



Department for
Communities and
Local Government

LOCAL GOVERNMENT PENSION SCHEME

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

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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The Statutory Ill Health Guidance of June 2011 is no longer applicable – except in so far as it is still required in connection with the Local Government Pension Scheme Provisions saved by Regulation 12 of the Local Government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/quest/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 Custom's '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/lgpc-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.