whether they have obtained gainful employment as this is a matter for the Scheme employer. To help this assessment process, the Scheme employer needs to know if the work obtained is actually paid employment and will need details of pay to check this. They also need to be advised about how many hours the member is working each week and the terms of the contract i.e. is this for a fixed period or an open contract with no end date, so that the employer can establish whether gainful employment has been obtained? In Schedule 1 to the 2013 Regulations "gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months. It should be noted, however, that the former Scheme employer can cease the Tier Three pension if they form the reasonable view that gainful employment is likely to endure for at least 12 months, regardless of whether or not the employment does, in fact, endure for 12 months.

Q10. What happens if the person had obtained work when the Scheme employer conducts the review at 18 months?

The Scheme employer is required to stop payments if the work obtained is 'gainful employment' as defined in the 2013 regulations ("gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months but, as noted above, the former Scheme employer can cease the Tier Three pension if they form the reasonable view that gainful employment is likely to endure for at least 12 months, regardless of whether or not the employment does, in fact, endure for 12 months). The Scheme employer should notify the administering authority without delay that payments should be discontinued.

Q11. What happens if the member fails to respond to the former employer's enquiry?

If a Scheme employer has written to a member at the review with no response, they may wish to check whether a change of address notification has been received by the administering authority. If despite reminders, there is still no response from the member, it would be considered reasonable to cease payments until the employment position has been clarified.

Q12. What happens if work was found some time before the 18 month review and the Tier Three member failed to inform their previous employer?

Any payment made beyond the date of return to gainful employment can be regarded as an overpayment and the former Scheme employer has powers to recover that overpayment.

However, if the Scheme employer has had to ask for further information to be able to assess whether the employment is 'gainful employment' as described in the Regulations, the Scheme employer may wish to consider ceasing payments at the point when the information received confirms gainful employment.

Recovered payments will be the gross amount paid to the member and should be returned without delay to the relevant LGPS pension fund. The member will be able to reclaim any tax paid on these payments from HMRC.

If the Scheme employer considers that an overpayment has been made but then chooses not to seek recovery, or is unsuccessful in seeking to recover the overpayment, this would result in the payment being an unauthorised payment unless the payment was made in error and was for less than £250 gross. If it is an unauthorised payment the relevant administering authority has to provide the member with various information by the following 7 July (amount of overpayment, dates, nature of overpayment), and has to report the overpayment to HMRC as an unauthorised payment which will lead to a 40% unauthorised payment tax charge on the member and a Scheme sanction charge of 40% or 15% on the Fund (unless a case can be made for HMRC to waive the Scheme sanction charge).

Q13. Should the Scheme employer inform the member when their Tier three payments are stopped?

Yes, if Tier Three benefits are stopped, the Scheme employer should inform the member why and from what date. For example, if payments are stopped because of a return to paid employment, the Scheme employer should inform the member that they have decided that the paid employment they have is 'gainful employment' as described in the Regulations. The Scheme employer also needs to promptly inform the relevant administering authority to discontinue the Tier Three payments and the date from which the payment is to cease.

Q14. If a Tier Three member continues to be incapable of work at the point of the review, can retirement benefits continue?

Yes, in certain circumstances. A further medical judgement would be needed and where the medical assessment justifies this, a Scheme employer would be able to decide to award the enhanced Tier Two benefits from the date of the review decision. Alternatively, Tier Three payments could also continue based on the initial medical assessment up to the maximum three years after the date of termination of employment, as prescribed in the Regulations. Tier Three benefit payments would, of course, cease if gainful employment was obtained or the person was deemed to be capable of undertaking gainful employment.

Q15. Can a Tier Three member be considered for an enhanced retirement pension at the review?

Yes. The regulations provide that a Scheme employer can consider an uplift from a Tier Three to a Tier Two pension either at the review or at any stage up to 3 years after a Tier Three pension has been discontinued but this must relate to the condition that resulted in the Tier Three award.

A Scheme employer will need to be aware that there could be tax implications for the award of the enhanced Tier Two pension and have regard to HMRC normal rules for the increases of pensions, see

<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11104310.htm> and
<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11104460.htm>.

Stopping Tier Three payments**Q16. Why are payments stopped after 3 years?**

The duration of three years is consistent with the eligibility criteria where a member is judged capable of undertaking gainful employment within three years or not capable of undertaking gainful employment within three years, for the Tier Two and Three pensions respectively. A Tier Three pension is a short term benefit to provide financial assistance until such time as gainful employment can be, or is, found. It is not the intention that a member, whose medical condition requires payments beyond three years, should remain a Tier Three member and the Scheme employer has powers to consider an enhanced Tier Two pension at the Tier Three review. Even after Tier Three payments have been stopped, a further determination can be made under Regulation 37(10) up to three years after payments are discontinued where the original medical condition justifies this.

Q17. Can Tier Three payments be stopped regardless of whether a review has been undertaken or not?

If payments are continuing until the review, payments cannot be stopped until a review is undertaken by the Scheme employer at 18 months as the Regulations require this when payments have been made for that long. It follows, therefore, that while Tier Three payments will stop at three years if they are continuing at that point, they cannot be stopped at any point up to the three year threshold without an earlier review. The exception is where the member has obtained gainful employment or fails to answer any reasonable inquiries made by the Scheme employer about the person's employment status, including as to pay and hours worked.

Q18. Does the Scheme employer have to notify the administering authority when payments stop?

Yes and promptly. The Scheme employer should notify the administering authority without delay when Tier Three payments need to be stopped giving the reason i.e. that gainful employment has been found, or at or after the review when the member is judged immediately capable of gainful employment, or when the payments need to stop because they have been paid for three years.

Q19. Can a member who has received Tier Three ill health retirement benefits which have been discontinued receive retirement benefits again before their normal pension age?

Yes, a deferred pensioner member may:

- a) subject to the former Scheme employer obtaining the necessary medical certification, ask to receive payment of an unreduced retirement pension at any time before their normal pension age on the grounds that, because of ill health or infirmity of mind or body, they are unlikely to be capable of undertaking gainful employment before their normal pension age, or
- b) elect for payment of the deferred benefit at any time from age 55 (on grounds other than permanent ill health) which, if paid before the member's normal

pension age would normally be subject to an actuarial reduction for early payment.

Certain protections for members

Q20. Has the age 45 protection in the 2008 Scheme been carried over to the 2014 Scheme?

Regulation 12 in the 2014 Transitional Regulations (SI 2014/525) continues to provide for those who would have benefited from the age 45 protection in Benefit Regulation 20(13) (transitional protection for those aged 45 before 1 April 2008) by ensuring the enhancement is calculated by reference to the period under the 1997 Scheme compared with the period under the 2014 Scheme.

Q21. What if the person has to reduce their hours just before their employment is terminated on ill health grounds?

Provided the IRMP certifies that the member's pay during the period used to calculate the assumed pensionable pay (APP) figure (which used in calculating the amount of enhanced pension to award to a Tier One or Tier Two retiree) was reduced because the member's contractual hours of employment had, since joining the Scheme, been reduced as a consequence of the member's ill health, the Scheme employer can calculate the APP as if the member's contractual hours had not been reduced.

Q22. What happens to a member who has always been employed part-time because of an existing ill health condition and further reduces their contractual hours of employment as a result of that medical condition and is now being considered for ill health retirement?

If a member employed at the outset on a part time basis because of an ill health condition, further reduces their hours as a result of that ill health condition, and provided the IRMP certifies that the member's pay during the period used to calculate the APP was reduced because the member's contractual hours of employment had, since joining the Scheme, been further reduced as a consequence of the member's ill health, the Scheme employer can calculate the APP as if the member's contractual hours had not been further reduced.

Need for Certification by Independent Registered Medical Practitioner qualified in occupation health medicine

Q23. Do all decisions regarding an ill health pension need a certification by an independent registered medical practitioner qualified in occupational health?

Yes, this includes decisions for those who have already left local government and are asking for early release of their pension. Regulations 35-38 require this.

Q24. Can the independent doctor who made the medical assessment that resulted in a Tier Three award, undertake the second medical assessment at the 18 month review if asked to do so by the Scheme employer?

Yes. The same doctor can sign the certificate that resulted in the first determination as well as at the Tier Three review. (Regulation 37(11))

Q25. Can a Tier Three member whose payments have stopped ask for pension payments to resume if it relates to the condition that resulted in a Tier Three award?

Only in certain circumstances but there is no future entitlement to Tier Three payments. Regulation 37(10) permits a determination for a Tier Two pension relating to the condition that resulted in Tier Three payments, if that condition subsequently merits such an award, but any such determination has to be made within three years of the date the Tier Three pension was discontinued.

Other Q&As which IRMPs might find helpful**Q26. What if a member is awaiting treatment or has just had treatment and is not immediately capable of gainful employment, but would be expected to be capable in time?**

In the case of a member who is awaiting treatment for a serious condition, it would be sensible that they undergo treatment first before the Scheme employer makes a decision about whether the member should be considered for ill health retirement unless there are overriding considerations.

In the case of a member who has just had treatment for a serious condition, it would be sensible to allow a suitable recovery period to pass first before the issue of ill health retirement is considered, unless there are overriding considerations.

Q27. How is the term ‘efficiently’ in relation to ‘discharging efficiently the duties of employment’ to be determined?

It takes on its normal everyday meaning as per the Oxford English Dictionary.

Q28. What if a member can undertake a significant or substantial proportion of their job but not all the job?

An ill health retirement in the LGPS is about being permanently incapable of your current job. It might be appropriate for the Scheme employer to consider another role for the member or also consider undertaking any reasonable adjustments.

Q29. How is the term ‘likely’ defined? The standard legal definition of greater than 50%, or the Equality Act definition of ‘could well happen’?

We have not defined ‘likely’ as it should take on its normal everyday meaning as in the Oxford English Dictionary.

Q30. If a member already works less than 30 hours a week and cannot work 30 hours, are they automatically eligible for a pension?

It would depend on whether the member was originally employed to work less than 30 hours a week through choice or because an existing ill health condition forces the person to work less than 30 hours a week. If the latter and the member further reduces their hours of work because of the medical condition and is being considered for an ill health retirement, they would need to be assessed against the ill health criteria like anyone else before a determination can be made. It should be noted that there is no automatic right to a pension. The gainful employment test is applied regardless of whether the member is working full or part-time. The IRMP

report may be key to next steps in this situation as there may be a recommendation that before the Scheme employer considers the question of ill health retirement, consideration is given to whether any workplace adjustments need to be carried out to allow the member to remain in employment.

Q31. If the Scheme employer does not like the opinion of the IRMP is there a reasonable limit to the number of additional opinions that a Scheme employer should or could seek?

There is nothing in the Regulations requiring additional opinions. This issue would really be a matter for the Scheme employer concerned who would make a judgement on whether there is a need for any additional information before being able to make a decision whether or not to award an ill health retirement.

Q32. Is there a plan to create a register of IRMPs who are appropriately qualified and experienced?

Administering authorities have to approve their IRMPs under Regulation 36. There are no plans to create a register as generally this is a local matter. There would be no objection should organisations such as the Association of Local Authority Medical Advisors want to create such a list.

Q33. How should the Scheme employer respond if the member refuses to give consent for the IRMP to send the certificate and/or report to the Scheme employer?

Then the application for the ill health retirement cannot be processed and the member would need to be advised of that. It is the Scheme employer's responsibility to make the final decision in ill health retirement cases. If they are not in possession of the IRMP certificate and/or report, the Scheme employer cannot fulfil its duties in this respect.

Q34. If a member is likely to be able to recover and be capable of gainful employment if they engage with treatment, but refuse to do so, or appear not to be engaging, and are unlikely to do so, do they meet the criteria or not?

Any opinion from an IRMP must be objective and independent. It should be based on available evidence including peer-reviewed evidence in the literature, and should be in line with current medical approaches. Where there is evidence that a good recovery should be expected, and the main reason why the member is unable to recover is solely the result of inappropriate belief, maladaptive behaviours, failure to accept standard treatment or failure to engage reasonably with treatment, it would not be reasonable to consider the member permanently unfit. Where there is a general consensus among ALAMA members in relation to this condition, the IRMP would be expected to follow the consensus view unless an alternative recommendation can be objectively justified.

It is important in these circumstances to explain the issues in a narrative report to the Scheme employer including the provision of appropriate references. This will enable the Scheme employer to make a reasonable and fair decision.

Q35. If a member refuses treatment on the grounds of religious belief, can they be considered to meet the criteria for an award?

We are of the view that the doctor/specialist would not have recommended treatment, unless there was a reasonable degree of success attaching to it. Undergoing such treatment may mean that the member would be completely cured and, therefore, not in need of an ill health retirement. This information should be provided as part of a narrative report from the IRMP.

Q36. Does the IRMP have to request a GP or specialist report?

It would be beneficial for any referral to an IRMP to include as much information about the member as is available, including GP or specialist reports. If these are not with the referral document and the IRMP is of the view that they would (or should) have been prepared, it is acceptable for the IRMP to seek this information so that the IRMP is in possession of all the facts prior to making a professional decision about the member's condition and application for ill health retirement. It would be reasonable for the IRMP to delay the process of certification while awaiting such reports provided they already exist. If they did not request such a report, it would be helpful if the IRMP set out why that is so.

Q37. Can the IRMP disagree with the GP or specialist?

DCLG would regard this as purely a professional matter for the IRMP to decide. If they did disagree then they would need to set out why that is so.

Q38. If the IRMP has seen the member in the past for a different condition, can they still meet the criteria for an IRMP?

Only in respect of Regulation 38 where a deferred pensioner member who has received tier 3 ill health retirement benefits in the past comes back to seek early payment of retirement benefits on the grounds of ill health (which could be for a different condition to the one which led to a tier 3) – the same IRMP who opined originally can make a subsequent determination under the Regulations. In all other cases, they would not be regarded as independent and the member would need to be referred to another IRMP.

Q39. Can we have some clarity as regards a situation where a member is medically fit for gainful employment but has no aptitude for it?

Generally, aptitude is not due to be considered by the IRMP of itself. However, if aptitude and/or attitude emerge as the out-workings of an illness/disease, then it would appear that these should be noted down by the IRMP in his medical report. It is then for the Scheme employer to review the IRMP's report and to take these matters of aptitude/attitude into account when making their decision on ill health retirement.

Q40. The LGPS Statutory Guidance seems to imply that the Scheme employer can only award ill health retirement if the IRMP states that the member is eligible, in effect, expecting the IRMP to make the decision. Can DCLG clarify that this is not the case?

The Statutory Guidance is clear that it is mandatory for the Scheme employer to seek the professional opinion of the IRMP before it makes a decision as to whether to retire the member on ill health grounds. Paragraph 9 of the Guidance specifically refers to Regulation 35 of the LGPS Regulations 2013 and what that Regulation seeks to do but, that said, DCLG notes that the Scheme employer could also assess other factors (as part of the decision making process). These could include:- medical reports from hospital specialists/consultants; whether 'any reasonable adjustments' have also been taken into account of where appropriate (as part of the Disability Discrimination Act) along with any HR reports on absenteeism, sickness, performance records etc.

Other relevant issues

Q41. Would a lump sum be payable again if a further determination to a Tier Two pension is made?

No. The termination of employment on ill health grounds and award of Tier Three benefits triggered a benefit crystallisation event with early release of retirement benefits and a lump sum payment. A member whose Tier Three benefits have stopped is a deferred pensioner member. Any future entitlement to ill health retirement benefits in respect of the ill health condition that resulted in Tier Three ill health benefits, is likely to be a Tier Two award which uplifts the Tier Three pension with an enhancement of 25%.

Q42. From what date does the administering authority make any payments payable under Regulation 38?

Deferred Members

The member should notify the relevant Scheme employer that they want benefits to be released under Regulation 38. The Scheme employer is required to obtain a certificate from the IRMP regarding the member's condition and whether it renders the member permanently incapable of discharging efficiently the duties of the employment the member was engaged in (immediately prior to becoming a deferred member) and, whether as a result of that condition, the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age or for at least 3 years whichever is the sooner. The Scheme employer should notify the administering authority to release unenhanced benefits on and from the date the Scheme employer made the determination that the member met the ill health criteria under Regulation 38.

Deferred Pensioner Members

The member should notify the relevant Scheme employer that they want benefits to be released under Regulation 38. The Scheme employer is required to obtain a certificate from the IRMP regarding the member's condition and whether the member is unlikely to be capable of undertaking gainful employment before normal pension

age. The Scheme employer should notify the administering authority to release unenhanced benefits on and from the date the Scheme employer made the determination that the member met the ill health criteria under Regulations 38.

Q43. Can a Tier Three member be uplifted to the enhanced Tier Two with a condition other than that which resulted in the ill health retirement?

No. The regulations are quite clear that it is the initial condition resulting in an ill health Tier Three payment that should be considered when assessing a possible uplift to a Tier Two pension.

Q44. Can the employee return to local authority or another LGPS Scheme employer?

They are not expected to return to their employment that resulted in the Tier Three retirement benefits but they could obtain other employment with a local authority or LGPS Scheme employer.

Q45. If a Tier Three member obtains employment with a local authority or LGPS Scheme employer can the earlier membership resulting in a Tier Three pension be aggregated with the new period of membership?

No. When the Tier Three pension stops, a pension account is closed and a deferred pensioner member account is opened with the amount of accrued pension as the opening balance. This would then be uprated each year under the Pensions (Increase) Act 1971. The deferred pension account cannot be added to an active account.

Q46. Prior to the 18 month review, the Tier Three member has written to the former Scheme employer saying that they have a short term contract. How does the Scheme employer decide if the member has satisfied the gainful employment test?

It would be unreasonable for a Scheme employer to assume that a person is in gainful employment having been notified, prior to the 18 month review, that the member had entered a short term contract of employment for, say, six months. Whether that contract will be renewed or not would be pure conjecture and should not, therefore, fall to be considered. Even if a Tier Three member had served two months of the six month contract, it follows that the definition of gainful employment has not been satisfied. Neither would it be reasonable to make any assumption that four months on, the contract might be reviewed for a further six months which could arguably bring it within the gainful employment definition. Where the Scheme employer is notified of a member's employment showing contract details of 30 hours or more in each week, for a period of less than 12 months, the Tier Three payments should not be stopped but the Scheme employer should check the current employment status with the member at the point the contract was due to end. If it is found that a further contract has been obtained, and this was again for 30 hours or more in each week, for a period of less than 12 months but which, when aggregated with the previous contract, would take the overall period to 12 months or more, it will be reasonable to stop payments. (Regulation 37(4)).

Under some contracts, the hours may be variable and this may cause some difficulty in deciding whether, over the future, the 30 hour test is satisfied over a 12 month period. If employment was obtained some time ago, it should be possible to ascertain a pattern of working from the variable hours worked up to that point and to base a decision on that evidence. A better way forward would be to defer any decision until later in the employment when evidence about working hours has been established.

In other words, taking short term contracts may avoid the Tier Three pension being suspended in the short time, but once the former Scheme employer forms a reasonable view that gainful employment of 30 hours or more in each week is likely to endure for 12 months, the Scheme employer can make a determination to cease the Tier Three pension. It is immaterial whether the employment does in fact endure for 12 months.

In any event, if it is clear from the outset that the member has obtained employment with a specified period of less than 12 months, the Scheme employer will wish to ask the member in receipt of a Tier Three pension to let them know their employment status at the end of the period of the first short term contract, and subsequent contracts to assist them in coming to a reasonable view as to whether the gainful employment test has been met.

The view is also taken that the words “in each week” where they appear in the definition of “gainful employment” in Schedule 1 means in each week throughout the 12 month period, rather than in each week where there is a contract of employment. Otherwise, the definition would be satisfied by a person taking just a one month contract of employment for 35 hours a week.

Q47. Does a Scheme employer need to wait until 12 months of an open contract have been served before stopping payments, where it is clear that the contract was for 12 months or more and for not less than 30 hours in each week?

Where a member notifies the previous Scheme employer that they have obtained employment, for example, 37 hours a week on an open contract i.e. one that has no specified end date, it would be reasonable for the Scheme employer to take the view that the gainful employment test was met and to discontinue payment of the Tier Three benefits.

Q48. Would a member who, prior to the 18 month review obtains employment only during term time, be regarded as undertaking gainful employment?

A “term-time worker” means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year (but is not limited to persons working in educational establishments). It follows that if a member, prior to the 18 month review, notifies the previous Scheme employer that they have obtained employment as a ‘term time worker’ on a standard hours contract that is not less than 30 hours each week with an unspecified end date, it would be reasonable for the Scheme employer to take the view that the gainful employment test was met and to discontinue payment of the Tier Three benefits.

If, however, the member notifies that term time working had been obtained with a specified end date within 12 months, the Scheme employer should check the position at the end of the contract. If the member entered into a further term time contract of not less than 30 hours per week, it would be reasonable for the Scheme employer to cease payments when the aggregated contract period is not less than 12 months.

A member may choose to obtain employment on a term time only basis for other reasons, such as child care arrangements, and a member in this position would be treated as a part time worker.

The gainful employment test for a member on a term time working contract with no specified end date but with hours of less than 30 hours a week would not be satisfied. Tier Three retirement benefits would be payable in these circumstances (for a maximum of three years or until gainful employment was obtained or the person became capable of gainful employment).

Q49. What happens if a member is paying Additional Regular Contributions (ARCs) or Additional Pension Contributions (APCs)?

A member paying ARCs or APCs who is entitled to a Tier One or Tier Two ill health pension will be deemed to have completed all their ARC or APC payments and will be credited with the whole of the extra pension they had contracted to buy.

A member who is entitled to a Tier Three ill health pension will only be credited with that proportion of the extra pension which they have paid for by the date of leaving i.e. they will not be deemed to have completed payments. There are no plans to change this.

Q50. Can a member receive his retirement benefits without retiring on ill health grounds if he is over 60 but would have been a Tier Three member?

A Scheme employer may wish to consider not terminating the member's employment on ill health grounds and, for instance, where existing protections permit the early release of unreduced retirement benefits, retire the employee as a regular retiree.

Q51. What death grant is payable in respect of a Tier Three pension?

If the Tier Three member dies while in receipt of the Tier Three pension, a death grant is payable under Regulation 43(6).

Q52. What survivor benefits are payable in respect of a Tier Three pension?

If a Tier Three member dies (either while in receipt of the Tier Three pension or the Tier Three pension is suspended), survivor benefits can be considered in accordance with regulations 44 and 45 of the 2013 regulations respectively.

Q53. Is a member's reduction in pensionable pay ignored when calculating survivor benefits if the reduction relates to the condition that resulted in the death of an active member?

No account is to be taken of any reduction in pensionable pay when calculating survivor benefits provided the reduction relates to the condition that resulted in the

death of an active member and this would have to be certified by an independent registered medical practitioner.

Q54. Would a female pensioner member with deferred benefits be entitled to the Guaranteed Minimum Pension (GMP) element of the deferred (or suspended) Tier Three benefits from age 60?

There are certain options that the member will need to consider depending on the circumstances. Please look at the tables on the following link:-

http://www.local.gov.uk/c/document_library/get_file?uuid=a425d8d9-27b7-4608-aa02-e75ade6a1466&groupId=10180

Q55. Does a member with a Tier Three pension qualify under the pension increase legislation?

Yes, a member with a Tier One, Two or Three retirement pension would qualify under the Pensions (Increase) Act 1971 as the member has retired on account of physical or mental infirmity from the employment in respect of which the pension is payable. Pensions (Increase) Act 1971 section 3 (2) (b) refers.

Q56. What do the terms mean in the Regulations?

Unless defined in the Scheme's Regulations, words, terms and phrases are to be given their normal and everyday meaning, except where clarification or an explanation is given in the Statutory Ill Health Retirement Guidance 2014.

Q57. What happens if the member is unhappy with the employer's decision about an ill health retirement application?

A member does have recourse to query decisions made by a Scheme employer regarding ill health retirements under IDRP. This would include any disagreement with the level of ill health retirement benefit that was awarded i.e. Tier One, Tier Two or Tier Three. Also, a member, who has left local government employment and who was awarded deferred retirement benefits can appeal against this decision by writing to their former Scheme employer that made the decision, setting out the reasons for their disagreement with the decision, in accordance with Regulation 72 of the 2013 Regulations. Any appeal against the decision of the Scheme employer is required within 6 months of the date of the original decision. The 6 months period within which an appeal should be lodged can be extended at the discretion of the official who is to give the decision on the appeal (see Regulation 74(4)). The Regulations do not provide for appeals before a member's employment is terminated where an ill health retirement pension is not awarded.

Q58. How will the application of HMRC's Annual Allowance rules and definition of "severe ill health" be applied?

Template ill health certificates have been developed that ask the IRMP, at the point of referral, to provide an opinion relating to the severe ill health condition for the purposes of the annual allowance test under the Finance Act 2004.

The IRMP is asked to give an opinion and certify whether the member:-

(a) meets the LGPS criteria for the release of ill health benefits for one of the three tiers of ill health pension; **and additionally**

(b) has a “severe ill health” condition for the purposes of the exemption from the annual allowance test in the Finance Act i.e. whether the individual is suffering from ill health which makes that individual unlikely to be able (otherwise than to an insignificant extent) to undertake work (in any capacity) before normal pension age.

The member (regardless of tier) would need to meet the conditions set out in both (a) and (b) above in order to be exempt from paying the tax charge.

The LGA has updated the suite of ill health retirement certificates and these can be downloaded from the Circulars page of the Local Government Association website – <http://www.local.gov.uk/web/workforcelibrary.lgpc-circulars> (see Circular 277 of March 2014 and Circular 282 of June 2014).

Q59. What happens where the LGPS IRMP has advised that the member meets the LGPS Tier One eligibility criteria but not that for HMRC “severe ill health” – and where the member seeks to appeal against the opinion regarding the “severe ill health” condition?

To take into account HMRC rules on severe ill health, DCLG has included the severe ill health test as part of an ill health assessment but if the member does not satisfy the test, there is no right of appeal to HMRC.

Q60. If a member takes ill-health retirement in the 2014 Scheme will the member still be able to take a lump sum as well?

Yes, the member will be able to take a one off tax free cash lump sum if they qualify for an ill health retirement in the new Scheme. For every £1 of pension the member gives up, they will receive £12 of tax free lump sum subject to the total lump sum not exceeding 25% of the capital value of their accrued rights in that benefit crystallisation and in accordance with HMRC rules.

Q61. Can a member have an enhanced Tier One or Tier Two pension if they have previously been retired under the Scheme on ill health grounds?

No enhancement can be added if the member has previously received a Tier One ill health pension under the 2014 or 2008 Schemes or has received an ill health pension under any earlier Scheme.

The enhancement for a member entitled to a Tier One or Tier Two pension is adjusted if the member has previously received a Tier Two ill health pension under the 2014 or 2008 Schemes in accordance with regulation 39 (7).

Q62. Can a member have a Tier Three pension if they have previously been retired on ill health grounds with a Tier Three pension?

No. Regulation 37(8) of the 2013 Regulations prevents this.

Department for Communities & Local Government

Workforce Pay & Pensions Division April 2015

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