

Local Government Pension Scheme (Scotland)

A Guide to Ill Health Retirement and Early Payment of Deferred Benefits

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1. Introduction

1.1 Purpose & Application

The purpose of this document is to provide guidance to employing & administering authorities around ill health retirement and the Internal Dispute Resolution Procedure (IDRP). This advice covers active and deferred members of the Local Government Pension Scheme (Scotland).

This guide will be of relevance to Line Managers, HR Staff, Administering authorities, OH providers and Appointed Persons reviewing cases at IDRP stage 1.

1.2 Role of the Employer & Administering Authority – First Instance Decisions

An employer or administering authority must obtain a certificate from an Independent Registered Medical Practitioner (IRMP) before determining whether to agree ill health retirement.

The IRMP must review all available evidence, including any reports that are due to be provided to the member by their consultant/specialist. The IRMP should then provide detailed advice to the employer (or, for deferred members, the administering authority), including a consideration of treatments that have yet to be tried. The employer (or, for deferred members, the administering authority) should review all **relevant** evidence, as well as the certificate provided by the IRMP, before making a decision about ill-health benefits.

However, the decision maker may not need to review the relevant medical evidence if they have decided to award Tier 1 ill health retirement (active members) or, in the case of a deferred member, agree to early payment of deferred benefits.

2. Key Facts

- First instance decisions on ill health retirement for active members, are made by scheme employers.
- First instance decisions on ill health retirement for deferred members, are made by administering authorities.
- There are two tiers of enhanced ill health benefits for active members. There are no enhanced ill health benefits for deferred members.
- Tier 1 benefits can be allowed even if a member does not meet the HMRC Severe Ill Health Test (SIHT). Tier 1 ill health benefits can either be with the HMRC Severe Ill Health Test (SIHT) met or not.

- Decisions on whether the SIHT is met can only be made by IRMPs, and there is an associated tax consideration. Where Tier 1 or Tier 2 ill health benefits are granted without the SIHT being met, the benefits together with any associated tax charge generally still provide a better financial outcome for the member than if no ill health award were made.
- To be entitled to ill health benefits, a member must meet the criteria set out in the relevant LGPS(S) regulations.
- Under IDRP stage 1, the Appointed Person is responsible for providing a determination. The determination letter must advise the applicant of the stage 2 appeal process in accordance with the LGPS (S) regulations, “*If you wish to proceed to Stage 2 you should submit an IDRP Stage 2 Application to the Scottish Public Pensions Agency (SPPA) within 6 months from the date of this letter. Application forms and guidance can be found on the [SPPA website](#). Completed forms can be posted to:-*
- *LGPS Policy Manager, Scottish Public Pensions Agency, 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE, or emailed to IDRPAApplications@gov.scot.”*
- If the member is not satisfied with the outcome of their appeal at Stage 1, the SPPA will determine appeals at the second stage of the IDRP process, for members of the LGPS(S) applying for ill health retirement or early payment of deferred benefits on ill-health grounds. We will ask for evidence from all parties and consider whether the employer (administering authority for deferred members) or Appointed person has fulfilled their role as required by the LGPS(S) regulations and the ill-health guidance and remit cases back to the Appointed Person if the correct process has not been followed.
- The SPPA will contact the employer (or, for deferred members, the administering authority) to obtain the evidence considered by the Stage 1 Appointed Person. The SPPA **may** refer the case to an IRMP for a new opinion. The SPPA's IRMP is required to consider previously submitted applications, along with any new relevant medical evidence and provide a report detailing whether they consider the member meets the criteria for ill health benefits under the LGPS regulations. If the member is waiting for further treatment, we may pause the case until the treatment has been undertaken or ask the IRMP to consider the probable effect of the planned treatment.
- As the SPPA may review a case sometime after the initial decision, it is possible that further evidence may be available, which allows the IRMP to conclude a different outcome i.e. in some cases permanence cannot be established until time has gone by and the member's health has not improved. If this is the case, the effective date can be backdated to date of dismissal. **SPPA can only consider evidence that refers to the member's condition at the original assessment date and should have been available at that time**, for example

the appointment has taken place, and the member is waiting for the consultant or specialist report.

- Regulation 71 of the Local Government Pension Scheme (Scotland) Regulations 2018 sets out what must be included in a stage 2 application. When submitting an application, applicants must provide all the evidence they consider relevant to their case. The application will not be regarded as complete until all supporting evidence has been received.
- A completed Stage 2 application must:
 - (a) set out the applicant's full name, address and date of birth;
 - (b) set out details of the grounds on which it is made (including any relevant supporting documentation); This includes evidence to be considered. The application is not deemed complete until all evidence is received.
 - (c) include a statement that the applicant wishes the disagreement to be reconsidered by the Scottish Ministers;
 - (d) be accompanied by a copy of any written notification under [Regulation 71. Reference of disagreement for reconsideration by Scottish Ministers](#), the (Stage 1 letter) from the original decision-maker; and
 - (e) be signed by, or on behalf of the applicant.

3. First Instance Decision Maker

3.1 Employer & Administering Authority Duties

Under [LGPS\(S\) 2018 Regulation 67](#) an ill-health assessment is undertaken to ascertain if a member meets the criteria for ill-health retirement. It is the first instance decision-maker's responsibility to;

- Process active member's application for ill health grounds under [Regulation 34, LGPS\(S\) 2018](#)
- Process deferred member's application for ill health grounds under [Regulation 36, LGPS\(S\) 2018](#) (or, for leavers before April 2015, under the relevant earlier regulations)
- Tell the member about their rights, about how the process works and to keep them informed of progress throughout the process

- Obtain all relevant medical information from the OH provider and the member and commission further GP/consultant reports, as necessary.
- Complete and return an S18 form for all ill-health applications.
- This is to ensure that an IRMP is given access to all available evidence to provide a report indicating whether they believe that the member meets the criteria for ill-health retirement. Any concerns about the amount of information considered or possible omissions, should be referred back to the IRMP for further consideration or a second opinion.

Questions from the checklist should be replicated on the certificates for the IRMP to complete. All medical evidence taken into consideration should also be listed on the certificate.

- If there is uncertainty about the prognosis, due to other treatments which have yet to be tried, the first instance decision-maker must ask the IRMP to provide their professional opinion as to the expected efficacy of those treatments. If there are specialist reports due to be provided, where possible, the decision- maker must take these into account before making a decision.
- Upon receipt of the certificate and report from the IRMP, the First Instance decision-maker should weigh up the report, along with all relevant medical evidence and make a decision ensuring they apply the right test i.e. not the criminal law test of “beyond a reasonable doubt” but the civil law test of “on the balance of probabilities.” Any concerns about the extent of information or possible omissions should be referred back to the OH provider for further consideration or a second opinion.
- The decision-maker must consider all evidence that is relevant for the purposes of assessing the member’s ill health condition(s). He/she has the right to give more weight to some evidence than others when considering their decision, i.e. a specialist report may hold more weight than the opinion of a GP, but the advice of an occupational expert may override both.
- The First Instance decision-maker must apply the law correctly and consider all relevant information. It is also important to ignore any irrelevant information and ask the right questions. The Appointed Person at IDRP stage 1 will be checking that the decision-maker has considered all relevant medical evidence and that the resulting decision is not ‘irrational or perverse’.
- When the decision letter is provided to the member, it must explain the next steps in the process, so that they know their right of redress if they do not agree with the decision, as required under [LGPS\(S\) 2018 Regulation 68](#), Notification of first instance decision.

3.2 Checklist for First Instance Decision-maker

It is important to ensure that all the questions on the checklist have been considered and answered during the IDRP process.

1. Have you ensured that you have obtained all the relevant evidence, commissioned further reports and/or given the member the opportunity to provide more? If the case progresses to Stage 2 of the IDRP process, SPPA will assess the evidence provided and may remit the case back to the first instance decision-maker.
2. Has the IRMP applied the right test i.e. 'on the balance of probabilities'?
3. Have you reviewed and based your decision on all the evidence, not just the IRMP's report or certificate? You will need to list all the evidence you have considered.
4. Where you have doubts about the IRMP's advice regarding the member's medical condition, have you sought a further report/ clarification?
5. Has the IRMP fully considered and written about the probable effect of untried treatments? Have you informed the member of the IRMP's report and given them the opportunity to provide further evidence?
6. Have you clearly explained the decision to the member and included information about the next steps in the process?
7. If the member appeals against your decision the person appointed to review the process and the decision should not be the same person, to ensure a fair and impartial review.

4. IDRP Stage 1

4.1 Appointed Persons Duties

When a member does not agree with the decision of the first instance decision maker and invokes stage 1 of the IDRP process under [LGPS \(S\) Regulations 2018, regulation 69](#), as the appointed person you must;

- Tell the member about their rights, how the process works and keep them informed of progress.
- Request the first instance decision maker to provide you with a copy of all the relevant medical information used to make their decision, so that you can ensure

that they have applied the right test, i.e. 'on the balance of probabilities' and revert to them to ask for further reports if necessary.

- If the first instance decision maker has failed to carefully consider all relevant medical information or there is uncertainty about the prognosis, due to other treatments which have yet to be tried, revert the case back to the first instance decision maker to:
 - a) obtain further relevant medical information,
 - b) ask the IRMP for their professional opinion on the likely outcome of further treatments, and
 - c) revisit their decision on receipt of that advice
- Once you have made your decision, explain the next steps in the process to the member and inform them of their right of further redress, should they not agree with the decision, as required under Regulation 70 "Notice of decisions on disagreements".

Checklist for Appointed Person

It is important to ensure that all the questions on the checklist have been considered and answered during the Stage 1 Determination process.

1. Has the IRMP / first instance decision-maker applied the right test i.e. 'on the balance of probabilities'? Could that decision be considered perverse?
2. Has the first instance decision-maker reviewed all the relevant medical evidence or just the IRMP's opinion or certificate?
3. Has the first instance decision-maker made the decision or simply adopted the IRMP's opinion without question?
4. Where there was not enough information to make an informed decision; did the first instance decision-maker seek clarification from the IRMP or ask for another opinion?
5. Has the IRMP considered the question of untried treatments properly?
6. Did the first instance decision-maker explain the decision to the member clearly and include information about the next steps in the process?

5. Q & A's First Instance Decision-Makers

Q 1. How is the term 'efficiently' in relation to 'discharging efficiently the duties of employment' to be determined?

A. i.e. in a well-organised and competent way.

Q 2. How is the term 'likely' defined? The standard legal definition of greater than 50%, or the Equality Act definition of 'could well happen'?

A. i.e. probably the case or could well happen.

Q 3. If a member is likely to be capable of gainful employment if they engage with treatment, but refuses to do so , or appear not to be engaging and are unlikely to do so, do they meet the criteria?

A. Any opinion from an IRMP must be objective and independent. It should be based on all relevant evidence and should be in line with current medical approaches.

Where there is evidence that a good recovery should be expected and the main reason the member is unable to recover is the result of inappropriate belief, failure to accept standard treatment or failure to engage reasonably with treatment, it would not be reasonable to consider the member permanently unfit.

It is important in these circumstances that the IRMP explains the issues in a narrative report to the decision maker, including the provision of appropriate references. This report, provided with the medical evidence relied upon to provide the report/recommendation, will enable the decision-maker to make a reasonable and fair decision.

Q 4. If a member refuses treatment on the grounds of religious belief, can they be considered to meet the criteria for an award?

A. Where there is evidence that a good recovery should be expected, and the main reason the member is unable to recover is the result of failure to accept standard treatment or failure to engage reasonably with treatment, whether on grounds of religious belief or otherwise, it would not be reasonable to consider the member permanently unfit.

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

Q 5. Can the IRMP disagree with the GP or specialist?

A. This is a matter for the IRMP to decide. If they did disagree, they should set out their reasons for this.

Q 6. If the IRMP has seen the member in the past for a different condition, can they still be deemed independent under the LGPS(S) 2018 regulations?

A. The IRMP who provided previous advice would not be regarded as independent for these purposes and the member should be referred to another IRMP.

Q 7. What if a member is considered fit for other gainful employment, but has no aptitude for other options offered by their employer or are available elsewhere?

A. The suitability/availability of other possible employment is not considered in this IDRP process.

Q 8. Can ill health retirement from active status only be awarded if the IRMP states that the member is eligible, in effect, expecting the IRMP to make the decision?

A. The decision-maker is responsible for deciding whether the member qualifies for ill health retirement, and, if so, the relevant ill health tier. Before they can do so, they must have obtained an opinion from an IRMP.

The decision-maker should also consider GP letters, reports from consultants, specialists and psychiatric professionals, alongside the IRMP's opinion.

If the decision-maker has any questions about the IRMP's advice, they should ask for clarification from the IRMP to ensure they understand the underlying advice, before making their decision.

The decision-maker is not bound to follow the IRMP's opinion, as long as they have a valid reason for their decision.

However, only an IRMP can make a decision with regards to the severe ill health test.

The Scheme employer should assess all relevant factors as part of their decision-making process. These should include medical reports from hospital specialists/consultants and whether any reasonable adjustments have also been considered, where appropriate (as part of the Equality Act 2010). Evidence of this may be required by the SPPA, along with any HR reports on sickness absence, capability decisions, should the appeal go to Stage 2 of the process.

Q 9. Can a member appeal if they are still an active member?

A. Regulations 67 and 69 apply. Regulation 67 specifies that; "Any question concerning the rights or liabilities under the Scheme of any person, other than a Scheme employer, must be decided in the first instance by the person specified in this regulation."

Regulation 69, Applications to resolve disagreements “applies where there is a disagreement about a matter in relation to the Scheme between a member (or an alternative applicant) and a Scheme employer or the administering authority.”

Neither of these require that a member must have left the scheme to appeal, however, should a member still be working, it is unlikely that they would meet the criteria for ill-health benefits under Regulation 34, Early payment of retirement pension on ill-health grounds: active members;

- (3) The condition is that the member is, because 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) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before reaching normal pension age.
- (5) A member is entitled to Tier 2 benefits if that member is likely to be able to undertake gainful employment before reaching normal pension age.”

6. Entitlement to payment of benefits on the grounds of ill health

6.1 Active Members

All criteria below must be met:

- At least 2 years' LGPS membership.
- Permanent Incapacity
- Permanently incapable of efficiently discharging duties of their current job until Normal Pension Age (NPA).
- Not Immediately Capable of Gainful Employment
- Not immediately capable of gainful employment (≥ 30 hours/week for ≥ 12 months)

Regulation 34, sets out the criteria the employer is required to consider before entitlement to an ill health retirement benefit under that regulation can be awarded.

The member is entitled to payment of an ill-health benefit under Regulation 34 **where 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**. To decide the level of benefit, the employer must further decide which of the following situations apply;

- a) is the member unlikely to be capable of undertaking any gainful employment before reaching their normal pension age? If so, the member receives Tier 1 benefits based on accrued rights up to the date of termination and an enhancement calculated using their prospective service from that date to normal pension age; or

- b) is the member likely to be capable of undertaking any gainful employment before reaching normal pension age? In these circumstances, the member receives Tier 2 benefits based on accrued rights up to the date of termination and an enhancement calculated using 25% of prospective service from that date to normal pension age.

Before the employer can decide, they must have obtained a certificate from an IRMP.

Where the IRMP recommends Tier 1, they must then assess the member to the HMRC severe ill health test. This is defined as “unlikely because of ill health to be able to any type of gainful work, other than to an insignificant extent before state pension age. For example, the individual could undertake voluntary work or unpaid work where out of pocket expenses are reimbursed or small amounts of travelling or subsistence payments are made. Any paid work should be insignificant, for example it should be infrequent or only for a few days during the year and the payment must be small in amount, not just as a proportion of previous pay or salary.

Members who meet the scheme criteria for Tier 1 but do not meet the HMRC test will be subject to Annual Allowance restrictions on their pension. The Annual Allowance charge is a tax charge payable to HMRC.

6.2 Deferred Members (member left LGPS after 31 March 2015)

Regulation 36 of the 2018 Regulations provides an unenhanced ill health retirement benefit in respect of the following:

- (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

The early payment of deferred benefits can only be made where the appropriate administering authority obtains a certificate from an IRMP as to:

- (a) whether the member is suffering from a condition that renders the member 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 because of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age.

The relevant regulations for ill health retirement of deferred members will depend on when the member left the Scheme. The following table provides a link to the other relevant regulations.

Date of leaving	Relevant regulations (Timeline)
On or after 1 April 2015	The Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141)
On or after 1 April 2009 and before 1 April 2015	The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230)
On or after 1 April 1998 and before 1 April 2009	The Local Government Pension Scheme (Scotland) Regulations 1998 (SI 1998/366 (S.14))
Before 1 April 1998	The Local Government Superannuation (Scotland) Regulations 1987 (SI 1987/1850 (S.128))

7. The Role and Status of the IRMP

7.1 Definition of IRMP

The definition of the term "IRMP" is laid out in Schedule 1 of the Local Government Pension Scheme (Scotland) Regulations 2018:

"IRMP" means an independent registered medical practitioner who is registered with the General Medical Council and;

- a) holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state;
- b) and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983; or;
- c) is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state

7.2 Certification of Ill Health

The certification of ill health retirements by an IRMP qualified in occupational medicine is a feature of the Scheme regulations and is carried forward into the current scheme arrangements in regulations 35(1) and 36(3). These regulations set out the questions that the IRMP must address in their certificate.

The IRMP may be asked to sign the certificate required under regulations 35(1) or 36(3) and it is recommended that the IRMP complies with this request.

7.3 Key Points

- The First Instance decision maker will need to consider the evidence that has been considered by the IRMP before making their decision.
- Any concerns about the extent of information or possible omissions should be referred back to the IRMP for further consideration or a second opinion.
- The IRMP should provide a detailed narrative report to accompany the certificate.
- Where the IRMP is of the opinion that the applicant could work in their current role, with adjustments, or in an alternative role likely to be available by the employer, it is appropriate to include this advice in the narrative report.

7.4 Questions for the IRMP

Under regulation 35(1), for active members, the role of the IRMP is to certify whether, in his or her opinion, on the balance of probabilities, that the criteria for entitlement to an ill health benefit are met in each case.

The questions to be considered by the IRMP:

- (a) is the member permanently incapable of discharging efficiently the duties of the local government employment the member was engaged in,
- (b) because of ill health or infirmity of mind or body? and if so –
- (c) is the member likely to be capable of undertaking gainful employment before normal pension age?

Other considerations should be;

1. Were there any conflicting medical opinions? (if so, these should be noted)
2. Are there any treatments not been tried by the member which, in your opinion, should be tried? If so, provide a list of treatments/ medications.
3. Are these treatments or medications available to the member?
4. Is it reasonable to expect the member to undertake the treatment?
5. What effect do you expect the treatment is likely to have on the member's condition(s)? (Please give your reasons and relate your answer to the member specifically)
6. Have the correct regulations been applied in arriving at your decision?

7. Ensure that 'gainful employment,' as defined within the relevant regulations, has been referenced in your report.
8. If Tier 1 is recommended, please advise if the member meets the HMRC Severe Ill Health Test ([SIHT](#)) – members that qualify for the SIHT will be deemed to have nil pension input and so there can be no annual allowance charge against the pension savings in the tax year that benefits were awarded.

8. Special Considerations

Where an active member is awarded ill health retirement benefits but, prior to leaving employment, they have had to reduce their hours as a result of ill health, no account is taken of this reduction when calculating the enhancements for Tier 1 or Tier 2 awards.

The employer must take a view as to whether the reduction in hours is as a result of ill health or infirmity of mind or body. The employer can make this decision, based on previous OH advice or by seeking new OH advice.

If a member who is employed on a part time basis because of an ill health condition, further reduces their hours because of ill health, based on previous or new OH advice, the employer can decide that no account is to be taken of the further reduction when calculating pension enhancement for a Tier 1 or Tier 2 award.

9. Definitions and Terms Used

The examples given below expand on the definitions given in Schedule 1 to the 2018 Regulations or refer to words or phrases, not defined in the regulations.

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, it is determined to the date of their normal pension age.

The IRMP should also consider whether the member would be capable of their former employment / gainful employment following further treatment still to be tried.

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, however there may be relevant reasons for this, as discussed with their GP.

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 other than where the member is medically incapacitated from undertaking their current employment or any other employment at their date of leaving.

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 IRMP is required to give an opinion on the member’s capability of undertaking any gainful employment and not just the previous post held by the member. This reflects government policy whereby public service ill health pensions are to be paid not only based on 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 IRMP is encouraged to give an assessment of the type of gainful employment the member is likely to be capable of, in the narrative report. Non-medical factors, such as the general availability of gainful employment in a work location or the attitude to certain conditions, would not be material factors and should not be part of the IRMP’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 and the IRMP could be asked to make a comment on this.

Relevant medical evidence is defined in the dictionary as “bearing upon or connected with the matter in hand”. In this context it means medical evidence that should have been available at the time the decision was made. It does not include medical evidence about a condition that came about after the member left their employment.

10. Annex - Legislation

[The Local Government Pension Scheme \(Scotland\) Regulations 2018](#)

[The Local Government Pension Scheme \(Scotland\) Regulations 2014](#)

[The Local Government Pension Scheme \(Benefits, Membership and Contributions\) \(Scotland\) Regulations 2008](#)

[The Local Government Pension Scheme \(Scotland\) Regulations 1998](#)

[The Local Government Superannuation \(Scotland\) Regulations 1987](#)

[Disability Discrimination Act 1995](#)

[The Medical Act 1983](#)

11. Useful links

[LGPS Regulations and Guidance](#)

[III-Health Certificates Scotland](#)