



June 2011

Local Government Pension Scheme (LGPS)

Supplementary Guidance for Independent Registered Medical Practitioners qualified in occupational health medicine (IRMPs)

This guidance is issued jointly by the Department for Communities and Local Government (DCLG) and the Faculty of Occupational Medicine to help IRMPs who have been asked to make an assessment under the LGPS ill health retirement regulations¹. This guidance does not replace the regulations, or DCLG's supporting guidance, but aims to clarify further several areas that have been drawn to the attention of the Faculty of Occupational Medicine, Association of Local Authority Medical Advisers, the British Medical Association Occupational Medicine Committee, and DCLG.

Background

1. Within the Local Government Pension Scheme, a new regulatory framework for ill-health retirement came into effect in April 2008, introducing three tiers of ill health retirement benefits. Subsequently, in November 2008, DCLG issued guidance on their implementation. Amongst other things, this addressed the advice that should be sought from an independent registered medical practitioner (IRMP) to enable decisions to be made on eligibility for pensions under the new-look scheme.

1. Regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007/1166), as amended by regulation 13 of the Local Government Pension Scheme (Amendment) Regulations 2008 (S.I. 2008/1083), by paragraph 15(2)(k) of Schedule 3 to The General and

Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234) & also by regulations 19, 26 and 52 of The Local Government Pension Scheme (Miscellaneous) Regulations 2010 (S.I. 2010/2090) and regulations 3, 4 and 5 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Amendment) Regulations 2011 (S.I. 2011/561

2. This supplementary guidance is intended to assist doctors further when they are providing reports for LGPS Scheme employers in relation to a Scheme
3. member who may be eligible for a pension to be paid before normal retirement age on the grounds of ill-health. It should be read in conjunction with the DCLG Guidance issued in June 2011 which includes the text of the relevant legislation, and also an example of an ill-health retirement certificate, Part B of which is to be completed by the doctor.
3. The IRMP must consider whether, on the balance of probabilities, an illness renders the employee permanently incapable of discharging efficiently the duties of his/her relevant employment, and, if so, whether as a result of that condition he/she has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age². (If, in your opinion, the employee is suffering from a condition that renders him or her permanently incapable of discharging efficiently the duties of his/her employment, you should ask yourself whether the employee will, as a result of that illness, more likely than not, be incapable in this way until, at the earliest, his/her 65th birthday³).

Guidance

4. The ill health certificate asks if the IRMP is attaching a full report or assessment. We are aware that some IRMPs prefer to include a LGPS assessment report with the certificate and we would strongly support this. It is, therefore, suggested that in addition to completing the certificate, two assessment reports are prepared. The first report should be a narrative to be sent to the employer to assist them in making a final decision and consider alternative arrangements, if appropriate. A second, more detailed report could also be provided for the Scheme member, medical staff and ombudsman to

² See Regulation 20(5)

³ See regulation 20(14) and the definition of “permanently incapable” as amended, in appropriate cases, by regulation 16A

enable them to understand the rationale for the decision. This sort of reporting system is already in use in some authorities. IRMPs might find the **attached** narrative template helpful, preferably converting it to a suitable electronic document and expanding the narrative boxes as necessary.

5. When completing Part B of an Ill-Health Retirement Certificate, as an IRMP, you are not making a decision as to whether the employee is eligible for a category of ill health retirement pension at tier 1, 2 or 3. Rather, you are providing an opinion and advice to the employer about the individual's likely future health and what employment task-related ability the individual has in relation to the medical condition that is being assessed. It is the employer who will, based on that opinion, decide whether to terminate the member's employment on grounds of ill health, and if so, which tier of ill-health retirement benefit is to be awarded. Equally, it remains the employer's decision on whether to uplift a tier 3 to a tier 2 ill health retirement, where the member seeks this, based on an IRMP's subsequent medical assessment.
6. As made clear in footnote (3) of the example Ill-Health Retirement Certificate, the doctor is asked to provide his/her opinion on the person's capability of undertaking gainful employment based **solely on the effect of the medical condition**.
7. Boxes B1-B2 of the certificate require the doctor to indicate whether the employee is suffering from a condition that, on the balance of probabilities, renders him/her permanently incapable of discharging efficiently the duties of his/her employment with his/her employer because of ill-health or infirmity of mind or body. In answering this and subsequent questions, "ill-health or infirmity of mind or body" should be taken to include illnesses such as non-specific arm pain, non-specific low back pain, chronic fatigue syndrome and fibromyalgia, despite the fact that there may be no demonstrable underlying pathology. However, the fact that an employee is diagnosed with such an illness should not automatically mean that the employee is deemed to be permanently incapable. Similarly, an employee who becomes mentally ill through work or as a consequence of a breakdown in working relationships

should not automatically be deemed to be permanently incapable of their employment. The IRMP may wish to recommend to the employer that the member tries alternative working arrangements.

8. Box B3 asks whether, as a result of the ill-health or infirmity, the employee does or does not have a reduced likelihood of being capable of undertaking other gainful employment, before age 65 (or by age 60 in certain protected cases).
9. Here, “reduced likelihood” means in comparison with the position of the same individual if he/she did not have the illness. In other words, are there jobs, which the employee could reasonably be expected to be capable of undertaking in the absence of his/her illness, but not in its presence?
10. Boxes B4-B6 refer to the prospect/likelihood of the employee being capable of undertaking gainful employment in different time windows. Here, “gainful employment” means paid employment for 30 or more hours per week for a period of not less than 12 months in an unsubsidised job (i.e. excluding sheltered employment).
11. A new Part C has been included in the medical certificate. This is to take account of HMRC’s new “severe ill health” test as required in its forthcoming Finance Bill 2011 (when enacted). IRMPs are now asked to give an opinion and certify whether the member meets not only the LGPS criteria for the release of ill health benefits but **additionally** whether the member has a “severe ill health” condition for the purposes of the exemption from the annual allowance test in the Finance Act when enacted. Boxes B9 and B10 on the certificate refer.
12. Non-medical factors, such as the general availability of gainful employment in a particular area or the attitude of employers to certain conditions, **are not material factors here, and should not be part of the IRMP’s consideration.** It is the effect that the medical condition would be expected to have on the employee’s practical ability to undertake gainful employment that should be

considered. This should include any effect that the condition has on the individual's attitude towards undertaking gainful employment, which could be a limiting factor in their search for employment. In considering the capability of undertaking employment, you should assume that the individual has average motivation, except in so far as his/her motivation may have been reduced as a clinical feature of the illness.

13. Medical incapacity could arise, not only because of disability resulting from the employee's illness, but also if there were a serious risk that a job could exacerbate the employee's illness. For example, an employee with allergic occupational asthma might need to avoid exposure to the sensitising agent.
14. The salary that would be paid for jobs that the employee could undertake in the future is not an issue here for the IRMP. For example, if a Chief Executive had suffered a head injury in a road traffic accident leading to mental impairment, but would be capable in the future of working for 30 or more hours per week for a period of not less than 12 months at other work such as a car park attendant, then he/she should be reported by the IRMPs as having a reasonable prospect of being medically capable of undertaking gainful employment. However, in such circumstances, it might help the employer if you indicated the type of work for which the employee would be capable.
15. You are not expected to take into account the competencies or aptitude of the employee in the absence of his/her illness. For example, if a manual labourer were rendered permanently incapable of performing his normal duties because of a chronic back disorder, but someone with such a disorder could be capable of working in a clerical job, you should classify the employee as capable of undertaking gainful employment, even if you think his aptitude would not enable him to work as a clerk. In these circumstances, you should add a report indicating the types of work for which someone with an illness or disability such as that affecting the employee, would be medically fit. This information can then be taken into account by the employer, when deciding the overall likelihood of the employee undertaking gainful employment.

16. Nor should you take account of factors other than the illness or disability that might influence the employee's competitiveness when applying for jobs (e.g. potential to perform well at interview, poor sickness absence record). You should assume the employee has average competitiveness.

***The Local Government Pension Scheme (Amendment) Regulations 2011
Registration with the General Medical Council (GMC)***

17. A drafting error contained within The LGPS (Miscellaneous) Regulations 2010 (SI 2010/2090) under Benefit Regulation 20(14) to originally define the acronym "IRMP" meant that part of the definition of "qualified in occupational health medicine" was omitted. So, an amendment which restores the full meaning of the expression as originally drafted has been made in the Local Government Pension Scheme (Amendment) Regulations 2011. Further, the regulation also clarifies that all IRMPs must be registered with the General Medical Council (GMC).

18. Finally, whilst IRMPs must be registered with the GMC, they should normally have a good knowledge of the work tasks undertaken by local government employees in order to be in the best position to assess health in relation to 'the duties of his/her relevant employment'. Knowledge of the Equalities Act, disability and pensions legislation plus related case law is also important.