



**GUIDANCE ON
THE LOCAL GOVERNMENT PENSION SCHEME
(NORTHERN IRELAND)
ILL-HEALTH RETIREMENT PENSION PROVISIONS**

APRIL 2015

Guidance on the Local Government Pension Scheme (Northern Ireland): Ill-Health Retirement Pension Provisions

1. This guidance is issued under regulation 38(4) of the Local Government Pension Scheme Regulations (Northern Ireland) 2014¹ (the “principal Regulations”), to the Northern Ireland Local Government Officers’ Superannuation Committee (the “Committee”) and the Independent Registered Medical Practitioners (IRMPs). It will also be made available to employing authorities and other relevant interested parties.
2. The Committee and the IRMPs must have regard to this guidance when carrying out their functions under regulations 36, 37, 38, 39 and 81 of the principal Regulations.
3. 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”.

EARLY LEAVERS: ILL-HEALTH

4. Regulations 36 and 37 of the principal Regulations set out provisions, which enable a member who has total membership of at least two years, to have his or her retirement pension come into payment before his or her normal pension age due to ill-health.
5. At the request of the employing authority, the Committee may determine that the member satisfies the conditions for ill-health retirement (regulation

¹ S.R. 2014 No. 188.

36(1)). In this case, it is the responsibility of the employing authority to contact the Committee. It is important that employers contact the Committee as soon as practicable. If the employer has made a request for a member to be assessed for ill-health retirement it would be preferable if the employer did not terminate that member's employment before the initial ill-health decision by the Committee is known.

6. The Committee may also be asked by a member, who had at least two years' membership of the pension scheme but who has left their employment with an entitlement to a deferred benefit, to determine if they are entitled to the early payment of those benefits due to ill-health (regulation 37). In this case, it is the responsibility of the deferred member to apply to the Committee directly and any payment would be from the date of the application.
7. The Committee cannot make such determinations unless it has referred the case to an IRMP for assessment and the IRMP has issued a certificate.
8. The Committee in appointing an IRMP must ensure the person is a registered medical practitioner who is registered with the General Medical Council²; and
 - holds a diploma in occupational health medicine (D Occ Med) or equivalent qualification issued by a competent authority³ in an EEA State; or
 - is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state.

² See Medical Act 1983 c. 54

³ Definition of "competent authority" was inserted into section 55 of the Medical Act 1983 by S.I. 2007/3101

- 8.** The Committee must also be satisfied that an IRMP in assessing a member does so as an independent. An IRMP, under regulation 38(3) of the principal Regulations, must include in their certification that he/she:
- has not previously advised, or given an opinion on or otherwise been involved in the particular case for which the certificate has been requested; and
 - is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case.

The inclusion of this statement should satisfy the Committee of the IRMP's independence.

- 9.** The IRMP must complete a certificate to state whether the member, due to his or her condition, is permanently incapable of discharging efficiently the duties of his or her employment because of ill-health or due to infirmity of mind or body. The IRMP must also state whether the member, as a result of ill-health or infirmity of mind or body, has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal pension age.
- 10.** In the case of an active member, the IRMP must also state whether, as a result of that condition, the member:
- is unlikely to be capable of undertaking any gainful employment before reaching normal pension age; or

- is likely to become capable of undertaking any gainful employment before reaching normal pension age.

11. The role of the IRMP in completing the certificate is to give an opinion, on the balance of probabilities, on whether the criteria for entitlement to ill-health benefits are satisfied in each case.
12. Non-medical factors, such as the general availability of gainful employment in a particular area or the attitude of employers to certain conditions, would not be material factors and should not be part of the IRMP's consideration. The same would apply to the individual's own attitude towards his or her condition, although it is recognised that in some cases, the member's attitude may constitute a medical condition in itself and the IRMP could be asked to make a judgement about this. The effect a medical condition would have on a member's practical ability to undertake gainful employment would be a material factor.
13. The Committee may determine that an active member's retirement pension comes into payment before his or her normal pension age, if he or she meets both criteria in paragraph 9 above. If, after conducting an assessment of a member's condition, the IRMP has issued a certificate stating that in his or her opinion that active member is unlikely to be capable of undertaking any gainful employment before reaching normal pension age, the Committee may determine that the member qualifies to receive full pension benefits (Tier 1) prior to his or her normal pension age. In this case an amount is added to the balance in the active 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 from the day following the date of termination and normal pension age, if that member had been treated as receiving assumed pensionable pay for each year and fraction of a year in that period and treating any election to the 50/50 section as lapsed on the date of termination of that member's employment. The retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment terminated.

- 14.** In the case of an active member who meets both criteria in paragraph 9 above and for whom the IRMP issues a certificate stating that in his/her opinion, the member is likely to become capable of undertaking any gainful employment before reaching normal pension age, the Committee may determine that the member qualifies to receive a Tier 2 pension award. That award is calculated by adjusting the active member's pension account for the year in which the active member's employment was terminated , by adding one quarter of the sum calculated in paragraph 13 (in accordance with regulation 39(2) of the principal regulations). The retirement pension is payable to the member as if they had reached normal pension age on the date the member's employment terminated.
- 15.** The Committee may determine that a deferred member's retirement pension should come into payment before his or her normal pension age on ill-health grounds, if he or she meets both criteria in paragraph 9 above.
- 16.** For active members who satisfy the following conditions-

 - aged 45 or more before 1 April 2009; and
 - a member of the Local Government Pension Scheme (Northern Ireland) before that date;

if the ill-health additional benefit for which they qualify in respect of a Tier 1 or Tier 2 award is less than the enhancement that would have been awarded under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009, the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (the 2009 Regulations), then the amount of member's benefits in respect of a Tier 1 or Tier 2 award (as appropriate) are increased as if the 2009 Regulations still applied.

- 17.** Where a member had reduced working hours and reduced pay as a consequence, in accordance with regulation 38(1) of the principal Regulations, the IRMP must certify whether that reduction in working hours is wholly or partly as consequence of the same ill-health or infirmity of mind or body. If this is the case, and the member is awarded ill-health retirement benefits no account is taken of the reduction in pensionable pay when calculating his or her award.

- 18.** Where a member (who is employed at the outset on a part-time basis because of an ill-health condition, and further reduces his or her hours as a result of that ill-health condition) is considered for ill-health retirement and the IRMP certifies that the further reduction in hours is due to the same ill-health condition, no account is taken of the further reduction in pensionable pay when calculating the ill-health benefits.

- 19.** The employer should retain a dated copy of the medical evidence of the medical condition which has resulted in the member working reduced hours.

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COUNCILLOR MEMBERS

- 20.** Councillors are also eligible for consideration for ill-health retirement benefits. The arrangements are similar to those for other members. Councillors must have at least two years' membership of the pension scheme (as a councillor) and, dependent upon the IRMP's assessment, the councillor member may receive a Tier 1 or Tier 2 award.
- 21.** The IRMP must complete a certificate to state whether the councillor member's ill-health or infirmity of mind or body renders the councillor member permanently incapable of discharging efficiently the duties of that office and whether, as a result of that ill-health or infirmity of mind or body, the councillor member has a reduced likelihood of undertaking any gainful employment before reaching normal pension age.
- 22.** The IRMP must also certify whether an active councillor member;
- is unlikely to be capable of undertaking any gainful employment before reaching normal pension age; or
 - is likely to become capable of undertaking any gainful employment before reaching normal pension age.
- 23.** The Committee may determine that an active councillor's retirement pension comes into payment before his or her normal pension age, if he or she meets both criteria in paragraph 21 above. If, after conducting an assessment of a member's condition, the IRMP has issued a certificate stating that in his or her opinion that active councillor member is unlikely to be capable of undertaking any gainful employment before reaching normal

pension age, the Committee may determine that the councillor member qualifies to receive full pension benefits (Tier 1) prior to his or her normal pension age. In this case an amount is added to the balance in the councillor member's active member's pension account for the year in which the councillor member's employment was terminated, equivalent to the amount of earned pension the councillor member would have accrued between the day following the date of termination and normal pension age, if that councillor member had been treated as receiving pensionable pay for each year and fraction of a year in that period. The retirement pension is payable to the councillor member as if the councillor member had reached normal pension age on the date the councillor member's employment was terminated (Tier 1).

- 24.** However, if, after conducting an assessment of a member's condition, the IRMP has issued a certificate stating that in his or her opinion that active councillor member is likely to be capable of undertaking any gainful employment before reaching normal pension age, the Committee may determine that the councillor member qualifies to receive pension benefits (Tier 2) prior to his or her normal pension age. That award is calculated by adjusting the councillor member's active member's pension account for the year in which the councillor member's employment was terminated, by adding one quarter of the sum calculated in accordance with regulation 39(1)(a) of the principal Regulations (as modified for councillor membership). The retirement pension is payable to the councillor member as if the councillor member had reached normal pension age on the date the councillor member's employment was terminated (Tier 2).
- 25.** As there are no set hours of work for a councillor, the arrangements for members employed on a part-time basis do not apply to councillor members.

EMPLOYERS' DUTIES

- 26.** Employers should note that the Committee, on receiving a request for a member to be assessed for ill-health retirement benefits, will ask if all other processes available to the employer have been exhausted. Employers have a responsibility to manage sick absences in the workplace and arrangements for doing so will vary amongst employers. However, it is important that employers refer a member for an ill-health determination as soon as practicable. If the employer has requested that a member be assessed for ill-health retirement benefits, it would be preferable if the employers did not terminate the member's employment until the initial ill-health decision is made by the Committee.
- 27.** Employers should include a statement to demonstrate that they have tried to accommodate the member remaining in employment, in line with the requirements of the Disability Discrimination Act 1995 (as amended), through such measures as redeployment, making reasonable adjustments to the workplace or flexible working.

ADDITIONAL MEDICAL EVIDENCE

- 28.** If a case is severe enough for the employer to make a request for a member to be assessed for ill-health retirement benefits, it would generally be expected that the member would have had the benefit of the employer's medical practitioner or a specialist opinion during his or her illness. It would greatly aid the Committee, if any relevant medical information provided by the employee's medical practitioner and/or by the member's specialist were attached to the application. Similarly, if no specialist advice is available, any

copies of hospital reports or notes from the member's GP would also be of benefit. The IRMP will form an opinion based on his/her own examination and the reports provided by the employer and/or by the member.

- 29.** Where an employer agrees that a member may reduce his or her hours of work because of a medical condition the employer should retain a dated copy of the medical evidence of that condition. This evidence should be provided to the Committee if the employer subsequently requests that a member be assessed for ill-health retirement benefits.