



# Department for Communities and Local Government

## FREQUENTLY ASKED QUESTIONS – ILL HEALTH RETIREMENT – 2014 SCHEME – EDITION 1

THIS SET OF ANSWERS TO FREQUENTLY ASKED QUESTIONS DEALS WITH THE REGULATORY PROVISIONS OF THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013 (SI 2013/2356). IT AIMS TO SUPPORT LGPS PRACTITIONERS AND INDEPENDENT REGISTERED MEDICAL PRACTITIONERS.

This replaces earlier FAQ Editions which are now obsolete

Main Sub-heading	<u>Index/Contents</u>	
	FAQ Number(s)	Page Number(s)
Main questions answered	FAQs 1 & 2	2
Tier Three framework	FAQs 3 & 4	3
The Tier Three review	FAQs 5 - 15	3
Stopping Tier Three payments	FAQs 16 - 18	7
Accessing deferred benefits before NPA	FAQ 19	7
Certain protections for members	FAQs 20 - 22	8
Need for certification by IRMP	FAQs 23 – 25	8
Other Q&As which IRMPs might find useful	FAQs 26 – 40	9
Other relevant issues:		
- Lump sum	FAQ 41	12
- Payments payable under Reg 38	FAQ 42	12
- Tier Three & uplift to Tier Two	FAQ 43	13
- Employee returning to work	FAQ 44	13
- Aggregation of membership	FAQ 45	13
- Short-term contract; open contract; and term-time	FAQs 46 - 48	13
- ARCs/APCs	FAQ 49	15
- Retirement – not on ill health grounds & over 60	FAQ 50	15
- Death grant		
- Survivor benefits/R'dction in pay	FAQs 51 - 53	15
- GMP	FAQ 54	16
- Pension increase legislation	FAQ 55	16
- Meaning of terms in Regulations	FAQ 56	16
- IDRPs	FAQ 57	16
- HMRC & the definition of "severe ill health"/appeals	FAQs 58 – 59	16
- Commutation	FAQ 60	17
- Previous ill health retirement & subsequent ill health	FAQ 61	17
- Limit on number of Tier Three pensions	FAQ 62	17

## **Ill Health benefits for Local Government Pension Scheme members**

### **Main questions answered**

This DCLG aide-memoir is intended to help Local Government Pension Scheme (“LGPS”) practitioners and Independent Registered Medical Practitioners (“IRMPs”) apply the current ill health retirement provisions contained in the LGPS Regulations 2013 and should be read in conjunction with the 2014 LGPS Statutory Ill Health Retirement Guidance. This Guidance is published at: <http://www.lgpsregs.org/images/SecStateGuidance/IIIHealthGuidance.pdf> .

In respect of members who became deferred or deferred pensioner members prior to 1 April 2014 and who make an application for ill health retirement benefits, their application should be considered under the relevant Earlier Scheme Regulations. Additionally, the refreshed 2008 Guidance also makes it clear that where a member who was in receipt of Tier Three benefits on or before 31 March 2014, Regulation 20(6) to (11) of the Benefit Regulations 2007 (as amended) continues to have effect in relation to those benefits.

The FAQs in this document relate to the ill health retirement regime in the LGPS Regulations 2013 and do not replace the Regulations. Practitioners and IRMPs will want to seek their own legal advice as necessary.

### **Q1. Can ill health benefits be awarded if the member resigns?**

No. Ill health retirement benefits can only be awarded to a member who has 2 years qualifying service when:

- a) the Scheme employer terminates the member’s employment (before the member’s normal pension age) on the grounds that the member’s ill health or infirmity of mind or body renders him/her permanently incapable of discharging efficiently the duties of his/her current employment, and
- b) as a result of that ill health or infirmity of mind or body, the member is not immediately capable of undertaking any gainful employment (whether in local government or elsewhere) before his/her normal pension age.

### **Q2. Who makes the decision to award ill health retirement benefits?**

It is the Scheme employer who makes the decision to terminate a member’s employment on the grounds of ill health but they cannot make this decision without having first obtained a certificate from an independent registered medical practitioner (IRMP) qualified in occupational health medicine and who is registered with the General Medical Council.

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 One, Tier Two or Tier Three ill health retirement benefits.

## **Tier Three framework**

### **Q3. Why is a Tier Three needed?**

All employees who are members of the LGPS and whose employment is terminated because they are permanently incapable of their current job and are not immediately capable of undertaking any gainful employment after they leave their current job are entitled to an ill health retirement pension.

The ill health retirement Regulations provide a pension for those employees whose Scheme employer terminates their employment because they are permanently incapable of that employment and either:

- are unlikely to be capable of undertaking gainful employment before their normal pension age (Tier One), or
- are unlikely to be capable of undertaking any gainful employment within 3 years of leaving but are likely to be capable before their normal pension age (Tier Two).

Tier Three provides a reviewable pension for a member whose Scheme employer terminates their employment because they are permanently incapable of their current job but are likely to be capable of undertaking gainful employment within 3 years or before their normal pension age, if earlier.

### **Q4. How is the Tier Three benefit paid?**

It is a pension made up of the member's accrued benefits to the point that their employment was terminated on the grounds of ill health with no enhancement.

## **The Tier Three Review**

### **Q5. Why is there a review for the Tier Three?**

A Tier Three benefit is an interim pension as the member is considered capable of returning to other work and is not payable if gainful employment is found. The Tier Three member is required to inform their former Scheme employer if work is found and payments will stop if the Scheme employer considers that this is gainful employment as defined in the Regulations (or if the member fails to answer inquiries made by their former Scheme employer about that work). The Scheme employer needs to check the Tier Three member's employment status when payments have continued for 18 months. These payments will stop if gainful employment has been obtained. If it is found that the member is not in gainful employment at the review, there is a requirement for the Scheme employer to check the latest medical position.

### **Q6. How many times does the Scheme employer undertake a Tier Three review?**

The Scheme employer is only required to undertake a review once when payments have continued for 18 months. The Scheme employer is not required to undertake a further review but they are not prevented from looking at the case again in the light of the medical assessment at the review.

**Q7. Is there a review for Tier One or Tier Two?**

No.

**Q8. Who does the review?**

The previous Scheme employer, or successor body, has to check the Tier Three member's employment / medical status if payments have continued for 18 months. If the former employer has ceased to be a Scheme employer and there is no successor body, the relevant administering authority must undertake the review.

**Q9. Why does a Scheme employer need to ask about the terms of a member's contract at the review?**

A member in receipt of a Tier Three pension, who notifies their former Scheme employer that they have started paid employment, is not expected to work out whether they have obtained gainful employment as this is a matter for the Scheme employer. To help this assessment process, the Scheme employer needs to know if the work obtained is actually paid employment and will need details of pay to check this. They also need to be advised about how many hours the member is working each week and the terms of the contract i.e. is this for a fixed period or an open contract with no end date, so that the employer can establish whether gainful employment has been obtained? In Schedule 1 to the 2013 Regulations "gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months. It should be noted, however, that the former Scheme employer can cease the Tier Three pension if they form the reasonable view that gainful employment is likely to endure for at least 12 months, regardless of whether or not the employment does, in fact, endure for 12 months.

**Q10. What happens if the person had obtained work when the Scheme employer conducts the review at 18 months?**

The Scheme employer is required to stop payments if the work obtained is 'gainful employment' as defined in the 2013 regulations ("gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months but, as noted above, the former Scheme employer can cease the Tier Three pension if they form the reasonable view that gainful employment is likely to endure for at least 12 months, regardless of whether or not the employment does, in fact, endure for 12 months). The Scheme employer should notify the administering authority without delay that payments should be discontinued.

**Q11. What happens if the member fails to respond to the former employer's enquiry?**

If a Scheme employer has written to a member at the review with no response, they may wish to check whether a change of address notification has been received by the administering authority. If despite reminders, there is still no response from the member, it would be considered reasonable to cease payments until the employment position has been clarified.

**Q12. What happens if work was found some time before the 18 month review and the Tier Three member failed to inform their previous employer?**

Any payment made beyond the date of return to gainful employment can be regarded as an overpayment and the former Scheme employer has powers to recover that overpayment.

However, if the Scheme employer has had to ask for further information to be able to assess whether the employment is 'gainful employment' as described in the Regulations, the Scheme employer may wish to consider ceasing payments at the point when the information received confirms gainful employment.

Recovered payments will be the gross amount paid to the member and should be returned without delay to the relevant LGPS pension fund. The member will be able to reclaim any tax paid on these payments from HMRC.

If the Scheme employer considers that an overpayment has been made but then chooses not to seek recovery, or is unsuccessful in seeking to recover the overpayment, this would result in the payment being an unauthorised payment unless the payment was made in error and was for less than £250 gross. If it is an unauthorised payment the relevant administering authority has to provide the member with various information by the following 7 July (amount of overpayment, dates, nature of overpayment), and has to report the overpayment to HMRC as an unauthorised payment which will lead to a 40% unauthorised payment tax charge on the member and a Scheme sanction charge of 40% or 15% on the Fund (unless a case can be made for HMRC to waive the Scheme sanction charge).

**Q13. Should the Scheme employer inform the member when their Tier three payments are stopped?**

Yes, if Tier Three benefits are stopped, the Scheme employer should inform the member why and from what date. For example, if payments are stopped because of a return to paid employment, the Scheme employer should inform the member that they have decided that the paid employment they have is 'gainful employment' as described in the Regulations. The Scheme employer also needs to promptly inform the relevant administering authority to discontinue the Tier Three payments and the date from which the payment is to cease.

**Q14. If a Tier Three member continues to be incapable of work at the point of the review, can retirement benefits continue?**

Yes, in certain circumstances. A further medical judgement would be needed and where the medical assessment justifies this, a Scheme employer would be able to decide to award the enhanced Tier Two benefits from the date of the review decision. Alternatively, Tier Three payments could also continue based on the initial medical assessment up to the maximum three years after the date of termination of employment, as prescribed in the Regulations. Tier Three benefit payments would, of course, cease if gainful employment was obtained or the person was deemed to be capable of undertaking gainful employment.

**Q15. Can a Tier Three member be considered for an enhanced retirement pension at the review?**

Yes. The regulations provide that a Scheme employer can consider an uplift from a Tier Three to a Tier Two pension either at the review or at any stage up to 3 years after a Tier Three pension has been discontinued but this must relate to the condition that resulted in the Tier Three award.

A Scheme employer will need to be aware that there could be tax implications for the award of the enhanced Tier Two pension and have regard to HMRC normal rules for the increases of pensions, see

<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11104310.htm> and  
<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11104460.htm>.

## **Stopping Tier Three payments**

### **Q16. Why are payments stopped after 3 years?**

The duration of three years is consistent with the eligibility criteria where a member is judged capable of undertaking gainful employment within three years or not capable of undertaking gainful employment within three years, for the Tier Two and Three pensions respectively. A Tier Three pension is a short term benefit to provide financial assistance until such time as gainful employment can be, or is, found. It is not the intention that a member, whose medical condition requires payments beyond three years, should remain a Tier Three member and the Scheme employer has powers to consider an enhanced Tier Two pension at the Tier Three review. Even after Tier Three payments have been stopped, a further determination can be made under Regulation 37(10) up to three years after payments are discontinued where the original medical condition justifies this.

### **Q17. Can Tier Three payments be stopped regardless of whether a review has been undertaken or not?**

If payments are continuing until the review, payments cannot be stopped until a review is undertaken by the Scheme employer at 18 months as the Regulations require this when payments have been made for that long. It follows, therefore, that while Tier Three payments will stop at three years if they are continuing at that point, they cannot be stopped at any point up to the three year threshold without an earlier review. The exception is where the member has obtained gainful employment or fails to answer any reasonable inquiries made by the Scheme employer about the person's employment status, including as to pay and hours worked.

### **Q18. Does the Scheme employer have to notify the administering authority when payments stop?**

Yes and promptly. The Scheme employer should notify the administering authority without delay when Tier Three payments need to be stopped giving the reason i.e. that gainful employment has been found, or at or after the review when the member is judged immediately capable of gainful employment, or when the payments need to stop because they have been paid for three years.

### **Q19. Can a member who has received Tier Three ill health retirement benefits which have been discontinued receive retirement benefits again before their normal pension age?**

Yes, a deferred pensioner member may:

- a) subject to the former Scheme employer obtaining the necessary medical certification, ask to receive payment of an unreduced retirement pension at any time before their normal pension age on the grounds that, because of ill health or infirmity of mind or body, they are unlikely to be capable of undertaking gainful employment before their normal pension age, or
- b) elect for payment of the deferred benefit at any time from age 55 (on grounds other than permanent ill health) which, if paid before the member's normal

pension age would normally be subject to an actuarial reduction for early payment.

### **Certain protections for members**

#### **Q20. Has the age 45 protection in the 2008 Scheme been carried over to the 2014 Scheme?**

Regulation 12 in the 2014 Transitional Regulations (SI 2014/525) continues to provide for those who would have benefited from the age 45 protection in Benefit Regulation 20(13) (transitional protection for those aged 45 before 1 April 2008) by ensuring the enhancement is calculated by reference to the period under the 1997 Scheme compared with the period under the 2014 Scheme.

#### **Q21. What if the person has to reduce their hours just before their employment is terminated on ill health grounds?**

Provided the IRMP certifies that the member's pay during the period used to calculate the assumed pensionable pay (APP) figure (which used in calculating the amount of enhanced pension to award to a Tier One or Tier Two retiree) was reduced because the member's contractual hours of employment had, since joining the Scheme, been reduced as a consequence of the member's ill health, the Scheme employer can calculate the APP as if the member's contractual hours had not been reduced.

#### **Q22. What happens to a member who has always been employed part-time because of an existing ill health condition and further reduces their contractual hours of employment as a result of that medical condition and is now being considered for ill health retirement?**

If a member employed at the outset on a part time basis because of an ill health condition, further reduces their hours as a result of that ill health condition, and provided the IRMP certifies that the member's pay during the period used to calculate the APP was reduced because the member's contractual hours of employment had, since joining the Scheme, been further reduced as a consequence of the member's ill health, the Scheme employer can calculate the APP as if the member's contractual hours had not been further reduced.

### **Need for Certification by Independent Registered Medical Practitioner qualified in occupation health medicine**

#### **Q23. Do all decisions regarding an ill health pension need a certification by an independent registered medical practitioner qualified in occupational health?**

Yes, this includes decisions for those who have already left local government and are asking for early release of their pension. Regulations 35-38 require this.

#### **Q24. Can the independent doctor who made the medical assessment that resulted in a Tier Three award, undertake the second medical assessment at the 18 month review if asked to do so by the Scheme employer?**

Yes. The same doctor can sign the certificate that resulted in the first determination as well as at the Tier Three review. (Regulation 37(11))



**Q25. Can a Tier Three member whose payments have stopped ask for pension payments to resume if it relates to the condition that resulted in a Tier Three award?**

Only in certain circumstances but there is no future entitlement to Tier Three payments. Regulation 37(10) permits a determination for a Tier Two pension relating to the condition that resulted in Tier Three payments, if that condition subsequently merits such an award, but any such determination has to be made within three years of the date the Tier Three pension was discontinued.

**Other Q&As which IRMPs might find helpful**

**Q26. What if a member is awaiting treatment or has just had treatment and is not immediately capable of gainful employment, but would be expected to be capable in time?**

In the case of a member who is awaiting treatment for a serious condition, it would be sensible that they undergo treatment first before the Scheme employer makes a decision about whether the member should be considered for ill health retirement unless there are overriding considerations.

In the case of a member who has just had treatment for a serious condition, it would be sensible to allow a suitable recovery period to pass first before the issue of ill health retirement is considered, unless there are overriding considerations.

**Q27. How is the term 'efficiently' in relation to 'discharging efficiently the duties of employment' to be determined?**

It takes on its normal everyday meaning as per the Oxford English Dictionary.

**Q28. What if a member can undertake a significant or substantial proportion of their job but not all the job?**

An ill health retirement in the LGPS is about being permanently incapable of your current job. It might be appropriate for the Scheme employer to consider another role for the member or also consider undertaking any reasonable adjustments.

**Q29. How is the term 'likely' defined? The standard legal definition of greater than 50%, or the Equality Act definition of 'could well happen'?**

We have not defined 'likely' as it should take on its normal everyday meaning as in the Oxford English Dictionary.

**Q30. If a member already works less than 30 hours a week and cannot work 30 hours, are they automatically eligible for a pension?**

It would depend on whether the member was originally employed to work less than 30 hours a week through choice or because an existing ill health condition forces the person to work less than 30 hours a week. If the latter and the member further reduces their hours of work because of the medical condition and is being considered for an ill health retirement, they would need to be assessed against the ill health criteria like anyone else before a determination can be made. It should be noted that there is no automatic right to a pension. The gainful employment test is applied regardless of whether the member is working full or part-time. The IRMP

report may be key to next steps in this situation as there may be a recommendation that before the Scheme employer considers the question of ill health retirement, consideration is given to whether any workplace adjustments need to be carried out to allow the member to remain in employment.

**Q31. If the Scheme employer does not like the opinion of the IRMP is there a reasonable limit to the number of additional opinions that a Scheme employer should or could seek?**

There is nothing in the Regulations requiring additional opinions. This issue would really be a matter for the Scheme employer concerned who would make a judgement on whether there is a need for any additional information before being able to make a decision whether or not to award an ill health retirement.

**Q32. Is there a plan to create a register of IRMPs who are appropriately qualified and experienced?**

Administering authorities have to approve their IRMPs under Regulation 36. There are no plans to create a register as generally this is a local matter. There would be no objection should organisations such as the Association of Local Authority Medical Advisors want to create such a list.

**Q33. How should the Scheme employer respond if the member refuses to give consent for the IRMP to send the certificate and/or report to the Scheme employer?**

Then the application for the ill health retirement cannot be processed and the member would need to be advised of that. It is the Scheme employer's responsibility to make the final decision in ill health retirement cases. If they are not in possession of the IRMP certificate and/or report, the Scheme employer cannot fulfil its duties in this respect.

**Q34. If a member is likely to be able to recover and be capable of gainful employment if they engage with treatment, but refuse to do so, or appear not to be engaging, and are unlikely to do so, do they meet the criteria or not?**

Any opinion from an IRMP must be objective and independent. It should be based on available evidence including peer-reviewed evidence in the literature, 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 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 Scheme employer including the provision of appropriate references. This will enable the Scheme employer to make a reasonable and fair decision.

**Q35. If a member refuses treatment on the grounds of religious belief, can they be considered to meet the criteria for an award?**

We are of the view that the doctor/specialist would not have recommended treatment, unless there was a reasonable degree of success attaching to it. Undergoing such treatment may mean that the member would be completely cured and, therefore, not in need of an ill health retirement. This information should be provided as part of a narrative report from the IRMP.

**Q36. Does the IRMP have to request a GP or specialist report?**

It would be beneficial for any referral to an IRMP to include as much information about the member as is available, including GP or specialist reports. If these are not with the referral document and the IRMP is of the view that they would (or should) have been prepared, it is acceptable for the IRMP to seek this information so that the IRMP is in possession of all the facts prior to making a professional decision about the member's condition and application for ill health retirement. It would be reasonable for the IRMP to delay the process of certification while awaiting such reports provided they already exist. If they did not request such a report, it would be helpful if the IRMP set out why that is so.

**Q37. Can the IRMP disagree with the GP or specialist?**

DCLG 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 that is so.

**Q38. If the IRMP has seen the member in the past for a different condition, can they still meet the criteria for an IRMP?**

Only in respect of Regulation 38 where a deferred pensioner member who has received tier 3 ill health retirement benefits in the past comes back to seek early payment of retirement benefits on the grounds of ill health (which could be for a different condition to the one which led to a tier 3) – the same IRMP who opined originally can make a subsequent determination under the Regulations. In all other cases, they would not be regarded as independent and the member would need to be referred to another IRMP.

**Q39. Can we have some clarity as regards a situation where a member is medically fit for gainful employment but has no aptitude for it?**

Generally, aptitude is not due to be considered by the IRMP of itself. However, if aptitude and/or attitude emerge as the out-workings 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 Scheme employer to review the IRMP's report and to take these matters of aptitude/attitude into account when making their decision on ill health retirement.

**Q40. The LGPS Statutory Guidance seems to imply that the Scheme employer can only award ill health retirement if the IRMP states that the member is eligible, in effect, expecting the IRMP to make the decision. Can DCLG clarify that this is not the case?**

The Statutory Guidance is clear that it is mandatory for the Scheme employer to seek the professional opinion of the IRMP before it makes a decision as to whether to retire the member on ill health grounds. Paragraph 9 of the Guidance specifically refers to Regulation 35 of the LGPS Regulations 2013 and what that Regulation seeks to do but, that said, DCLG notes that the Scheme employer could also assess other factors (as part of the decision making process). These could include:- medical reports from hospital specialists/consultants; 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.

### **Other relevant issues**

**Q41. Would a lump sum be payable again if a further determination to a Tier Two pension is made?**

No. The termination of employment on ill health grounds and award of Tier Three benefits triggered a benefit crystallisation event with early release of retirement benefits and a lump sum payment. A member whose Tier Three benefits have stopped is a deferred pensioner member. Any future entitlement to ill health retirement benefits in respect of the ill health condition that resulted in Tier Three ill health benefits, is likely to be a Tier Two award which uplifts the Tier Three pension with an enhancement of 25%.

**Q42. From what date does the administering authority make any payments payable under Regulation 38?**

### **Deferred Members**

The member should notify the relevant Scheme employer that they want benefits to be released under Regulation 38. The Scheme employer is required to obtain a certificate from the IRMP regarding the member's condition and whether it renders the member permanently incapable of discharging efficiently the duties of the employment the member was engaged in (immediately prior to becoming a deferred member) and, whether as a result of that condition, the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age or for at least 3 years whichever is the sooner. The Scheme employer should notify the administering authority to release unenhanced benefits on and from the date the Scheme employer made the determination that the member met the ill health criteria under Regulation 38.

### **Deferred Pensioner Members**

The member should notify the relevant Scheme employer that they want benefits to be released under Regulation 38. The Scheme employer is required to obtain a certificate from the IRMP regarding the member's condition and whether the member is unlikely to be capable of undertaking gainful employment before normal pension

age. The Scheme employer should notify the administering authority to release unenhanced benefits on and from the date the Scheme employer made the determination that the member met the ill health criteria under Regulations 38.

**Q43. Can a Tier Three member be uplifted to the enhanced Tier Two with a condition other than that which resulted in the ill health retirement?**

No. The regulations are quite clear that it is the initial condition resulting in an ill health Tier Three payment that should be considered when assessing a possible uplift to a Tier Two pension.

**Q44. Can the employee return to local authority or another LGPS Scheme employer?**

They are not expected to return to their employment that resulted in the Tier Three retirement benefits but they could obtain other employment with a local authority or LGPS Scheme employer.

**Q45. If a Tier Three member obtains employment with a local authority or LGPS Scheme employer can the earlier membership resulting in a Tier Three pension be aggregated with the new period of membership?**

No. When the Tier Three pension stops, a pension account is closed and a deferred pensioner member account is opened with the amount of accrued pension as the opening balance. This would then be uprated each year under the Pensions (Increase) Act 1971. The deferred pension account cannot be added to an active account.

**Q46. Prior to the 18 month review, the Tier Three member has written to the former Scheme employer saying that they have a short term contract. How does the Scheme employer decide if the member has satisfied the gainful employment test?**

It would be unreasonable for a Scheme employer to assume that a person is in gainful employment having been notified, prior to the 18 month review, that the member had entered a short term contract of employment for, say, six months. Whether that contract will be renewed or not would be pure conjecture and should not, therefore, fall to be considered. Even if a Tier Three member had served two months of the six month contract, it follows that the definition of gainful employment has not been satisfied. Neither would it be reasonable to make any assumption that four months on, the contract might be reviewed for a further six months which could arguably bring it within the gainful employment definition. Where the Scheme employer is notified of a member's employment showing contract details of 30 hours or more in each week, for a period of less than 12 months, the Tier Three payments should not be stopped but the Scheme employer should check the current employment status with the member at the point the contract was due to end. If it is found that a further contract has been obtained, and this was again for 30 hours or more in each week, for a period of less than 12 months but which, when aggregated with the previous contract, would take the overall period to 12 months or more, it will be reasonable to stop payments. (Regulation 37(4)).

Under some contracts, the hours may be variable and this may cause some difficulty in deciding whether, over the future, the 30 hour test is satisfied over a 12 month period. If employment was obtained some time ago, it should be possible to ascertain a pattern of working from the variable hours worked up to that point and to base a decision on that evidence. A better way forward would be to defer any decision until later in the employment when evidence about working hours has been established.

In other words, taking short term contracts may avoid the Tier Three pension being suspended in the short time, but once the former Scheme employer forms a reasonable view that gainful employment of 30 hours or more in each week is likely to endure for 12 months, the Scheme employer can make a determination to cease the Tier Three pension. It is immaterial whether the employment does in fact endure for 12 months.

In any event, if it is clear from the outset that the member has obtained employment with a specified period of less than 12 months, the Scheme employer will wish to ask the member in receipt of a Tier Three pension to let them know their employment status at the end of the period of the first short term contract, and subsequent contracts to assist them in coming to a reasonable view as to whether the gainful employment test has been met.

The view is also taken that the words “in each week” where they appear in the definition of “gainful employment” in Schedule 1 means in each week throughout the 12 month period, rather than in each week where there is a contract of employment. Otherwise, the definition would be satisfied by a person taking just a one month contract of employment for 35 hours a week.

**Q47. Does a Scheme employer need to wait until 12 months of an open contract have been served before stopping payments, where it is clear that the contract was for 12 months or more and for not less than 30 hours in each week?**

Where a member notifies the previous Scheme employer that they have obtained employment, for example, 37 hours a week on an open contract i.e. one that has no specified end date, it would be reasonable for the Scheme employer to take the view that the gainful employment test was met and to discontinue payment of the Tier Three benefits.

**Q48. Would a member who, prior to the 18 month review obtains employment only during term time, be regarded as undertaking gainful employment?**

A “term-time worker” means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year (but is not limited to persons working in educational establishments). It follows that if a member, prior to the 18 month review, notifies the previous Scheme employer that they have obtained employment as a ‘term time worker’ on a standard hours contract that is not less than 30 hours each week with an unspecified end date, it would be reasonable for the Scheme employer to take the view that the gainful employment test was met and to discontinue payment of the Tier Three benefits.

If, however, the member notifies that term time working had been obtained with a specified end date within 12 months, the Scheme employer should check the position at the end of the contract. If the member entered into a further term time contract of not less than 30 hours per week, it would be reasonable for the Scheme employer to cease payments when the aggregated contract period is not less than 12 months.

A member may choose to obtain employment on a term time only basis for other reasons, such as child care arrangements, and a member in this position would be treated as a part time worker.

The gainful employment test for a member on a term time working contract with no specified end date but with hours of less than 30 hours a week would not be satisfied. Tier Three retirement benefits would be payable in these circumstances (for a maximum of three years or until gainful employment was obtained or the person became capable of gainful employment).

**Q49. What happens if a member is paying Additional Regular Contributions (ARCs) or Additional Pension Contributions (APCs)?**

A member paying ARCs or APCs who is entitled to a Tier One or Tier Two ill health pension will be deemed to have completed all their ARC or APC payments and will be credited with the whole of the extra pension they had contracted to buy.

A member who is entitled to a Tier Three ill health pension will only be credited with that proportion of the extra pension which they have paid for by the date of leaving i.e. they will not be deemed to have completed payments. There are no plans to change this.

**Q50. Can a member receive his retirement benefits without retiring on ill health grounds if he is over 60 but would have been a Tier Three member?**

A Scheme employer may wish to consider not terminating the member's employment on ill health grounds and, for instance, where existing protections permit the early release of unreduced retirement benefits, retire the employee as a regular retiree.

**Q51. What death grant is payable in respect of a Tier Three pension?**

If the Tier Three member dies while in receipt of the Tier Three pension, a death grant is payable under Regulation 43(6).

**Q52. What survivor benefits are payable in respect of a Tier Three pension?**

If a Tier Three member dies (either while in receipt of the Tier Three pension or the Tier Three pension is suspended), survivor benefits can be considered in accordance with regulations 44 and 45 of the 2013 regulations respectively.

**Q53. Is a member's reduction in pensionable pay ignored when calculating survivor benefits if the reduction relates to the condition that resulted in the death of an active member?**

No account is to be taken of any reduction in pensionable pay when calculating survivor benefits provided the reduction relates to the condition that resulted in the

death of an active member and this would have to be certified by an independent registered medical practitioner.

**Q54. Would a female pensioner member with deferred benefits be entitled to the Guaranteed Minimum Pension (GMP) element of the deferred (or suspended) Tier Three benefits from age 60?**

There are certain options that the member will need to consider depending on the circumstances. Please look at the tables on the following link:-

[http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=a425d8d9-27b7-4608-aa02-e75ade6a1466&groupId=10180](http://www.local.gov.uk/c/document_library/get_file?uuid=a425d8d9-27b7-4608-aa02-e75ade6a1466&groupId=10180)

**Q55. Does a member with a Tier Three pension qualify under the pension increase legislation?**

Yes, a member with a Tier One, Two or Three retirement pension would qualify under the Pensions (Increase) Act 1971 as the member has retired on account of physical or mental infirmity from the employment in respect of which the pension is payable. Pensions (Increase) Act 1971 section 3 (2) (b) refers.

**Q56. What do the terms mean in the Regulations?**

Unless defined in the Scheme's Regulations, words, terms and phrases are to be given their normal and everyday meaning, except where clarification or an explanation is given in the Statutory Ill Health Retirement Guidance 2014.

**Q57. What happens if the member is unhappy with the employer's decision about an ill health retirement application?**

A member does have recourse to query decisions made by a Scheme employer regarding ill health retirements under IDRP. This would include any disagreement with the level of ill health retirement benefit that was awarded i.e. Tier One, Tier Two or Tier Three. Also, a member, who has left local government employment and who was awarded deferred retirement benefits can appeal against this decision by writing to their former Scheme employer that made the decision, setting out the reasons for their disagreement with the decision, in accordance with Regulation 72 of the 2013 Regulations. Any appeal against the decision of the Scheme employer is required within 6 months of the date of the original decision. The 6 months period within which an appeal should be lodged can be extended at the discretion of the official who is to give the decision on the appeal (see Regulation 74(4)). The Regulations do not provide for appeals before a member's employment is terminated where an ill health retirement pension is not awarded.

**Q58. How will the application of HMRC's Annual Allowance rules and definition of "severe ill health" be applied?**

Template ill health certificates have been developed that ask the IRMP, at the point of referral, to provide an opinion relating to the severe ill health condition for the purposes of the annual allowance test under the Finance Act 2004.

The IRMP is asked to give an opinion and certify whether the member:-



(a) meets the LGPS criteria for the release of ill health benefits for one of the three tiers of ill health pension; **and additionally**

(b) has a “severe ill health” condition for the purposes of the exemption from the annual allowance test in the Finance Act i.e. whether the individual is suffering from ill health which makes that individual unlikely to be able (otherwise than to an insignificant extent) to undertake work (in any capacity) before normal pension age.

The member (regardless of tier) would need to meet the conditions set out in both (a) and (b) above in order to be exempt from paying the tax charge.

The LGA has updated the suite of ill health retirement certificates and these can be downloaded from the Circulars page of the Local Government Association website – <http://www.local.gov.uk/web/workforcelibrary.lgpc-circulars> (see Circular 277 of March 2014 and Circular 282 of June 2014).

**Q59. What happens where the LGPS IRMP has advised that the member meets the LGPS Tier One eligibility criteria but not that for HMRC “severe ill health” – and where the member seeks to appeal against the opinion regarding the “severe ill health” condition?**

To take into account HMRC rules on severe ill health, DCLG has included the severe ill health test as part of an ill health assessment but if the member does not satisfy the test, there is no right of appeal to HMRC.

**Q60. If a member takes ill-health retirement in the 2014 Scheme will the member still be able to take a lump sum as well?**

Yes, the member will be able to take a one off tax free cash lump sum if they qualify for an ill health retirement in the new Scheme. For every £1 of pension the member gives up, they will receive £12 of tax free lump sum subject to the total lump sum not exceeding 25% of the capital value of their accrued rights in that benefit crystallisation and in accordance with HMRC rules.

**Q61. Can a member have an enhanced Tier One or Tier Two pension if they have previously been retired under the Scheme on ill health grounds?**

No enhancement can be added if the member has previously received a Tier One ill health pension under the 2014 or 2008 Schemes or has received an ill health pension under any earlier Scheme.

The enhancement for a member entitled to a Tier One or Tier Two pension is adjusted if the member has previously received a Tier Two ill health pension under the 2014 or 2008 Schemes in accordance with regulation 39 (7).

**Q62. Can a member have a Tier Three pension if they have previously been retired on ill health grounds with a Tier Three pension?**

No. Regulation 37(8) of the 2013 Regulations prevents this.

**Department for Communities & Local Government**

**Workforce Pay & Pensions Division April 2015**