

III Health Retirements

References to regulations are Benefits regulations unless stated

General information

Appointment of medical officer making certification

The employing authority must have already obtained the administering authority's approval to its choice of registered medical practitioner.

The employing authority and the medical practitioner must have regard to guidance given by the Secretary of State when carrying out their functions.

Independence of medical officer making certification

With the exception of 3rd tier reviews, the medical officer must be in a position to declare that: (Administration Reg56)

- they have not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
- they are not acting, and have not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case; and
- they must include a statement to that effect in the certificate.

Qualifications of medical officer making certification

Qualified in Occupational medicine means either: (Reg20(14))

- holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, "competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a);
or
- being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Active and Deferred beneficiary members

If certified unfit for his/her current employment, an active member will receive immediate payment of pension benefits (that may also include enhancement) and pensions increases may be paid from the following April.

A deferred beneficiary is not eligible for enhancements and if they are under age 55 will only be entitled to the pensions increase element if they are certified as being unfit for all regular full time (30 hours or more) employment.

Councillor members

The provisions of the 'New Look' scheme do not apply to Councillors. Councillors ill health provisions continue to be those under the Local Government Pension Scheme Regulations 1997 as amended, i.e. the Pre April 08 rules.

Appeals

Though ultimately it is for the 'Nominated' or 'Specified' person to decide whether they will consider an appeal, it is understood that the scheme's Internal Disputes Resolution Procedure may only be used by a member where their employment has been terminated and not where employment continues.

Costs to the pension fund and enhancement

Generally there is no direct cost to the employer as the scheme's actuary incorporates an ill health element as part of the employer contribution. In exceptional circumstances though, where the allowance has been far exceeded, the actuary has the authority to make a further charge. Enhancement is not an employer discretion but is determined by the regulations.

Serious ill health

The regulations prior to 1/4/2008 had a special provision for terminally ill members. This provision has been discontinued under the current regulations and cannot now apply to active members, though it may still apply to deferred beneficiaries who left prior to 1/4/08.

(LGE Circular 212) It is likely that Councillors may also still have this provision, but if you get a case check first.

“comparable employment”

Though not part of the formal 97 regulations, the guidance notes made it clear that to determine whether a comparable employment could be performed, it must actually exist within the employing authority rather than being a hypothetical job.

“gainful employment”

means paid employment for not less than 30 hours in each week for a period of not less than 12 months. (Ben Reg20(14))

The actual availability of gainful employment should not be a consideration, nor does it have to be commensurate in terms of pay and conditions with the member's former/current employment.

Actual contracts of less than 12 months do not count as gainful unless extended to beyond 12 months. Payments should stop when a continuous 12 month period of gainful employment has been undertaken.

Variable hour contracts should be considered when a suitable averaging period has been assessed.

Open ended contracts should be treated as 12 months or more and should discontinue immediately upon commencement. (CLG guidance 24nov08)

“normal retirement age”

is 65. (Adm Sch1)

“permanently incapable”

means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday. (Ben Reg20(14))

Ill health retirement from ACTIVE membership

Eligibility to ill health benefits

Service criteria (Reg 5)

- member's total membership is at least three months (reg5(1)(a))
or
- transfer value is credited to member (reg5(1)(b))
or
- has previously qualified for benefits in the scheme and hasn't subsequently transferred them out (reg5(2) to (4))

Medical criteria (Reg 20 (1))

- It is the employer's responsibility to determine whether the member is to have their employment terminated on ill health grounds. (reg20(1))
- In making such a determination the employer must obtain a certificate from a medical practitioner as to whether in his opinion: (reg20(5))

(1) - the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body (reg20(1)(a))

and, if so,

(2) - whether as a result of that condition the member has a reduced likelihood of obtaining any gainful employment before reaching their normal retirement age. (reg20(1)(b))

(In regard to this, the criteria of the three Tiers of ill health benefits should be taken into account).

Which tier of ill health

(to be determined in relation to medical practitioner certification)

Tier 1 Reg20(2)

- If there is no reasonable prospect of the member obtaining any gainful employment before his normal retirement age, then
- benefits are enhanced by potential service to normal retirement age.

Tier 2 Reg20(3)

- If the member cannot obtain gainful employment within three years of leaving employment, and
- it is likely that they will be able to obtain gainful employment before their normal retirement age,
- benefits are enhanced by 25% of potential service to normal retirement age.

Tier 3 Reg20(4)

- though the member has a reduced likelihood of obtaining gainful employment, if it is likely that the member will be able to such within three years of leaving his employment, then
- benefits are not enhanced (but both pension and lump sum are paid) and
- the pension element is only payable for so long as they are not in gainful employment, or if after 18 months are deemed to be capable of such (see review of Tier 3 payments), up to a maximum of three years.

Enhancement for Part Timers (Reg20(12))

Unless the member is certified as having reduced their hours because of the health conditions leading to their ill health retirement, then any enhancement granted will be apportioned in relation to their normal part time hours in their final post (not averaged over total membership unless the 1997 regulation protection applies).

If member became Part Time because of ill health prior to retirement (Reg20(12))

If the certificate states that, in the medical practitioner's opinion, the member is wholly or partly in part-time service as a result of the condition that has caused him to be incapable of discharging efficiently the duties of the relevant local government employment, no account shall be taken of such reduction in his service nor enhancement as is attributable to that condition.

(it is understood from CLG guidance 24nov08 that this also applies to Tier 3 benefits)

Protections for pre Apr08 members (Reg20(13))

If the member:

- qualifies for Tier 1 or Tier 2 ill health benefits, *and*
- was in active membership before 1st April 2008, *and*
- was born before 2/4/1963, *and*
- the period of enhancement granted is less than it would have been under the 1997 Regulations,

then the benefits are increased to those payable if the enhancement period due under the 1997 Regulations was granted.

(i.e. qualification to benefit is assessed on the new rules only, and if they so qualify then the enhancement period is the higher of the old or new rules, and in either case 1/60ths pension applied to the enhancement period).

‘Historic’ - Protection for all members (1997 Regulation protection) (Reg20(15))

Where an employing authority makes a determination under the ‘New Look’ ill health retirement provisions before 1st October 2008, and this gives the member less benefit than would have applied under the 1997 Regulations had they continued to apply, then the 1997 Regulations shall have effect in relation to him as if they were still in force instead of the ‘New Look’ provisions.

(i.e. qualification and benefit under the new rules is compared with qualification and benefit under the old rules.*

**But calculation of enhancement under the old rules is based on the new 1/60ths accrual – confirmed by LGE bulletin 52. The higher of the benefits that the member qualifies under may be paid.)*

Added years contracts

Technically are only deemed paid up upon ill health retirement if the conditions of the 1997 ill health retirement rules are met. For practical reasons, we will deem contracts paid up in all cases of ill health retirement. (Q33 CLG Q&A aug08)

ARCs (Admin reg 24)

- Are deemed paid up upon Tier 1 or 2 ill health retirement.
- On Tier 3, ARCs are to be paid but only at the value purchased to date. It is unclear whether the ARCs will then be subject to actuarial reduction.

(LGE GAD course indicated reduction, reading of reg 24 and GAD guidance indicates no reduction)

This should be resolved in due course but in the meantime we propose that no actuarial reduction is applied.

If subsequently Tier 3 is reviewed and revised to Tier 2 then the ARCs are adjusted to be paid up and without actuarial reduction.

AVCs

- May be paid upon ill health retirement.
(unclear if this applies to Tier 3 benefits)

Death Grants

In all cases there is no death grant if member dies after age 75.

- Actives – 3 x final pay (actual, not WTE)
- Tier 1 ill health retirements - 10 x annual pension less pension received
- Tier 2 ill health retirements - 10 x annual pension less pension received
- Tier 3 ill health retirements - whether in receipt of the 3rd tier pension or the 3rd tier pension is suspended, 10 x annual pension in payment (or the pension that would have been in payment but for the suspension) less the amount that has already been paid.

(Q36 CLG Q&A aug08)

MEDICAL CERTIFICATE of PERMANENT INCAPACITY for Current Employees

MEMBER'S NAME: _____

National Insurance Number: _____ Date of Birth: _____

Current POST HELD: _____

Current EMPLOYER: _____

Medical Practitioner's Certification – (You must tick Section A or B)

A I certify that the above-named person **IS NOT** suffering from ill health or infirmity of mind or body that renders him/her permanently incapable of discharging efficiently the duties of his/her current employment.

B I certify that the above-named person **IS** suffering from ill health or infirmity of mind or body that renders him/her permanently incapable of discharging efficiently the duties of his/her current employment,

and

1. **HAS** a reduced likelihood of obtaining any gainful employment before age 65, or
2. **DOES NOT HAVE** a reduced likelihood of obtaining any gainful employment before age 65.

and

if Section B1 is ticked you must also tick either 3, 4 or 5 below, and one of the options in Section C, and consider Section D.

3. he/she has no reasonable prospect of being capable of gainful employment before age 65.

4. he/she is not capable of any gainful employment for at least three years but has a reasonable prospect of being capable of gainful employment before age 65.

5. he/she is or will be capable of obtaining gainful employment within three years.

C I certify that the above-named person **IS** **IS NOT** permanently incapable of any other comparable employment with his/her employer.

D I certify that, in my opinion, the member is wholly or partly in part-time service as a result of the condition that has caused him/her to be incapable of discharging efficiently the duties of his/her employment, and the earliest reduction in hours to which this applies is _____ (insert date if this section applies)

Certification

I confirm that I have not previously advised, or given an opinion on, or otherwise been involved in this particular case nor am I acting, or have ever acted, as the representative of the member, the Scheme employer or any other party in relation to this case. I further confirm that I am in possession of a qualification in Occupational Health required for the completion of this certificate.

Signature: _____ (Medical Officer) Date: _____

Print Name: _____

Notes for medical practitioners completing certificates of incapacity

The additional complexity of the new certificate is a result of changes to the LGPS from April 2008 and the transitional protections given to existing members.

Section A – to certify that the member **is not** permanently incapacitated. If Section **A** is ticked then Sections B, C & D can be ignored.

Section B – to certify that the member **is** permanently incapacitated. If this box is ticked then option 1 or 2 must be ticked. If option 1 is ticked, then either option 3, 4 or 5 must also be ticked and one of the options in Section C. If the point at which the member is likely to be capable of gainful employment is after age 65 and also within 3yrs, please tick option 3 in Section B.

Section C – if Section B1 applies, Section C also needs to be completed. It forms part of the comparison between old and new benefit regimes.

Section D – if Section B applies, Section D also needs to be considered. It relates to a new provision designed to protect the benefits of members who may have reduced their hours of employment as a result of the ill health that has led to this certification.

Comparable employment – (97regs27(5))

means employment in which, when compared with the member's employment -

(a) the contractual provisions as to capacity either are the same or differ only to an extent that is reasonable given the nature of the member's ill-health or infirmity of mind or body;

and

(b) the contractual provisions as to place, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the member's employment; and

Permanently incapable - (97regs27(5)) & (2008Ben Reg20(14))

means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.

Qualified in Occupational medicine - (2008Regs20(14))

means either;

holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, "competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a);

or

being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Gainful employment – (2008Ben Reg20(14))

means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

Review of Tier 3 ill health pensions

(Reg20(6) to (11))

A member in receipt of Tier 3 ill health benefits must:

- inform the authority if he obtains employment
- answer any inquiries made by the authority as to his current employment status, including as to his pay and working hours.

Once benefits have been in payment for 18 months, the employer must:

- make enquiries as to his current employment, and
- if he is not in gainful employment, obtain a further certificate from an independent registered medical practitioner. It is understood that this does not have to be a different medical practitioner from the original assessment (*CLG guidance 24nov08*). A certificate with alternative wording will be required.

Note: suspension of a 3rd tier pension may not be made prior to 18 months unless the member is actually working in gainful employment, even if the member is certified as being capable of immediate gainful employment. However, if the member is capable of immediate gainful employment at the point of retirement, it may be argued that the member does not have a 'reduced likelihood' of such and may not be entitled to 3rd Tier benefits in the first place. (confirmed verbally by TE at LGE 30jul08)

The employer must discontinue the pension if they consider:

- that the person is in gainful employment
or
- if the further medical certificate states he is capable of obtaining such employment and
- may recover any payment made in respect of any period during which they consider him to have been in gainful employment.

The employer may as a result of a medical review:

- determine that Tier 2 benefits are payable (even where the tier 3 pension has already ceased) provided that the medical condition relates to that for which the tier 3 benefit was paid, and
- increase the member's pension benefit from the date of that determination.

The employer must in any event:

- discontinue the pension after three years
- notify the administering authority that it has ceased.

A member who has had Tier 3 benefits ceased:

- is treated as a pensioner member with deferred benefits, and
- is not eligible to receive Tier 3 benefits again in respect of any future period, and
- may not aggregate those benefits upon return to active membership.
- May apply for the early release of benefits under Reg 31 (Bens Regulations) in respect of an unrelated medical condition.

**MEDICAL CERTIFICATE of PERMANENT INCAPACITY
REVIEW of Tier 3 Pensioner**

MEMBER'S NAME: _____

National Insurance Number: _____ Date of Birth: _____

Former POST HELD: _____

Former EMPLOYER: _____

Date left employment: _____ Note: compulsory review should not be prior to 18mths after leaving

Medical Practitioner's Certification – (You must tick Section A or B)

A I certify that the above-named person is **CURRENTLY CAPABLE** of obtaining gainful employment.

B I certify that the above-named person **CONTINUES TO HAVE** a reduced likelihood of obtaining any gainful employment,

and

if Section B is ticked you must also tick either 1 or 2 below

1. he/she continues to be capable of obtaining gainful employment within three years of his/her date of leaving.

2. owing to the worsening of the member's health for which the Tier 3 pension was paid, he/she is not now capable of obtaining any gainful employment for at least three years after his/her date of leaving.

If box B1 is ticked and you would like to review the case again before the member's pension ceases (which is 3 yrs after leaving), please state the date you would propose to review the case: _____

Certification

I confirm that I am in possession of a qualification in Occupational Health required for the completion of this certificate.

Signature: _____ (Medical Officer) Date: _____

Print Name: _____

Notes for medical practitioners completing certificates of incapacity

The additional complexity of the new certificate is a result of changes to the LGPS from April 2008 and the transitional protections given to existing members.

Section A – to certify that the member **is currently capable of gainful employment.**

Section B – to certify that the member continues to have a reduced likelihood of obtaining gainful employment. If this box is ticked then one of the options 1 or 2 must be ticked. If box 2 is ticked, this will increase the award payable to the member from a Tier 3 temporary pension to a Tier 2 pension payable for life.

Tier 3 pension – a pension awarded to an employee who was certified as permanently unfit for their post and having a reduced likelihood of obtaining gainful employment, though would be likely to obtain gainful employment within 3 years of leaving employment.

Qualified in Occupational medicine - (2008Regs20(14))

means either;

holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a);

or

being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Gainful employment – (2008Ben Reg20(14))

means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

III health retirement from DEFERRED membership

(Reg 31)

Early payment of deferred pension benefits is split into 3 categories dependant upon the date the member left active employment.

In all cases

- The former employer (at the point the member left) is responsible for making the decision whether benefits are paid, but may only agree to the payment of benefits on the certification of a qualified occupational health advisor appointed by them.
- The former employer is also responsible for meeting the costs of the certification.
- If benefits become payable, they are paid without enhancement.
- If member is under 55, then PI is withheld until age 55, unless member is further certified to be incapable of any regular full-time (30hrs or more per week) employment (provision comes from the PI Act 1972).

Case specific (LGE Circular 212)

Members who left before 1/4/1998

- May be paid from any date that the member is certified to have been permanently incapable of discharging efficiently the duties of their former job.
- Payment may only be backdated if evidence of the member's permanent incapacity was available at that time.

Members who left on or after 1/4/1998 and before 1/4/2008

- May be paid from the date of application provided that the member is certified to have been permanently incapable of discharging efficiently the duties of their former job.
- Date of payment may not be backdated prior to the date of the member's application for payment.

Members who left on or after 1/4/2008

- May be paid from the date of application provided that the member is certified to have been
 - permanently incapable of discharging efficiently the duties of their former job and,
 - would fall within the category of tier 1 or 2 that applies to actives.
- If tier 3 would apply then benefits may not be released.

Certificates

Two sample certificates for payment of deferred benefits are provided at the end of this guide. One relates to members who left before April 2008, (and includes the differences for pre 1/4/98 leavers) and the other is for members who left on or after 1/4/2008.

**MEDICAL CERTIFICATE of PERMANENT INCAPACITY
for Former Employees who left on or after 1 April 2008**

MEMBER'S NAME: _____

National Insurance Number: _____ Date of Birth: _____

FORMER POST HELD: _____

FORMER EMPLOYER: _____

DATE LEFT FORMER EMPLOYMENT: _____

Medical Practitioner's Certification – (You must tick Section A or B)

A I certify that the above-named person **IS NOT** suffering from ill health or infirmity of mind or body that renders him/her permanently incapable of discharging efficiently the duties of his/her previous employment.

B I certify that the above-named person **IS** suffering from ill health or infirmity of mind or body that renders him/her permanently incapable of discharging efficiently the duties of his/her previous employment.

and

this condition **IS** **IS NOT** likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching age 65, or for at least three years, whichever is the sooner.

C *Only required if the member is under age 55 to enable pensions increase to be paid:*

I certify that the above-named person **IS** **IS NOT** incapable of **any** regular full-time (30hrs or more per week) employment.

Certification

I confirm that I have not previously advised, or given an opinion on, or otherwise been involved in this particular case nor am I acting, or have ever acted, as the representative of the member, the Scheme employer or any other party in relation to this case.

I further confirm that I am in possession of a qualification in Occupational Health required for the completion of this certificate.

Signature: _____ (Medical Officer) Date: _____

Print Name: _____

Notes for medical practitioners completing certificates of incapacity

The additional complexity of the new certificate is a result of changes to the LGPS from April 2008 and the transitional protections given to existing members.

Section A – to certify that the member **is not** permanently incapacitated. If Section A is ticked then Sections B & C can be ignored.

Section B – to certify that the member **is** permanently incapacitated. If this box is ticked then one of the options **IS** **IS NOT** must be ticked. If the point at which the member is likely to be capable of gainful employment is after age 65 and also within 3yrs, please tick the **IS** option in the second part of Section B.

Section C – if Section B applies and the member is under age 55, then Section C also needs to be completed. It determines whether pensions increase may be paid to the member before he/she reaches age 55, as required of the Pensions Increase Act 1972.

Permanently incapable - (97regs27(5)) & (2008Ben Reg20(14))

means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.

Qualified in Occupational medicine - (2008Regs20(14))

means either;

holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a);

or

being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Gainful employment – (2008Ben Reg20(14))

means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

**MEDICAL CERTIFICATE of PERMANENT INCAPACITY
for Former Employees who left prior to 1 April 2008**

MEMBER'S NAME: _____

National Insurance Number: _____ Date of Birth: _____

FORMER POST HELD: _____

FORMER EMPLOYER: _____

DATE LEFT FORMER EMPLOYMENT: _____

Medical Practitioner's Certification – (You must tick Section A or B)

A I certify that the above-named person **IS NOT** suffering from ill health or infirmity of mind or body that renders him/her permanently incapable of discharging efficiently the duties of his/her previous employment.

B I certify that the above-named person **IS** suffering from ill health or infirmity of mind or body that renders him/her permanently incapable of discharging efficiently the duties of his/her previous employment.

C *Only required if Section B is ticked and the member is under age 55 to enable pensions increase to be paid:*
I certify that the above-named person **IS** **IS NOT** incapable of **any** regular full-time (30hrs or more per week) employment.

D *To be considered if Section B is ticked.*
Where the member left the former employment prior to 1 April 1998 and there is evidence available that the benefits may have been put into payment due to becoming permanently incapable of discharging efficiently the duties of the former post by reason of ill health or infirmity of mind or body, from a date earlier than the date of application, please state below the date from which benefits should be put into payment: _____

E *To be considered if Section B is ticked.*
 I certify that, in my opinion, the above-named is exceptionally ill, with a life expectancy of less than one year.

Certification

I confirm that I have not previously advised, or given an opinion on, or otherwise been involved in this particular case nor am I acting, or have ever acted, as the representative of the member, the Scheme employer or any other party in relation to this case.

I further confirm that I am in possession of a qualification in Occupational Health required for the completion of this certificate.

Signature: _____ (Medical Officer) Date: _____

Print Name: _____

Notes for medical practitioners completing certificates of incapacity

Section A – to certify that the member **is not** permanently incapacitated. If Section A is ticked then Sections B, C, D & E can be ignored.

Section B – to certify that the member **is** permanently incapacitated. If this box is ticked then Section C, D & E should be considered.

Section C – if Section B applies and the member is under age 55, then Section C also needs to be completed. It determines whether pensions increase may be paid to the member before he/she reaches age 55, as required of the Pensions Increase Act 1972.

Section D – Only required if the member left prior to 1/4/1998 and it is considered that the member was permanently unfit prior to their application for payment of their deferred pension benefits, and that there was evidence available at that time.

Section E – if Section B applies, consider Section E. For cases of exceptional ill-health with a life expectancy of less than one year, the member may commute his/her pension to a single lump sum.

Permanently incapable - (97regs27(5)) & (2008Ben Reg20(14))

means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.

Qualified in Occupational medicine - (2008Regs20(14))

means either;

holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a);

or

being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.