

Working draft to replace p 45 in the LGPS Commentary

Regulation 20 –Ill-health

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (*benefit regulations*) take effect from 1 April 2008. They provide a 100% enhancement to accrued retirement benefits for those employees who leave because an Independent Occupational Health Professional (IOHP) has determined that they are permanently incapable of their local authority employment and are not likely to work in any other employment before normal retirement age of 65 (NRA), (1st tier); and a 25% enhancement for those permanently incapable of their current employment but who are likely to become capable of gainful employment at some stage before NRA (2nd tier).

Regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (the benefits regulations) is being amended to provide for a 3rd tier of ill health benefit and include other amendments.

The 3rd tier of ill health provision

The measure, which will take effect from 1 April 2008, provides local authority employers with powers to award benefits for those scheme members who are permanently incapable of their local authority employment but are judged by an Independent Occupational Health Practitioner (IOHP) to be capable of gainful employment within three years of leaving that employment.

The framework

Regulation 20 (when made and laid) would provide:

A qualifying period for release of ill health benefits the same as that in Regulations 5 of the benefits regulations.

1st tier benefits where there is no reasonable prospect of gaining gainful employment before age 65 (normal retirement age); 2nd tier benefits where the member is not capable of gainful employment within three years of local government employment and 3rd tier benefits where the member is capable of obtaining gainful employment within three years of leaving local government employment.

An employee who leaves local government employment as a 3rd tier member will be entitled to their accrued benefits payable as a pension for such time as the member does not obtain gainful employment, or unless suspended following the review.

The 3rd tier member is required to notify the previous employer when employment is found providing details, including pay and working hours of that employment (the employer would then stop payments if this was ‘gainful employment.’).

The Review mechanism

The previous employer will be required to undertake a review when 3rd tier payments had been made for 18 months. If the employer decides, from the information provided that gainful employment had been obtained, the 3rd tier payments will be stopped. The employing authority will be required to notify the appropriate administering authority without delay when payments should be stopped. If payments have continued when gainful employment has been found, the employer will have powers to recover any overpayment from the 3rd tier member.

Other measures

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 should not be aggregated with the later active membership.

Protection is given for those members who have a reduction in hours which directly relate to the ill health condition resulting in termination of employment. Other provisions apply for the calculation of an enhancement for a part time employee.

Protection is given for those aged 45 before 1 April where there is entitlement to an enhancement and provides that the member should be in no worse position than they would have been in had Regulation 28 of the 1997 Regulations applied.

An authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine (IOHP).

Definitions

‘gainful employment’ means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

The status of a 3rd tier member whose benefits are stopped is ‘a pensioner member with deferred benefits’, and is not eligible to receive 3rd tier payments in respect of any future period.

Seeking a further opinion from an Independent Occupational Health Practitioner (IOHP)

If, as a result of the employer’s enquiry, it was found that a 3rd tier member had not found gainful employment, the employer will seek a further opinion from an IOHP concerning the condition which resulted in the 3rd tier membership.

Statutory Guidance will set out that a 3rd tier member’s employer would not be precluded, for the review, from selecting the same IOHP who made the judgement for the 3rd tier decision.

The employer will have powers to determine that a 3rd tier member should become a 2nd tier member and the date of further determination will decide the date from which the uplift to 2nd tier will be put into payment.

Transitional protections

Transitional protections apply for determinations made where the date of termination of employment is between 1 April and 30 September 2008 inclusive, to provide that the member is not in a worse a position than he would have been in if the 1997 regulations applied.

Regulation 31

Reg 31 provides that the accrued retirement benefits are payable, and that the member requesting early release of the retirement benefits should be judged by an IOHP as permanently incapable of the previous local authority employment and is likely to be prevented from obtaining gainful employment before reaching normal retirement age, or for at least three years, whichever is the sooner.

Membership of the Ill Health Monitoring Group has been announced and meetings will commence shortly.