

**Bath & North East  
Somerset Council**



# CLG III Health Retirement Communities & Local Government FAQs Edition 3 June 2011



THIS SET OF ANSWERS TO FREQUENTLY ASKED QUESTIONS DEALS WITH THE REGULATORY PROVISIONS OF THE LOCAL GOVERNMENT PENSION SCHEME (BENEFITS, MEMBERSHIP AND CONTRIBUTIONS) REGULATIONS 2007 (SI 2007/1166), AND THE LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) REGULATIONS 2008 (SI 2008/239) (AS AMENDED) )<sup>1</sup>

FAQs – Edition 3 – June 2011 – this replaces FAQ Editions 1 and 2 which should no longer be used

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<sup>1</sup> including the Local Government Pension Scheme (Amendment) Regulations 2008 (SI 2008/1083) and the Local Government Pension Scheme (Miscellaneous) Regulations 2010 (SI 2010/2090)

## **Ill Health benefits for LGPS Scheme members**

### **Main questions answered**

This DCLG aide-memoir is intended to help practitioners apply the current ill health LGPS regulations and supports the LGPS Ill Health Guidance. The Ill Health Guidance can be seen at: <http://www.clg.heywood.co.uk/> .

This note does not replace the regulations and practitioners 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 are only awarded when the employer terminates the member's employment on the grounds that the member's ill health or infirmity of mind or body, renders him permanently incapable of discharging efficiently the duties of his current employment and the member has a reduced likelihood of being capable of undertaking gainful employment (whether in local government or elsewhere) before his normal retirement age (Regulation 20(1)).

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

It is the 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 qualified in occupational health medicine (IRMP).

If the employer decides to terminate a member's employment on the grounds of ill health, it is also for them to decide whether to award 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> tier ill health retirement benefits.

### **3<sup>rd</sup> tier framework**

#### **Q3. Why is a 3<sup>rd</sup> tier needed?**

All employees who are members of the LGPS and whose employment is terminated because they are permanently incapable of their current job and cannot work immediately after they leave their current job, are entitled to an ill health provision.

The ill health regulations provide a pension for those employees whose employer terminates their employment because they are permanently incapable of it but either cannot work again before normal retirement age or are unlikely to work again within 3 years of leaving (1<sup>st</sup> and 2<sup>nd</sup> tiers).

The 3<sup>rd</sup> tier provides a reviewable pension for a member whose employer terminates their employment because they are permanently incapable of their current job but are

judged capable of undertaking gainful employment within 3 years or before normal retirement age, if earlier.

**Q4. How is the 3<sup>rd</sup> tier 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. There will also be a lump sum if the member has pre 1 April 2008 membership and/or opts to commute some pension to a lump sum.

**The 3<sup>rd</sup> tier Review**

**Q5. Why is there a review for the 3<sup>rd</sup> tier?**

A 3<sup>rd</sup> tier benefit is an interim pension until the member returns to other work and is not payable if gainful employment is found. The 3<sup>rd</sup> tier member is required to inform their former employer if work is found and payments will stop if the employer considers that this is gainful employment as defined in the regulations. The employer needs to check the 3<sup>rd</sup> tier member's employment status where payments have continued for 18 months. 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 employer to check the latest medical position.

**Q6. How many times does the employer undertake a 3<sup>rd</sup> tier review?**

The employer is only required to undertake a review once when payments have continued for 18 months. The 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 the 1<sup>st</sup> and 2<sup>nd</sup> tiers?**

No.

**Q8. Who does the review?**

The previous employer, or successor body, has to check the 3<sup>rd</sup> tier member's employment / medical status if payments have continued for 18 months.

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

A member in receipt of a 3<sup>rd</sup> tier pension, who notifies their former 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 employer. To help this assessment process, the 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 ie 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

Regulation 20 (14) of the benefits regulations “gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

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

The employer is required to stop payments if the work obtained is ‘gainful employment’ as defined in the regulations (“gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months). The 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 an 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 3<sup>rd</sup> tier 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 employer has powers to recover that overpayment.

However, if the 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 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 pension fund. The member will be able to reclaim any tax paid on these payments from HMRC.

If the 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 employer tell the member when their 3<sup>rd</sup> tier payments are stopped?**

Yes, if 3<sup>rd</sup> tier benefits are stopped the employer should tell the member why and from what date. For example, if payments are stopped because of a return to paid employment, the employer should inform the member that they have decided that the paid employment they have is 'gainful employment' as described in the regulations. The employer also needs to promptly inform the relevant administering authority to discontinue the 3<sup>rd</sup> tier payments and the reason why.

**Q14. If a 3<sup>rd</sup> tier 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, an employer would be able to decide to award the enhanced 2<sup>nd</sup> tier benefit from the date of the decision to award the 2<sup>nd</sup> tier. Alternatively, 3<sup>rd</sup> tier 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. 3<sup>rd</sup> tier 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 3<sup>rd</sup> tier member be considered for an enhanced retirement pension at the review?**

Yes. The regulations provide that an employer can consider an uplift from a 3<sup>rd</sup> tier to a 2<sup>nd</sup> tier pension either at the review or at any stage up to 3 years after a 3<sup>rd</sup> tier pension has been suspended but this must relate to the condition that resulted in the 3<sup>rd</sup> tier award.

An employer will need to be aware that there could be tax implications for the award of the enhanced 2<sup>nd</sup> tier 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 3<sup>rd</sup> tier 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 3<sup>rd</sup> and 2<sup>nd</sup> tiers respectively. A 3<sup>rd</sup> tier 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 3<sup>rd</sup> tier member and the employer has powers to consider an enhanced 2<sup>nd</sup> tier pension at the 3<sup>rd</sup> tier review. Even after 3<sup>rd</sup> tier payments have been stopped, a further determination can be made under Regulation 20 (11) (a) up to three years after payments are discontinued where the original medical condition justifies this.

**Q17. Can 3<sup>rd</sup> tier 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 employer at 18 months as the regulations require this when payments have been made for that long. It follows, therefore, that while 3<sup>rd</sup> tier 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.

**Q18. Does the employing authority have to notify the administering authority when payments stop?**

Yes and promptly. The employing authority should notify the administering authority without delay when 3<sup>rd</sup> tier payments need to be stopped giving the reason i.e. that gainful employment has been found, 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 3<sup>rd</sup> tier ill health retirement benefits which have been suspended, receive retirement benefits again before their normal retirement age and are these benefits actuarially reduced?**

Yes. A pensioner member with deferred benefits under benefits Regulation 20 (9) can ask for these benefits to be unsuspending and agreement of the former employing authority would be needed if the member is aged between 55 and 60. This means that members with suspended ill health benefits have the same right to access deferred benefits before age 65 as other deferred members in the Scheme. On payment before normal retirement age the member's pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary. However whilst the "rule of 85" rights contained within the LGPS Transitional Regulations apply to active members and rejoining actives including flexible retirees, it should be noted that the current regulatory framework does not provide for "rule of 85" where a suspended tier 3 pension is brought back into payment before age 65\*. The actuarial reduction in such a case would be assessed by reference to the full period of time between the date the pension is brought back into payment and normal retirement age. This means that, for some scheme members, retiring with a tier 3 pension might not necessarily be to their advantage. For example, a person leaving at age 58 ½ who has met the "rule of 85" might prefer to leave with a deferred pension that they can access with no actuarial reduction from age 60 rather than have a tier 3 pension paid for 18 months which, if they want to bring it back into payment at age 60, would be paid with a full (5 year) actuarial reduction applied.

\* DCLG is considering whether this position should remain.

## Certain protections for members

### **Q20. What if the member's employment was terminated on ill health grounds and they were a member aged 45 or over before 1 April 2008?**

In these circumstances, for a member judged eligible for a 1<sup>st</sup> or 2<sup>nd</sup> tier enhancement, an employer will consider the benefits under both the 1997, and the 2007 ill health regulations as amended. They will make a comparison of the calculations, with the enhancement of prospective service for both calculations at the 1/60<sup>th</sup> accrual rate, and award benefits that are the greater of the two.

### **Q21. If a member receives an ill health retirement pension based on the 1997 regulations in the transitional period to 30 September 2008, but would otherwise have been entitled to a 3<sup>rd</sup> tier pension under the 2007 amended regulations, would their payments be reviewed?**

No. The 1997 ill health regulations apply in all respects and there is no review.

### **Q22. What if the person has to reduce their hours just before their employment is terminated on ill health grounds?**

Where a member is awarded ill health retirement benefits but, prior to termination of their 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 the reduction in hours. The member's reduction in service which is accrued between the date of the reduction in hours and the date they leave employment is ignored for the purposes of calculating his ill health benefits. For this provision to apply, the IRMP will need to certify that the reduction in hours is as a result of the condition that causes him to be permanently incapable of the relevant local government employment and that the member has a reduced likelihood of being capable of undertaking gainful employment; this is set out in regulation 20 (12) (b). If this is certified, the employer can make a determination, and the ill health pension will be calculated based on accrued service with no reduction in service because of the reduction in hours; this applies to past service and, where appropriate, any future membership enhancement for a 2<sup>nd</sup> or 1<sup>st</sup> tier award.

### **Q23. What happens to a member who has always been employed part-time because of an existing ill health condition and is being considered for ill health retirement because of that ill health condition?**

If a member's part time hours are not further reduced as a result of the ill health condition that is being assessed for ill health retirement, regulation 20 (12) (b) will not apply as there has been no reduction in their current service as a result of the condition resulting in 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 this is certified to be the case by an IRMP, and the employer determines to make an health retirement award, no account is taken of that further reduction in part time hours when calculating the ill health retirement award. This applies for both past service

and, where appropriate, any future service with the enhancement for a 2<sup>nd</sup> or 1<sup>st</sup> tier award.

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

#### **Q24. 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 20 and 31 of the Benefits Regulations require this. Regulation 56 of the Administration Regulations stipulate certain conditions that must be met.

#### **Q25. Can the independent doctor who made the medical assessment that resulted in a 3<sup>rd</sup> tier award, undertake the second medical assessment at the 18 month review if asked to do so by the employing authority?**

Yes. The same doctor can sign the certificate that resulted in the first determination as well as at the 3<sup>rd</sup> tier review (Administration regulation 56 (1A) applies). There is, effectively, no requirement that the IRMP has to be able to certify at a 3<sup>rd</sup> tier review that they have not previously advised, given an opinion on, or otherwise been involved in the case.

#### **Q26. Can a 3<sup>rd</sup> tier member whose payments have stopped ask for pension payments to resume if it relates to the condition that resulted in a 3<sup>rd</sup> tier award?**

Only in certain circumstances but there is no future entitlement to 3<sup>rd</sup> tier payments. Regulation 20 (11) (a) permits a determination for a 2<sup>nd</sup> tier pension relating to the condition that resulted in 3<sup>rd</sup> tier payments, if that condition subsequently merits such an award, but any such determination has to be made within three years of the date the 3<sup>rd</sup> tier pension was suspended (Regulation 20 (11) (aa)).

### **Other relevant issues**

#### **Q27. Would a lump sum be payable again if a further determination to a 2<sup>nd</sup> tier pension is made?**

No. The termination of employment on ill health grounds and award of 3<sup>rd</sup> tier benefits triggered a benefit crystallisation event with early release of retirement benefits and a lump sum payment. A member whose 3<sup>rd</sup> tier benefits have stopped is a pensioner member and, therefore, any future entitlement to ill health retirement benefits in respect of the ill health condition that resulted in 3<sup>rd</sup> tier ill health benefits, is likely to be a 2<sup>nd</sup> tier award which has an enhancement of 25% of their prospective membership to normal retirement age, based on 1/60<sup>th</sup> accrual with no option to commute for an additional lump sum.

**Q28. From what date does the administering authority make any payments payable under Regulation 31?**

The member should notify the relevant employing authority that they want benefits to be released under regulation 31. The employing authority is required to obtain a certificate from an IRMP regarding the member's condition and whether it renders the member permanently incapable of their former local authority employment and whether they have a reduced likelihood of being capable of undertaking gainful employment (ie would now meet the qualifying test for tier 1 or 2 of Regulation 20). The employer should notify the administering authority to release unenhanced benefits from the date they determined that the member became permanently incapable of discharging efficiently the duties of the relevant employment.

**Q29. Can a 3<sup>rd</sup> tier member be uplifted to the enhanced 2<sup>nd</sup> tier 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 3<sup>rd</sup> tier payment that should be considered when assessing a possible uplift to a 2<sup>nd</sup> tier pension.

**Q30. Can the employee return to local authority or another LGPS employer?**

They are not expected to return to their employment that resulted in the 3<sup>rd</sup> tier retirement benefits but they could obtain other employment with a local authority or LGPS employer.

**Q31. If a 3<sup>rd</sup> tier member obtains employment with a local authority or LGPS employer can the earlier membership resulting in a 3<sup>rd</sup> tier pension be aggregated with the new period of membership?**

No. Regulation 20 (10) requires that when benefits are stopped and the 3<sup>rd</sup> tier member subsequently becomes an active member of the LGPS, the earlier period of membership which resulted in 3<sup>rd</sup> tier benefits is not aggregated with the later active membership.

**Q32. Prior to the 18 month review, the 3<sup>rd</sup> tier member has written to the former employer saying that they have a short term contract. How does the employer decide if the member has satisfied the gainful employment test?**

It would be unreasonable for an 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 3<sup>rd</sup> tier 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 employer is notified of a member's employment showing contract details of 30 hours or more in each week, for a period less than 12 months, the 3<sup>rd</sup> tier payments should not be stopped but the 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 less than 12 months, it will be reasonable to stop payments when a continuous 12 month period has been undertaken, as the gainful employment test will have been satisfied.

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 3<sup>rd</sup> tier pension being suspended in the short time, but once the employment in individual contracts for 30 hours or more in each week have been undertaken over a continuous 12 month period, the definition of gainful employment would be satisfied.

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 employer will wish to ask the member in receipt of a 3<sup>rd</sup> tier pension, to let them know their employment status at the end of the period of the first short term contract, and subsequent contracts until 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 regulation 20(14) 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.

**Q33. Does an 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 employer that they have obtained employment, for example, 37 hours a week on an open contract ie one that has no specified end date, it would be reasonable for the employer to take the view that the gainful employment test was met and to discontinue payment of the 3<sup>rd</sup> tier benefits.

**Q34. Would a member who, prior to the 18 month review obtains employment only during term time, be regarded as undertaking gainful employment?**

In the Benefits Regulations, (Regulation 3 (7)), 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 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 employer to take the view that the gainful employment test was met and to discontinue payment of the 3rd tier benefits.

If, however, the member notifies that term time working had been obtained with a specified end date within 12 months, the 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 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. 3<sup>rd</sup> tier retirement benefits would be payable in these circumstances.

### **Q35. What happens if a member has an 'added years' contract?**

Regulation 83 of the 1997 Regulations has been retained by the LGPS (Transitional Provisions) Regulations 2008. This means that a person with an added years contract will be deemed to have completed the purchase of the added years if they meet the definition of ill health retirement under regulation 27 of the 1997 Regulations. Therefore,

- a) a member who meets the 1997 Regulations ill health definition but not the 2008 Benefits Regulation 20 definition, will get the added years contract bought out even though they will not be entitled to an ill health pension under the Benefits Regulations; or
- b) a member who meets the 1997 Regulations ill health definition and meets the 2008 Benefits Regulation 20 definition, will get the added years contract bought out and receive a tier 1, 2 or 3 pension under the Benefits Regulations; or
- c) a member who does not meet the 1997 Regulations ill health definition but does meet the new definition in the Benefits Regulations will not get the added years contract bought out. The member will only be entitled to the proportion of the added years contract purchased to the date of termination of employment but will be entitled to an ill health pension under tier 1, 2 or 3 of the Benefits Regulations.

**Q36. What happens if a member is paying Additional Regular Contributions (ARCs)?**

A member paying ARCs who is entitled to a 1<sup>st</sup> or 2<sup>nd</sup> tier ill health pension will be deemed to have completed all their ARC payments and will be credited with the whole of the extra pension they had contracted to buy.

A member who is entitled to a 3<sup>rd</sup> tier 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.

**Q37. Can a member receive his retirement benefits without retiring on ill health grounds if he is over 60 but would have been a 3<sup>rd</sup> tier member?**

It is the employer who has to determine the reason for terminating employment. An 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.

**Q38. What death grant is payable in respect of a 3<sup>rd</sup> tier pension?**

If a 3<sup>rd</sup> tier member dies while in receipt of the 3<sup>rd</sup> tier pension, a death grant is payable under Regulation 35 of the benefits regulations. This would be 10 times the pension in payment (or the pension that would have been in payment but for the suspension or any abatement under Regulation 71 of the Administration Regulations) less the amount that has already been paid, any or would have been paid but for any abatement applied under Regulation 71 of the Administration Regulations. If a 3<sup>rd</sup> tier member dies whilst the 3<sup>rd</sup> tier pension has ceased and future retirement benefits are deferred, a death grant would be payable under Regulation 32. This would be 5 times the deferred pension less the amount of any lump sum already paid and the amount of 3<sup>rd</sup> tier pension paid before it was suspended.

**Q39. What survivor benefits are payable in respect of a 3<sup>rd</sup> tier pension?**

If a 3<sup>rd</sup> tier member dies (either while in receipt of the 3<sup>rd</sup> tier pension or the 3<sup>rd</sup> tier pension is suspended), survivor benefits can be considered in accordance with regulations 36 and 37 of the Benefits regulations respectively.

**Q40. Is a member's reduction in hours ignored when calculating survivor benefits if the reduction relates to the condition that resulted in the death of an active member?**

Yes. Benefits Regulations 24 (2A) applies. But note that the reduction is not currently ignored when calculating children's pensions.

**Q41. Can a member commute any pension accrued after 1 April 2008 before a 3<sup>rd</sup> tier pension is awarded?**

Yes but this is subject to the limit that the commuted sum must not exceed 25% of the capital value of the member's accrued rights.

**Q42. Would a female pensioner member with deferred benefits be entitled to the Guaranteed Minimum Pension (GMP) element of the deferred (or suspended) benefits from age 60?**

Yes, if a female member does not seek early release of her 3<sup>rd</sup> tier deferred benefits before age 65 and is not in paid employment, that member with a GMP would be entitled to that part of her pension from age 60.

**Q43. Does a member with a 3<sup>rd</sup> tier pension qualify under the pension increase legislation?**

Yes, a member with a 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> tier 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.

**Q44. 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 ill health statutory guidance.

**Q45. 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 an employer regarding ill health retirements under IDRPs. This would include any disagreement with the level of ill health retirement benefit that was awarded ie 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> tier. Also, a member, who has left local government employment and who was awarded deferred retirement benefits can appeal against this decision by writing to the employer that made the decision, setting out the reasons for their disagreement with the decision, in accordance with Regulation 58 of the LGPS (Administration) Regulations 2008. Any appeal against the decision of the employing authority 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. The regulations do not provide for appeals before a member's employment is terminated where an ill health retirement pension is not awarded.

Detailed guidance for both scheme employers and scheme members on the scheme's IDRPs arrangements can be found at:

<http://www.clg.heywood.co.uk/system/files/+Guide+to+IDRP+June+2004.doc>

(scheme members) and:

<http://www.clg.heywood.co.uk/system/files/040407-Guide-NewPractitionersGuide.doc>

(scheme employers).

The guides also refer to the role of the Pensions Ombudsman.

**Q46. How will the application of HMRC's new Annual Allowance rules and definition of "severe ill health" be applied?**

DCLG has been working with ALAMA, HMRC and LGE colleagues and revised ill health certificates have been prepared that asks 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 (based on amendments to that Act contained in the current wording of the Finance Bill 2011).

The IRMP is now 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 when enacted.

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 LGE has recently re-issued all their ill health certificates (which take on board these changes) under Circular 249 – June 2011 and these can be downloaded from their website at: <http://www/lge.gov.uk/lge/aio/11971370> .

**Q47. What happens where the LGPS IRMP has advised that the member meets the LGPS tier 1 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?**

There is no appeal process to HMRC as it is a matter of fact based on the medical practitioner's professional opinion at the time the ill health pension is paid as to whether or not the individual meets the severe ill health condition.

**Department for Communities and Local Government  
Workforce, Pay and Pensions  
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