

**LOCAL GOVERNMENT PENSION SCHEME
STATUTORY GUIDANCE – ILL-HEALTH**

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THIS DRAFT PAPER IS ISSUED FOR CONSULTATION PURPOSES AND REFLECTS THE STATUTORY PROVISIONS OF THE LOCAL GOVERNMENT PENSION SCHEME (BENEFITS, MEMBERSHIP AND CONTRIBUTIONS) REGULATIONS 2007 (SI 2007 NO 1166), AS AMENDED BY THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) REGULATIONS 2008 (SI 2008 NO 1083)

THE NEW LOOK ILL-HEALTH RETIREMENT PENSION PROVISIONS DRAFT GUIDANCE

This guidance is issued under Regulation 56(3) of The Local Government Pension Scheme (Administration) Regulations 2008 to all administering authorities, employing authorities, independent registered medical practitioners and other relevant interested parties in England and Wales with statutory responsibilities under the new Local Government Pension Scheme that came into effect on 1 April 2008.

This guidance includes a combination of descriptive text explaining the background and operation of the new ill-health retirement benefit provisions as they apply in the new look scheme after 31 March 2008, a description of the relevant statutory provisions, and a set of best practice documentation that LGPS employers and independent doctors are expected to employ in each ill-health retirement case.

The Secretary of State will keep the content of the guidance under review in the light of employing authorities', independent doctors' and other interested parties' experiences of applying this guidance. The guidance will be updated as necessary to reflect this and any future legislative changes.

Unless a reference is made to regulations by their full title, it can be assumed for the purposes of this guidance that the reference is to a regulation of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007 No 1166), as amended. ("the Benefit Regulations").

Section 1 - Background

1. In July 2000, HM Treasury published its review of ill-health retirement in the public sector. The 35 recommendations of the report were accepted in full by the Government and government departments responsible for public service pension schemes were tasked to come forward with individual action plans to implement the report's recommendations. The then DETR's action plan was agreed and published in October 2001.

2. The Department's action plan to implement the inter-Departmental report into ill-health retirements in the public sector 2000, included an undertaking to prepare a discussion paper outlining the scope for introducing four changes to the arrangements for the payment of ill-health retirement benefits under the Local Government Pension Scheme Regulations 1997.

3. The four recommendations included in the Action Plan relevant to this guidance were :-

- **Recommendation 27** - To examine the scope for introducing a two-tier ill-health retirement provision into the LGPS;

- **Recommendation 28** – To introduce the facility to review the levels of ill-health retirement benefit during retirement;
- **Recommendation 29** – To consider the role of abatement in the context of ill-health retirement, and
- **Recommendation 34** – To consider the scope for introducing a more efficient system for awarding enhanced membership on ill-health retirement with less incentive for members to seek ill-health retirement at specific ages.

The rationale for a multi tier ill-health pension provision

4. In common with most other occupational pension schemes in the public sector, the LGPS has historically assessed entitlement to ill-health retirement benefits on the individual employee's capacity to perform efficiently the duties of their former employment. However, the LGPS is different to the extent that for some time, it has also required LGPS employers to consider the capacity to undertake other local government employments that are comparable on the basis of pay, location, training/skill levels, etc. But that apart, there remained the problem envisaged by the July 2000 report that the LGPS, in common with most other occupational pension schemes in the public sector, failed to address the issue of a person's ability to perform a wide range of jobs in the employment sector as a whole.

5. The proposal to introduce a two-stage level of ill-health retirement benefit entailed the introduction of a new upper level of benefit for the minority of LGPS members whose condition rendered them permanently incapable of any work, whether in local government or elsewhere. For the remainder whose incapacity meant that they were still capable of performing work elsewhere, the second level of benefit would be assessed on a case by case basis according to a number of factors, including the degree of incapacity and the extent to which this might affect future earning potential. But given the Government's aim of reducing the levels of ill-health retirement and of retaining people in the workforce up to their normal retirement age and possibly beyond, the scope for introducing a series of measures designed to ease the transition between work and retirement and to retain staff in employment despite their inability to perform their current duties because of ill-health would have to be explored.

6. Although the HM Treasury review focussed its attention on a two tier ill-health pension arrangement, the working group set up by the then DETR to take forward implementation of the action plan considered that the range of incapacities covered by the second tier - from those just short of meeting the top tier criteria and those who would be capable of obtaining gainful employment within a reasonable period after ceasing their local government employment on permanent ill-health grounds - was such that a three tier provision might be more appropriate.

7. It was also suggested that there could be a role for some form of income-protection arrangement as a way of managing long term sickness absence

and ensuring that other alternatives to ill-health retirement, eg, re-training, re-habilitation, re-deployment and flexible retirement, were fully explored before employment is finally terminated on grounds of incapacity.

Policy development

8. After consideration of the views expressed by interested parties, Ministers came forward, in April 2007, with a two tier arrangement and contained in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (*benefit regulations*). A 1st tier member will receive their accrued pension entitlements plus a service enhancement of all (100%) of their prospective membership to their normal retirement rate. A 2nd tier member with a lower level of incapacity will receive 25% of that prospective membership along with their accrued pension entitlements.

9. The final element of ill health remained to be decided. CLG explored with key stakeholders the scope for a form of income replacement allowance, outside the pension scheme and to be paid by local authority employers from their revenue. However, agreement was not reached. As new tax rules, introduced in the 2007 Finance Act, did not preclude the cessation of a pension, consideration of a 3rd tier within the LGPS was then an option.

10. In November 2007, interested parties were consulted on a reviewable third tier of ill health retirement benefit for a Scheme member who leaves employment because they are assessed by an independent occupational health practitioner as being permanently incapable of their current job but medical evidence indicates that they are capable of obtaining alternative employment within three years of their leaving.

Section 2 - Statutory position

11. The regulatory provisions governing ill-health retirements under the LGPS with effect from 1 April 2008 are set out in regulations 20 and 31 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007 No 1166), as amended by The Local Government Pension Scheme (Amendment) Regulations 2008 (SI 2008 No 1083) :-

A : Entitlement on ceasing employment :-

“20.—(1) If an employing authority determine, in the case of a member who satisfies one of the qualifying conditions in regulation 5—

- (a) to terminate his employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
- (b) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age,

they shall agree to his retirement pension coming into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), (3) or (4), as the case may be.

(2) If the authority determine that there is no reasonable prospect of his obtaining any gainful employment before his normal retirement age, his benefits are increased—

- (a) as if the date on which he leaves his employment were his normal retirement age; and
- (b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.

(3) If the authority determine that, although he cannot obtain gainful employment within three years of leaving his employment, it is likely that he will be able to obtain any gainful employment before his normal retirement age, his benefits are increased—

- (a) as if the date on which he leaves his employment were his normal retirement age; and
- (b) by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.

(4) If the authority determine that it is likely that he will be able to obtain any gainful employment within three years of leaving his employment, his benefits—

- (a) are those that he would have received if the date on which he left his employment were the date on which he would have retired at normal retirement age; and
- (b) unless discontinued under paragraph (8), are payable for so long as he is not in gainful employment.

(5) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion 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 and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age.

(6) A person who receives benefits under paragraph (4) shall—

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

(7) (a) Once benefits have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.

- (b) If he is not in gainful employment, the authority shall obtain a further certificate from an independent registered medical practitioner as to the matters set out in paragraph (5).

(8) (a) The authority shall discontinue the payment of benefits under paragraph (4) if they consider—

- (i) that the person is in gainful employment; or
- (ii) in reliance on the certificate obtained under paragraph (7)(b), that he is capable of obtaining such employment

and may recover any payment made in respect of any period before discontinuance during which they considers him to have been in gainful employment.

- (b) The authority shall in any event discontinue the payment of benefits under paragraph (4) after they have been in payment to a person for three years.
- (c) The authority shall forthwith notify the appropriate administering authority of any action they have taken under this paragraph.

(9) A person in respect of whom the payment of benefits is discontinued under paragraph (8) shall be treated as a pensioner member with deferred benefits from the date the suspension takes effect, and shall not be eligible to receive benefits under paragraph (4) in respect of any future period.

earliest, his 65th birthday.” In addressing questions about permanency, 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 NRA.

23. The term “**gainful employment**” is defined by Regulation 20(14) as “paid employment for not less than 30 hours in each week for a period of not less than 12 months”. This term is **not** to be confused with the concept of “comparable employment” which was a feature of the 1997 Scheme for a number of years. As from 1 April 2008, independent doctors will be required to apply the wider test of capacity to undertake general employment of a remunerative nature - rather than one based on the type of local government formerly held by the member. This reflects the recent change in government policy whereby public service ill-health pensions are to be paid not only on the basis of capacity to undertake the member’s actual employment, but also other employment in the general workforce.

24. “**Reasonable period**”. The level of benefits payable under regulation 20 depends on the extent of the “reduced likelihood” of obtaining gainful employment, taking account of the incapacitating condition that existed at the time when employment in local government ceased. Originally, the view was taken that the regulations should rely on the concept of a “reasonable period” to distinguish 2nd tier from 3rd tier cases. Several ways of defining that term were considered, including :-

- For administrative and medico-legal simplicity, the term “reasonable period” could refer to a specific period of time, eg, 12 months, regardless of the nature of the member’s condition or incapacity, or
- It could vary in each individual case according to the nature of the condition or incapacity in question. This would be likely to result in greater complexity and more pressure on the appeals process, or
- The period could relate to whatever time limit or review period is imposed under any third tier arrangement. In other words, the 2nd/3rd tier entitlement threshold would need to be clear and consistent.

25. In view of the representations made by interested parties, the decision was taken that any reference to a reasonable period should be to a fixed period of time, applied consistently across all cases. The regulations, therefore, provide for a limit of 3 years for payment of 3rd tier benefits. In other words, 3 years represents a “reasonable period” for the purposes of regulation 20.

Best Practice Pro-Forma certificates for employers/doctors

Example III Health Retirement Certificate for a Current Employee – England and Wales – for determinations made before 1 October 2008.

Certificate of permanent incapacity by an independent, approved, duly qualified registered medical practitioner in accordance with regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) in respect of a current employee.

Part A: To be completed by the employer

Surname of employee:

Forenames:

Mr / Mrs / Miss / Ms*

Date of birth:

NI Number:

Home address:

Employer:

Place of work:

Nature of employment (job description attached):

Have the employee's contractual hours been reduced as a result of their ill health or infirmity or mind or body? Yes / No *

(*delete as appropriate)

Part B: To be completed by the approved (1) registered medical practitioner. Please tick appropriate boxes.

In order that the employer can determine whether the "old" ill health test under the LGPS Regulations 1997 is met, please tick either B1 or B2

I certify that, in my opinion, the person named in Part A

B1: IS

B2: IS NOT

on the balance of probabilities, permanently incapable (2) of discharging efficiently the duties of his / her employment or any other available comparable employment (3) with his / her employer because of ill health or infirmity of mind or body.

In order that the employer can determine whether the "new" ill health test under the Benefits Regulations is met, please tick either B3 or B4

I certify that, in my opinion, the person named in Part A

B3: IS

B4: IS NOT

on the balance of probabilities, permanently incapable (2) of discharging efficiently the duties of his / her employment with his / her employer because of ill health or infirmity of mind or body.

If B3 has been ticked, please tick B5 or B6

I certify that, in my opinion, as a result of that ill health or infirmity the person named in Part A

B5: DOES

B6: DOES NOT

have a reduced likelihood of being capable of obtaining other gainful employment (4), whether in local government or elsewhere, before age 65.

If B5 has been ticked I further certify that in my opinion:

B7: As a result of their ill health or infirmity, there is no reasonable prospect of the person named in Part A being capable of obtaining gainful employment (4) before age 65.

OR

B8: Although, as a result of their ill health or infirmity, the person named in Part A cannot obtain gainful employment (4) within the next three years he / she is likely to be capable of gainful employment (4) at some time thereafter and before age 65.

OR

B9: Having considered their ill health or infirmity, the person named in Part A is likely to be capable of obtaining gainful employment (4) within the next three years (or, if he / she attains age 65 within the next three years, the person is likely to be capable of obtaining gainful employment (4) before age 65).

If B5 has been ticked and the contractual hours of the person named in Part A have been reduced by the employer (as indicated in Part A) please tick B10 or B11

I certify that, in my opinion, the person named in Part A

B10: IS B11: IS NOT

in part-time service wholly or partly as a result of the condition that has caused him / her to be permanently incapable of discharging efficiently the duties of his / her employment.

General statement

I certify that:

I have not previously advised, or given an opinion on, or otherwise been involved in this case

AND

I am not acting, and have not at any time acted, as the representative of the person named in Part A, the employer or any other party in relation to this case

AND

I hold a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State, which has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003, or I am an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or of an equivalent institution in an EEA State

AND

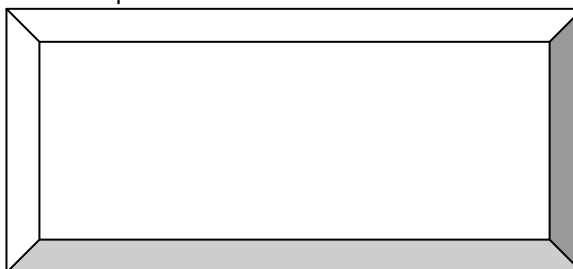
I have given due regard to any guidance issued by the Secretary of State when completing this certificate.

..... Date:

Signature of independent registered medical practitioner

.....
Printed name of independent registered medical practitioner

On behalf of (use official stamp)



Example III Health Retirement Certificate for a Current Employee – England and Wales – for determinations made after 30 September 2008.

Certificate of permanent incapacity by an independent, approved, duly qualified registered medical practitioner in accordance with regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) in respect of a current employee.

Part A: To be completed by the employer

Surname of employee:

Forenames:

Mr / Mrs / Miss / Ms*

Date of birth:

NI Number:

Home address:

Employer:

Place of work:

Nature of employment (job description attached):

Have the employee's contractual hours been reduced as a result of their ill health or infirmity or mind or body? Yes / No *

(*delete as appropriate)

General statement

I certify that:

I have not previously advised, or given an opinion on, or otherwise been involved in this case

AND

I am not acting, and have not at any time acted, as the representative of the person named in Part A, the employer or any other party in relation to this case

AND

I hold a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State, which has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003, or I am an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or of an equivalent institution in an EEA State

AND

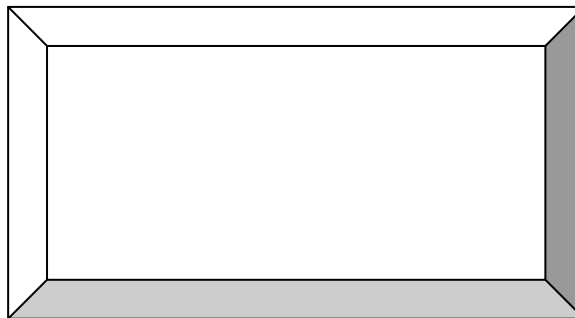
I have given due regard to any guidance issued by the Secretary of State when completing this certificate.

..... Date:

Signature of independent registered medical practitioner

.....
Printed name of independent registered medical practitioner

On behalf of (use official stamp)



Important notes:

- (5) The independent registered medical practitioner signing the certificate must have been approved for this purpose by the Pension Fund administering authority.
- (6) 'Permanently incapable' means that the person will, more likely than not, be incapable until, at the earliest, their 65th birthday.
- (7) 'Gainful employment' means paid employment (whether in local government or elsewhere) for not less than 30 hours in each week for a period of not less than 12 months. It does not have to be employment that is commensurate in terms of pay and

conditions with that of the person's current employment.

Permanently incapable:

This means that the person will, more likely than not, be incapable until, at the earliest, their 65th birthday.