

**Bath & North East
Somerset Council**



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Employers Guide to the LGPS

Retirements

7. LEAVING EMPLOYMENT WITH AN IMMEDIATE ENTITLEMENT TO THE PAYMENT OF BENEFITS

7.1 General

Please see Section 6.2 for advice on leaving dates. When an employee leaves in the circumstances described below there is an entitlement to the immediate payment of benefits. If he/she:

- a) is aged 65 or more having completed 3 month's membership or has less than 3 month's membership but has brought in a transfer from another pension scheme (see Section 7.2), or
- b) is being dismissed on the grounds of permanent ill-health having completed 3 month's membership or has less than 3 month's membership but has brought in a transfer from another pension scheme. Age is irrelevant (see Section 7.3), or
- c) is aged 55* or more having completed 3 month's membership or has less than 3 month's membership but has brought in a transfer from another pension scheme and is being dismissed by reason of redundancy or on the grounds of business efficiency, (see Section 7.4), or
- d) is aged 55* or more having completed 3 month's membership or has less than 3 month's membership but has brought in a transfer from another pension scheme and is being allowed by the employer to take flexible retirement (see Section 7.5),
- e) or is aged 55* or more having completed 3 month's membership or has less than 3 month's membership but has brought in a transfer from another pension scheme and the employer has agreed to the early payment benefits following a request from the employee (see Section 7.6)

***Note: In the case of an employee who was a member on 31 March 2008 and who is dismissed as in c) above or makes a request as in d) or e) above before 31 March 2010 the age of 55 is substituted by the age of 50.**

7.2 Leaving at age 65 or more having completed 3 month's membership or has less than 3 month's membership but has brought in a transfer from another pension scheme

Please ask the employee to complete **Form LGPS 20** and return it to you. Complete **Forms LGPS 15** and send them with **Form LGPS 20** to the Pensions Section.

If an employee decides to leave at the age of 60 or between the ages of 60 and 65, he/she will be given the opportunity of either choosing reduced benefits, payable immediately, or leaving payment until a later date but not later than age 75.

7.3 Dismissed by reason of redundancy or on the grounds of business efficiency – Regulation 19 of the Benefits Regulations

Immediate unreduced benefits will be paid to an employee aged 55 years or over and who has 3 or more month's membership, or has less than 3 month's membership but has transferred rights from another pension scheme. Providing the employer certifies that cessation of employment is by reason of redundancy or on the grounds of business efficiency.

The minimum age for the early payment of benefits by reason of redundancy or on the grounds of business efficiency is 55 for members who join the scheme from 1st April 2008. From 1st April 2008 to 31st March 2010 the minimum age will be 50 for those who were members of the scheme on 31st March 2008.

Employees with less than 3 months membership will be entitled to receive a refund of contributions with interest or a transfer to another approved pension scheme.

Please complete **Form LGPS 15** and attach a copy of the termination letter sent to the employee. Give the employee **Form LGPS 20** to complete and return to you. All completed forms must then be sent to the Pensions Section.

Employees dismissed on redundancy or on the grounds of business efficiency who are under the age 55 with 3 or more month's membership, or less than 3 month's membership but has transferred rights from another pension scheme are entitled to deferred benefits or a transfer to another pension arrangement (see Section 6.4)

The Benefits Regulations do not define "on the grounds of business efficiency".

7.4 Flexible Retirement – Regulation 18 of the Benefit Regulations

An employee who has attained the age of 55 and with his/her employer's consent, reduces the hours he/she works, or the grade in which he/she is employed, may elect in writing to the Avon Pension Fund for such benefits, with his/her employer's consent, to be paid to him/her notwithstanding that he/she has not retired from that employment.

The minimum age for requesting flexible retirement is 55 for members who join the scheme from 1st April 2008. From 1st April 2008 to 31st March 2010 the minimum age will be 50 for those who were members of the scheme on 31st March 2008.

If the payment of benefits referred to in the last paragraph takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

Please complete **Form LGPS 15** and attach a copy of the employer's consent to the flexible retirement. Give the employee **Form LGPS 20** to complete and return to you. All completed forms must then be sent to the Pensions Section.

7.5 Request for the early payment of benefits on Leaving Employment - Regulation 30 of the Benefit Regulations

When an employee aged 55 and over but less than age 60 leaves an employment with deferred benefits that employee has the right to request payment of his/her benefits subject to the employer agreeing to the request.

The minimum age for requesting the early payment of benefits is 55 for members who join the scheme from 1st April 2008. From 1st April 2008 to 31st March 2010 the minimum age will be 50 for those who were members of the scheme on 31st March 2008.

Please complete **Form LGPS 15** attach a copy of the employer's consent to the early payment of the employee's benefits. Give the employee **Form LGPS 20** to complete and return to you. All completed forms must then be sent to the Pensions Section.

7.6 Ill-Health Retirement – Regulation 20 of the Benefit Regulations

Before making a determination under this regulation, an employer must obtain a certificate from an independent registered medical practitioner **qualified in occupational health medicine** as to whether in his/her opinion the employee is **permanently incapable** of discharging efficiently the duties of his/her current employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he/she has a reduced likelihood of obtaining any **gainful employment** before reaching his/her normal retirement age.

"qualified in occupational health medicine" means—

- (a) holding a diploma in occupational 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 the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003; or
- (b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

"permanently incapable" means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday;

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

The scheme provides for three tiers of ill-health retirements where an employee has at least three months total membership or has less than three month's membership but has transferred rights from another pension scheme.

A member who has less than 3 month's membership in the LGPS and who has not transferred pension rights from another scheme into the LGPS is entitled to a refund of pension contributions less the statutory deductions. If the member wishes to transfer the accrued pension rights from the LGPS to another scheme a refund cannot be made.

7.6.1 Tier 1

If a member's employment is terminated by an employer because he/she is permanently incapable of discharging efficiently the duties of his/her current employment and the employer has determined that there is no reasonable prospect of the employee obtaining gainful employment before normal retirement age.

An enhancement is made to the member's accrued benefits by adding to his/her total membership at leaving date the whole of the period between that date and the age of 65.

7.6.2 Tier 2

If a member's employment is terminated by an employer because he/she is permanently incapable of discharging efficiently the duties of his/her current employment and the employer has determined that, although the employee cannot obtain gainful employment within three years of leaving employment, it is likely that he/she will be able to obtain gainful employment before normal retirement age.

An enhancement is made to the member's accrued benefits by adding to his/her total membership at leaving date 25% of the period between that date and the age of 65.

7.6.3 Tier 3

If a member's employment is terminated by an employer because he/she is permanently incapable of discharging efficiently the duties of his/her current employment and the employer has determined that the employee is likely to obtain gainful employment within three years of leaving employment no enhancement will be made to the member's accrued benefits at leaving date.

An employee who leaves employment as a 3rd tier member will be entitled to their pension for such time (not exceeding three year's) as long as the member does not obtain gainful employment, or unless suspended following a review. If the date of the 18 month review or the end of the three year period occurs after the age of 65 the pension cannot be stopped.

1. Gainful employment

The 3rd tier member is required to notify the employer who awarded the 3rd tier benefits when employment is found providing details, including pay, working hours and length of contract of that employment, If the employer decides that the employment is "gainful employment" ie paid employment for not less than 30 hours in each week for a period of not less than 12 months the employer must then advise the Avon Pension Fund to stop payment of the pension.

If pension payments have continued when gainful employment has been found, the employer can advise the Avon Pension Fund to recover any overpayment from the member.

2. The review

The previous employer is required to undertake a review when payments have been made for 18 months if payments are still continuing at that point.

At the review, the previous employer must ask the 3rd tier member if their circumstances had changed seeking details of working hours, pay and length of contract. If the employer decides, from the information provided that gainful employment had been obtained, the Fund must be advised that payment of the pension must be stopped.

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

If, as a result of the employer's enquiry, it is found that a 3rd tier member had not found gainful employment, the employer must seek a further opinion from an IOHP (this can be 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.

Please complete **Form LGPS 15** indicating which tier of ill-health applies to the employee and attach a copy of the dismissal letter sent to the employee together with a copy of the ill-health certificate (**Form LGPS 17A**). Give the employee **Form LGPS 20** to complete and return to you. All forms must then be sent the Pensions Section together with **Form LGPS 17**.

*****An ill-health retirement will NOT be processed without Form LGPS 17A and a copy of the dismissal letter to the employee*****

7.7 Estimates of Benefits

Where employees who are considering retirement require an estimate of the benefits they will receive, or where such an estimate is required in connection with a possible ill health retirement or redundancy / efficiency, this will be supplied on request from the employer. Please complete **Form LGPS 23** and forward it to the Pensions Section. A reply will be sent direct to the employee at their home address or in a sealed envelope to the employer as requested.

Care must be taken when advising the Pensions Section of the final pay that is to be used in the calculation of the estimate.

There has been a case with the Pensions Ombudsman where a local authority calculated an employee's final pay for an estimate and when the employee accepted the offer of early retirement the final pay calculation was less. The Ombudsman ruled that the employer had to calculate a lump sum compensation payment based on the difference in the benefits offered in the estimate and the benefits actually paid.