



**THE LOCAL
GOVERNMENT PENSION
SCHEME**

PensionChanges

LGPS Issues – No.5

June 2008

INTRODUCTION

This is the fifth issue of Pension Changes which brings you up to date with the latest information regarding the new-look LGPS and, in particular, on the new ill health provisions in the transitional period to 30 September 2008.

REGULAR UPDATES

We aim to update this newsletter as and when it is necessary, but if anyone has any comments on this edition or would like clarification of any points, then do get in touch with our lead contributors for this edition, either Lynda Jones at: lynda.jones@communities.gsi.gov.uk or Nicola Rochester at: nicola.rochester@communities.gsi.gov.uk.

ILL-HEALTH RETIREMENTS

Regulations to complete the new three tiers of ill health provisions and are now in force.

There was a debate in the House of Lords on 22 May following a motion tabled by Lord Campbell-Savours. Lord Bassam responded for the Government. The motion was withdrawn at the end of the debate. The full debate can be accessed by following this link:

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80522-0015.htm#08052274000004>

Ill Health Monitoring Group

It was agreed when the final, third, tier of ill health was finalised that the new ill health measures would be carefully monitored to ensure their effectiveness and fairness. The Ill Health Monitoring Group has been established and has now met twice. Membership includes representatives from trades unions, local government employers, occupational health practitioners, HR professionals and LGPS technical experts. The Group wants to ensure that their considerations are supported by good evidence of the practical application of the new measures and data to support this will be very important; ways to collect this are being explored.

Further guidance -Preparation of a FAQ sheet

CLG and the Monitoring Group are developing further useful guidance in the form of frequently asked questions which can be updated or revised easily. This should be finalised and circulated soon.

Statutory Ill Health Guidance

A statutory consultation will begin shortly on draft Statutory Guidance which will be issued under Regulation 56(3) of The Local Government Pension Scheme (Administration) Regulations 2007. In the meanwhile, and as there is much demand for the statutory guidance, we believe it would be helpful to set out here some of the practical aspects of the draft guidance on an informal basis to help practitioners. When Statutory Guidance is completed and agreed, this will be circulated to all stakeholders and practitioners. Some refinements may be made as a result of the consultation

Questions for the employer to determine

Under Regulation 20, the appropriate LGPS employer is required to consider and decide a number of questions before entitlement to an ill-health retirement benefit under that regulation can be paid. These include :-

- Is the length of total membership at least three months (Regulation 5 (1)(a) and 20(1));
- Will the employment be terminated on the grounds that the member's ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment (Regulation 20(1)(a));
- Does the member have a reduced likelihood of obtaining gainful employment (whether in local government or elsewhere) before his normal retirement age (Regulation 20(1)(b)).

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 20. To decide the level of benefit, the LGPS employer must further decide which of the following three situations applies :-

- Is there no reasonable prospect of the member obtaining gainful employment before reaching his NRA? In these circumstances, the member receives benefits based on his accrued rights up to the date of termination and enhancement equal to all his prospective service from that date to his NRA. (Regulation 20(2); or
- If the member is judged to be incapable of obtaining gainful employment within three years of leaving local government employment, but is likely to be able to do so before reaching his NRA, benefits equal to his accrued rights and enhancement of 25%

of his prospective service to NRA will be awarded. (Regulation 20(3)), or

- If the member is judged to be capable of recovering sufficiently from his incapacity to enable him to be capable of obtaining gainful employment within three years of leaving local government employment, benefits equal to his accrued rights, with no enhancement, will be awarded. (Regulation 20(4)).

Additional questions concerning part time employment and the protection rights of certain members fall to be considered by virtue of Regulations 20(12), (13) and (15) respectively.

Requirement to obtain a certificate from an Independent Registered Medical Practitioner qualified in occupational health medicine (IRMP)

Regulation 20(5), requires an authority to obtain a certificate from an IRMP qualified in occupational health medicine.

Return to gainful employment

The 3rd tier member is required to notify the previous employer when employment is found - providing details, including the pay and working hours of that employment. The employer considers the details regarding employment and, if they decide this is gainful employment according to the regulations, payments are stopped.

The Review mechanism

Under regulation 20(7), the previous employer needs to undertake a review when 3rd tier payments have been made for 18 months. The employer should write to the 3rd tier member asking for details of their employment status. If, from the information provided, the employer decides that gainful employment had been obtained, the 3rd tier payments are stopped.

The employing authority is required to notify the appropriate administering authority without delay when payments are stopped. If payments have continued when gainful employment has been found, the employer has powers to recover any overpayment from the 3rd tier member. Regulation 20(8)(c) and (a) refer.

3rd tier member returns to local government employment

Regulation 20(10), requires that when benefits are stopped and the 3rd tier member subsequently becomes an active member of the LGPS, the earlier period of membership which resulted in 3rd tier benefits is not aggregated with the later active membership.

Special considerations

Member reduces their hours because of the ill health condition which results in ill health retirement

Protection is given under regulation 20(12)(b) to any member who has a reduction in hours which directly relates to the ill health condition that resulted in termination of employment. In these circumstances, no account will be taken of the reduction in service for the purposes of calculating his benefits.

Treatment of those aged 45 before 1 April 2008 - 1st and 2nd tier determination

Under regulation 20(13), protection is given for those aged 45 before 1 April where there is entitlement to an enhancement. This provides that the member should be in no worse a position than they would have been, had Regulation 28 of the 1997 Regulations applied.

Status of member when payments cease

The status of a 3rd tier member whose benefits are stopped is 'a pensioner member with deferred benefits', and he is not eligible to receive 3rd tier payments in respect of any future period. Regulation 20(9) refers.

Seeking a further opinion from an IRMP

If, as a result of the employer's enquiry at the review, it is found that a 3rd tier member has not found gainful employment, the employer is required by regulation 20(7)(b) to seek a further opinion from an IRMP concerning the condition which resulted in the 3rd tier membership.

Employers' ability to uplift the 3rd tier member to a 2nd tier member following the review

The employer can determine that a 3rd tier member becomes a 2nd tier member upon the certification by the IRMP following the review or at any time even if the payment of the 3rd tier benefit has been stopped. The employer must take the same steps when determining the 2nd tier concerning certification by an IRMP. The date of the second determination will decide the date from which the uplift to 2nd tier will be put into payment.

Part IX – General

Transitional protections

Under regulation 20 (15), transitional protections apply for determinations made before 1 October 2008 to provide that if the benefits payable to a member under the amended Reg 20 would place him in a worse position than he would otherwise be had the 1997 Regulations continued to apply, then

those Regulations shall apply as if they were still in force. For all practical purposes, Regulation 27 of the 1997 Regulations and Regulation 20 of the Benefits Regulations 2007, as amended, both remain in force in the transitional period.

This means that the employer needs to consider whether the employee would be entitled to ill health benefits under Regulation 20 of the benefit regulations as amended by the LGPS (Amendment) Regulations 2008. The employer also needs to consider whether the member is entitled to ill health benefits under the 1997 Regulations. A calculation of any benefits payable, under the two sets of regulations, is made and any enhancement of prospective service for both calculations is at the 1/60th accrual rate. A comparison should then be made and the member is awarded the greater amount.

Until the end of September 2008, the ill health certificate to be completed by the independent registered medical practitioner will need to include questions about whether the member would meet the ill health definition in the LGPS Regulations 1997 as well as ill health questions relating to the Benefits Regulations 2007 (as amended).

For example, in the transitional period, a member who qualifies for a 3rd tier pension and would also qualify for an enhancement of 6 2/3 under the 1997 Regulations, would receive a 1997 Regulation non reviewable, permanent pension with the enhancement calculated at 1/60th accrual.

BENEFITS, MEMBERSHIP AND CONTRIBUTIONS

Other than issues relating to some employers terminating membership for people who had joined the scheme prior to April 2008 as casuals, which in many cases was not the appropriate classification, and some misunderstandings as to whether current actuarial factors continued to apply from 1 April 2008, the overwhelming majority of administrators and employers seem to have done an excellent job in introducing the new scheme.

There are still some concerns regarding defining a child, which is being looked at again, and for the longer term perhaps more clarity on how flexible retirement can operate smoothly and consistently when we still have rule of 85 protections to deal with as well.

Further consultations later this year linked to elected members and pension sharing on divorce will be necessary.

POLICY REVIEW GROUP AND COST SHARING

The PRG is due to meet in July and will discuss as main agenda items outstanding review of the rule of 85 phased protection period and initial results of the response to the cost sharing consultation. Minutes of these meetings will be posted on our website as soon as practicable.

**CLG, Workforce Pay and Pensions
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