



Scottish Public
Pensions Agency
Buidheann Peinneanan
Poblach na h-Alba

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 particular relevance to Line Managers, HR Staff and Appointed Persons reviewing cases at IDRP stage 1.

NB. An employer may terminate employment for some other reason (i.e. misconduct) even if a permanent incapacity opinion has been obtained, in which case ill health retirement would not apply.

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 or not 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 advice to the employer, including a consideration of treatments that have yet to be tried. The employer should review the available evidence as well as the certificate provided by the IRMP before making a decision about ill-health benefits.

An appointed person responsible for IDRP stage 1 must complete a review of the previous decision based upon a new report provided by an independent OH provider who should review all previous and any new medical evidence. The Appointed person should review all available evidence as well as the certificate provided by the IRMP before making a decision about ill-health benefits.

NB 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.

2. Key Facts

- First instance decisions on ill health retirement of active members are made by scheme employers.

- First instance decisions on ill health retirement of 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.
- In order to be entitled to ill health benefits, a member must meet the criteria set out in the relevant LGPS(S) regulations.
- Under IDRPs stage 1, the Appointed Person is responsible for providing a determination.
- Where the application for ill health benefits or early payment of deferred benefits are unsuccessful and the request for a stage 1 appeal under the IDRPs also fails, the applicant must be advised of the stage 2 appeal process in accordance with the LGPS(S) regulations.
- The SPPA determine appeals under IDRPs stage 2, for members of the LGPS(S) applying for ill health retirement or early payment of deferred benefits on ill-health grounds.
- The SPPA's Medical Advisor is required to consider previously submitted applications, along with any new medical evidence submitted, and provide a report detailing whether or not the member meets the prescribed criteria for ill health benefits.

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](#)

- 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 member and commission further reports as necessary.
- This is to ensure that an IRMP is given access to all available evidence in order to provide a report indicating whether they believe that the member meets the criteria for ill-health retirement; according to the Regulation 34.

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 professional opinion as to the expected efficacy of those treatments. If there are specialist reports due to be provided, 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 of the evidence, and make a decision based on these and applying 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”.
- The decision-maker must consider all relevant facts. 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 IDR stage 1 will be checking 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 Employer (First Instance Decision-maker)

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

1. Have you ensured that you have obtained all of the available evidence, commissioned further reports and/or given the member the opportunity to provide more?
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 of the evidence, not just the IRMP's report or certificate?
4. Where you have doubts about the advice, have you sought a further report/clarification?
5. Has the IRMP fully considered and written about the probable effect of untried treatments?
6. Have you clearly explained the decision to the member and included information about the next steps in the process?

4. IDRPs 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 IDRPs process [Local Government Pension Scheme \(Scotland\) 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 of 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 properly 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 the advice of their IRMP as to the efficacy of those treatments (in their professional opinion)

and

b) 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”.

4.2 Checklist for Appointed Person

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

1. Has the IRMP / first instance decision maker applied the right test i.e. ‘on the balance of probabilities’?
2. Has the first instance decision maker based their decision on all of the 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 medical advisor 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 properly and include information about the next steps in the process?

5. Q & A’s Which First Instance Decision Makers May Find Helpful

Q1. How is the term ‘efficiently’ in relation to ‘discharging efficiently the duties of employment’ to be determined?

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

Q2. 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.

Q3. If a member is likely to be able to recover and 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 or not?

A. Any opinion from an IRMP must be objective and independent. It should be based on available 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 why the member is unable to recover is solely the result of inappropriate belief, maladaptive behaviours, failure to accept standard treatment or failure to engage reasonably with treatment, it would not be reasonable to consider the member permanently unfit.

Where there is a general consensus among ALAMA (The Association of Local Authority Medical Advisors) members in relation to the condition, the IRMP would be expected to follow the consensus view unless an alternative recommendation can be objectively justified.

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.

Q4. 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 why the member is unable to recover is solely 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. Where there is a general consensus among ALAMA members in relation to this condition, the IRMP would be expected to follow the consensus view unless an alternative recommendation can be objectively justified.

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.

Q5. Can the IRMP disagree with the GP or specialist?

A. SPPA would regard this as purely a professional matter for the IRMP to decide. If they did disagree, then they would need to set out why.

Q6. 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 same IRMP who provided the original opinion would not be regarded as independent and the member would need to be referred to another IRMP.

Q7. Can we have some clarity as regards a situation where a member is medically fit for gainful employment but has no aptitude for it?

A. Generally, aptitude is not due to be considered by the IRMP of itself. However, if aptitude and/or attitude emerge as the indicators of an illness/disease, then it would appear that these should be noted down by the IRMP in his medical report. It is then for the decision maker to review the IRMP's report and to take these matters of aptitude/attitude into account when making their decision on ill health retirement.

Q8. Can ill health retirement only be awarded if the IRMP states that the member is eligible, in effect, expecting the IRMP to make the decision?

A. It is the Scheme employer who makes the decision to terminate an active member's employment on the grounds of ill health. They cannot make this decision without having first obtained a certificate from an IRMP qualified in occupational health medicine, however they are not bound to follow this recommendation if they have sound reasons to disagree and may seek a further medical opinion.

If the Scheme employer decides to terminate a member's employment on the grounds of ill health, it is also for them to decide whether to award Tier 1 or Tier 2 ill health retirement benefits.

The guidance specifically refers to Regulation 34 of the LGPS(S) Regulations 2018 however, the Scheme employer should also assess other factors (as part of the decision making process). These should include medical reports from hospital specialists/consultants, and whether any reasonable adjustments have also been taken into account of where appropriate (as part of the Disability Discrimination Act), along with any HR reports on absenteeism, sickness, performance records etc.

Q9. Can a member appeal if they are still an active member?

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, 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) 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

Under Regulation 34, the 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 have qualifying service for a period of 2 years? or has a transfer value been credited to the member’s record, or does the member already hold a Local Government Pension Scheme deferred benefit in the Scheme? [criteria listed in Local Government Pension Scheme (Scotland) Regulations 2018, Regulation 3(6)] and

b) does an independent registered medical practitioner consider that the member’s ill health or infirmity of mind or body render him permanently incapable of discharging efficiently the duties of his current employment? (Regulation 34(3) and 35(1) (a)).

If the answers to all three questions are yes, the member is entitled to payment of an ill-health benefit under Regulation 34. To decide the level of benefit, the employer must further decide which of the following situations apply:-

a) is there no reasonable prospect of the member being capable of undertaking any gainful employment before reaching his normal retirement age? If so, the member receives Tier 1 benefits based on accrued rights up to the date of termination and an enhancement equal to all prospective service from that date to normal retirement age (regulations 34(4) and 37(1); or

b) is the member likely (i.e. there is a reasonable prospect) of being capable of undertaking any gainful employment before reaching normal retirement age? In these circumstances, the member receives Tier 2 benefits based on accrued rights up to the date of termination and an enhancement equal to 25% of prospective service from that date to normal retirement age (regulations 34(5) and 37(2).

6.2 Deferred Members

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 as a result 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 table below provides a link to the relevant regulations.

Date of leaving	Relevant regulations (Timeline)
On or after 1 June 2018	The Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141)

On or after 1 April 2015 or before 1 June 2018	The Local Government Pension Scheme (Scotland) Regulations 2014 (SSI 2014/164)
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))

6.3 Payments

Ill health retirement benefit payments are made by the relevant administering authority following notification of the determination by the scheme employer for active members or the administering authority for deferred members.

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; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983 (64); or
- (b) 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 has been a feature of the Scheme regulations for a number of years 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 following points should be fully addressed in the ill health process:

- **The First Instance decision maker will need to understand the reasoning of the IRMP when making their decision.**
- **The IRMP should provide a detailed narrative report to accompany the certificate.**
- **Brief and imprecise reports do not form the foundation for a fully informed decision, and can be construed as dismissive and inconclusive by the member.**
- **Where the IRMP 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 this advice in the narrative report.**

7.4 Questions for the IRMP

In many respects, these reflect the questions that the decision maker is ultimately responsible for deciding however, it is important to bear in mind that the IRMP is not being asked to confirm the termination or otherwise of the member's employment.

Under regulation 35(1), the role of the IRMP 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 each case. On this basis, the questions to be considered by the IRMP 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? and if so –

b) is the member likely or unlikely 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 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

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

Where a member is awarded ill health retirement benefits but, prior to their leaving employment, they have had to reduce their hours as a result of the condition that lead to the ill health retirement award, no account is taken of this reduction in hours.

The employer must take a view as to whether the reduction in hours is as a result of the condition that causes him/her to be permanently incapable of the relevant local government employment and/or have a reduced likelihood of undertaking gainful employment, in accordance with regulation 35(1)(a)(b).

The member's reduction in earned pension, which is accrued between the date of the reduction in hours and the date they leave employment, is then ignored for the purposes of calculating his ill health benefits.

The employer can make this decision, based on previous OH advice or by seeking new OH advice.

If a member who is employed at the outset on a part time basis because of an ill health condition, further reduces their hours as a result of that condition, on the basis of

previous or new OH advice, the employer can decide that no account is to be taken of the further reduction when calculating an ill health retirement award. This also applies to pension enhancement for a Tier Two or Tier One award. The calculation is based on the pre-reduction part time earned pension.

9. Definitions and Terms Used

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 2018 Regulations, or refer to words or phrases that are not defined but which merit explanation.

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 IRMP should also consider whether the member would be capable of 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.

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.

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 IRMP 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 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.

“**Able to undertake**”. It is important to highlight the fact that regulation 34(4) and (5) 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.

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 in itself and the IRMP could be asked to make a comment on this.

The relevant definitions for the ill health retirement of deferred members will depend on when the member left the Scheme. *see page 13 6(2) Deferred Members.

Annexes

Annex 1: Scheme Regulations

[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](#)

Annex 2: Legislation

[Disability Discrimination Act 1995](#)

[The Medical Act 1983](#)

Annex 3: Useful Links

[Ill Health Certificates Scotland](#)