

**BRISTOL CITY COUNCIL  
HUMAN RESOURCES COMMITTEE**

**TO BE CONSIDERED 24th April 2008**

**Title: Early retirement on the grounds of ill-health: Revised regulations and BCC appeal rights** **Ward: City Wide**

**Report of: Head of Human Resources**

**Officer presenting report: Tom Wallen - Pensions Officer (HR)**

**Contact telephone number: (0117) 92 23489**

**1. Report Summary**

The pension changes referred to in this report do not affect teachers, who are eligible to join the Teacher's Pension Scheme rather than the Local Government Pension Scheme (LGPS)

Regulations have already been issued by parliament, which came into effect on the 1<sup>st</sup> April 2008, regarding ill-health retirements from the LGPS. However these regulations contain a number of drafting errors and we have been told to expect amending legislation to be issued in relation to these provisions. As at the time of writing this amendment legislation which we were initially told to expect in mid-February has not yet been issued by parliament.

The currently issued regulations only contain 2 tiers of benefits, but it is proposed that a lower 3<sup>rd</sup> tier will be introduced by the amending legislation which will also clarify the period of membership someone requires in order to be eligible for ill-health retirement benefits. The amendments are expected to state that there will be a qualifying period of 3 months of continuous contributory membership for these benefits and that the lowest benefits tier would cease when the individual obtained "gainful employment"

The proposed benefit tiers are specified below:-

	<b>Those eligible</b>	<b>Terms</b>	<b>Review</b>
1 <sup>st</sup> tier	Permanently incapable of LA employment and are not likely to work before NRA.	100% enhancement to accrued retirement benefits	No

2 <sup>nd</sup> Tier	Permanently incapable of their current employment. Will not be capable of “gainful employment” within 3 years, but are likely to be capable of such work before NRD	25% enhancement to accrued retirement benefits	No
3 <sup>rd</sup> Tier	Permanently incapable of their current employment but medical evidence indicates that gainful employment could be obtained within 3 years.	Accrued retirement benefits at the point of leaving but payments can be stopped when gainful employment is obtained.	Yes, after 18 months, by Bristol City Council.

The 1997 LGPS regulations define ***permanently incapable*** as - the member will, more likely than not, be incapable until, at the earliest, his 65<sup>th</sup> birthday.

***Gainful employment*** is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months.

The existing regulations contain the term “***reasonable period***” and this has not been defined by statutory guidance. However informal guidance issued on the 14.03.2008 suggests that this will be defined as 3 years (as stated in the above table).

We anticipate that the increased complexity of these ill-health retirement provisions will lead to appeals from people who believe they should have been placed into a different benefits tier. Administration costs will also increase if the proposed 3<sup>rd</sup> tier of pension benefits is introduced in-line with the informal government guidance issued on the 14<sup>th</sup> March 2008, as it would require us to review these cases after 18 months.

## 2. Recommendation

- 2.1 That the proposed method of dealing with appeals stated in Section 5 is approved
- 2.2 That the Managing Attendance policy is updated in-line with this change in legislation as outlined in section 5.5. In line with this, Members are also asked to agree that the Appeal Arrangements for 1<sup>st</sup> and 2<sup>nd</sup> tier officers will be dealt with by the Head of the Paid Service (or their nominated representative).
- 2.3 That the remaining contents of this report are noted.
- 2.4 Note that a further report will follow when the (new) 3<sup>rd</sup> tier is determined

### **3. Policy**

The City Council has to adhere to the Local Government Pension Scheme regulations and any related statutory guidance which is issued by the DCLG.

### **4. Consultation**

**(a) Internal**

**(b) External**

### **5. Background and Assessment**

5.1 Revised letters to staff who are retired on the grounds of ill-health have been produced and the appeals procedure contained within the pensions regulations is outlined in this correspondence as required by this pension scheme. (see appendix 2)

5.2 The Local Government Pension Scheme Independent Dispute Resolution Procedure (IDRP) is defined as:

Stage 1: Appeal to the employers “nominated person”  
Stage 2: Appeal to the administering authority (B&NES)  
Stage 3: Appeal to the pensions ombudsman

It is proposed that the Council's “Nominated Person” for stage 1, will be the Pensions officer for all employees, except those at 1<sup>st</sup> and 2<sup>nd</sup> tier where the nominated person will be the Head of the Paid Service (or her nominated representative).

5.3 Given the extensive Independent Dispute Resolution Procedure within the pension scheme, and the fact that any decisions in relation to ill-health retirement would be based upon the medical advice received, it would be unproductive to have any additional internal appeal process for these cases.

5.4 Therefore we propose that the process for Stage one of the appeals process (with Bristol City Council) should simply involve a check that the correct procedure was followed and the relevant advice sought from Occupational Health. If the relevant procedure was followed the nominated person could then refer the applicant to stage two of the appeals process with B&NES. At this stage an independent person employed by B&NES would review the case, should they query the initial decision or ask us to re-examine the case we would refer the individual to another independent medical

practitioner for a second medical opinion. Similarly, if a complaint proceeded to stage 3 of the process we would seek a third and final medical opinion in relation to the case, if the pensions ombudsman ask us to review the original decision we had made.

- 5.5 The **old ill-health retirement (IHR) definition required the individual to be:** "permanently incapable of discharging efficiently the duties of his/her local government employment ... or any other comparable employment."

**New IHR definition:** "permanently incapable of discharging efficiently the duties of his/her local government employment ..."  
Although extra criteria exist to determine the level of pension benefits available the requirement to be permanently incapable of any other comparable employment has been removed.

For those falling into the top 2 tiers of IHR redeployment would not be possible (as the physician will have certified that the individual is unable to obtain 'gainful employment' within the next 3 years because of their medical condition). However if tier 3 is introduced, as stated in the latest informal guidance from the DCLG, the IHR criteria will be less stringent than this.

Therefore we propose changing the the managing attendance policy which currently states that:

"Corporate Redeployment is mandatory before OH are able to confirm that the employee satisfies the rules of the local government pension scheme for the early release of pension on grounds of ill health retirement. The only exception to this is if OH confirm that redeployment would not be applicable due to the medical condition of the employee."

The revised wording would state:

"For ill-health retirement cases where an employee could be considered for redeployment, alternative employment should be sort up to the date of termination."

- 5.6 The Avon Pension Fund has now produced a new ill-health retirement form using the definition of "reasonable period" included in the latest informal guidance from the DCLG. As this is the only guidance we have in relation to the term "reasonable period" people will be assigned to the appropriate level off ill-health retirement benefits in-line with this informal guidance until we receive further guidance from central government.

- 5.7 Given the significant difference between the levels of ill health

retirement benefits the Avon Pension Fund will not provide employers with blanket estimates of an individual member's potential ill-health retirement benefits on all two (or three) possible tiers. They will only produce estimates of ill-health retirement benefits in cases where a determination has been made about which tier of benefits the person will receive. This means that estimates will only be produced after the occupational health physician has completed the Pension Fund's ill-health retirement form.

## **6. Other Options Considered**

It would be possible to have a more complex assessment for stage 1 of the Internal Disputes Resolution Procedure (IDRP) within Bristol City Council. However, the pension scheme regulations already allow for significant appeal rights in these circumstances. Adding additional complexity would not only increase administration costs but could also increase any distress experienced by an individual who is simply seeking a final decision about their case by exhausting the available appeal mechanism.

## **7. Risk Assessment**

At present the only information we have to determine the term "reasonable period" is the informal guidance issued by central government, as the long awaited statutory guidance has not been produced in relation to this definition. It is possible that the statutory guidance will differ from the information we have at present for determining the level of pension benefits awarded in these circumstances.

## **8. Equalities Impact Assessment**

An Equalities Impact Assessment has not been carried out as this report relates to a statutory change in the LGPS.

## **9. Legal and Resource Implications**

### **Legal:**

(Advice from Legal Services)

Not sought - Statutory changes

### **Financial:**

#### **(a) Revenue**

**(b) Capital** N/A

(Advice from designated Finance Officer)

**Land:** N/A

**Personnel:**

As set out in paragraphs 5.1 to 5.6 above

**Appendices:**

Appendix A: LGPS circular No. 4

Appendix B: Dispute Resolution- appeals procedure

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:** None



## THE LOCAL GOVERNMENT PENSION SCHEME

# PensionChanges

LGPS Issues – No.4

March 2008

### INTRODUCTION

The local authorities have a great deal of interest around 1 April (an unavoidable date!) and will be briefing our Press Staff about the new Scheme and our proposed commentary! No other CLG-inspired events are planned. As before, if anyone has any comments on these newsletters or would like clarification of any points, then do get in touch with one of the following, either Brian Town at: [brian.town@communities.gsi.gov.uk](mailto:brian.town@communities.gsi.gov.uk) or Nicola Rochester at: [Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk).

**Further, as we are drawing ever closer to the launch date – it would be very much appreciated if you would please draw this newsletter and our earlier editions to the attention of all your employers. It has become apparent to us recently that not everyone is quite up to speed with the relevant changes as they should be! This is worrying! So please don't leave folk out – get the message out!!**

### REGULAR UPDATES

This issue provides administrators with updates on ill health retirement – 3<sup>rd</sup> tier; Benefit Regulations; Administration and Transitional Provisions; Commentary Guide; Admitted Body Status Review, the Sustaining Mechanism and the Policy Review Group.

**ILL HEALTH RETIREMENT – 3<sup>RD</sup> TIER**

Set out below are the intended terms of the 3<sup>rd</sup> tier that will be contained in Regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2000 (the benefits regulations). Ministers have agreed that the necessary Statutory Instrument (SI) can be finalised and it should be published shortly when made and laid in Parliament. Stakeholders may find the comments helpful as they await the final provisions.

The proposals for a 3<sup>rd</sup> tier of ill health benefit were set out in a consultation letter issued on 21 November 2007 which invited comments by 12 January 2008. Communities and Local Government is grateful for the responses received which have been evaluated and assessed.

**The 3<sup>rd</sup> tier of ill health provision**

The measure which comes into force on 1 April 2008, provide 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 a reasonable period after leaving that employment.

When establishing the framework for the 3<sup>rd</sup> tier, account has been taken of all the representations made including those from employer organisations and trades unions. The final terms of the regulations have been prepared on the basis that the provisions must remain within the agreed cost envelope and cost no more than 0.1% of payroll.

**The framework**

There will be a qualifying period of 3 months of continuous contributory membership.

An employee who leaves local government employment as a 3<sup>rd</sup> tier member will be entitled to their annual accrued benefits payable as a pension for such time as the 3<sup>rd</sup> tier member does not obtain gainful employment, or until the employer stops payments following the review\*.

The 3<sup>rd</sup> tier member will be required to notify the previous employer when employment is found providing details, including pay, working hours and length of contract of that employment, and the employer would then stop payments if this was 'gainful employment.'

If payments have continued when gainful employment has been found, the employer will have powers to recover any overpayment from the 3<sup>rd</sup> tier member.

If 3<sup>rd</sup> tier payments cease, there should be no reinstatement.



The definition of the status of a 3<sup>rd</sup> tier member whose benefits are stopped is ‘a pensioner member with deferred benefits’.

There will be protection for those members who have a reduction in hours which directly relate to the ill health condition resulting in termination of employment.

When benefits are stopped and the then 3<sup>rd</sup> tier member subsequently becomes an active member of the LGPS, the earlier period of membership which resulted in ill health benefits should not be aggregated with the later active membership.

## **Definitions**

‘reasonable period’ means a period of 3 years.

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

## **The Review mechanism**

The previous employer will be 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 will ask the 3<sup>rd</sup> 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 3<sup>rd</sup> tier payments will be stopped.

The employing authority will be required to notify the appropriate administering authority without delay when payments should be stopped.

## **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 3<sup>rd</sup> tier member had not found gainful employment, the employer will be able to seek a further opinion from an IOHP concerning the condition which resulted in the 3<sup>rd</sup> tier membership.

*Statutory Guidance* will set out that the IOHP should be asked whether it remained the case that gainful employment could have been obtained within a reasonable period of leaving the former local authority employment (and the doctor should be asked to state the precise point at which gainful employment could be obtained) *or* if the member is judged to be incapable of undertaking gainful employment within a reasonable period but is likely to be able to obtain gainful employment before his retirement age.

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

\*If the IOHP is of the opinion that the member remains capable of gainful employment within the reasonable period, the employer will have powers to stop payments at the date specified by the IOHP.

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

### **Regulation 31**

The intention of Reg 31 will be redrafted to make clear that unenhanced 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 until normal retirement age.

The consultation letter highlighted the proposal for an Ill Health Monitoring Group and membership of the group will be announced shortly.

## **UPDATE ON GAD GUIDANCE**

You should now be in receipt of the first two GAD guidance notes that were sent out earlier this month. Please email Andy Lankester if you have not received yours: [andy.lankester@communities.gsi.gov.uk](mailto:andy.lankester@communities.gsi.gov.uk) .

Look out for the one we are hoping to issue on transfers in the next few days!

## **AMENDMENTS TO THE BENEFITS REGULATIONS – TECHNICAL CHANGES & CLARIFICATIONS**

A number of technical changes are to be made to the *Benefit Regulations* which have been picked up by practitioners and administrators since they were made in April 2007. These are as follows:-

After the standard preamble in regulation 1 and stating that the Benefits Regulations are amended as follows in regulation 2, this SI does the following to the LGPS (Benefits, Membership and Contributions) Regulations 2007:-

- the necessary cross reference to the LGPS (Administration) Regulations 2008 is inserted into the Benefits Regulation citation, regulation 1;
- regulation 2 now has a cross reference to the Admin Regulations rather than the 1997 Regulations in terms of defining Scheme employers, and makes clear that continuous members join the new arrangement;

- regulation 3 has been amended to show how new joiners should be allocated to one of the contribution pay bands on starting; how the bands will be uprated each year to the nearest £100, how a material change in a member's pay may require a re-attribution of contribution band, clarifies whole time term timers (in line with approach already in place with many employers and funds) and that band applies to all pay in EACH individual job;
- regulation 5 is amended to make clear that once the initial three month qualifying condition is satisfied it applies in respect of all later periods, other than where a pension has come into payment;
- regulation 6 now makes the appropriate cross reference to the Admin Regulations;
- regulation 8 is amended to meet the intention set out in the RIA which accompanied the Benefits Regulations;
- regulation 9(5) is now deleted as not being needed;
- regulation 10 has been amended to deliver a consistent approach to retirement and flexible retirement with ongoing membership, and see also changes made to regulation 16 and 18;
- in regulation 16 a new sub-paragraph (3) has been inserted to deal with the consistency of approach
- and this same point is repeated in regulation 17;
- regulation 18 as amended now sets out that stepping down, which can only be with same employer, permits flexible retirement in a consistent manner with amendments to regulations 10, 16 and 17;
- the cross referencing in regulation 25(6)(b) is now corrected;
- amends regulation 26 to set out definition of eligible child rather than rely on cross references to other legislation;
- a new provision is inserted into regulation 29 which removes need for point to be repeated in subsequent regulations and allows for enhancement where deferred member chooses not to take pension at age 65;
- regulation 30 has had otiose provisions deleted;
- in regulation 33 the word "salary" has been replaced by "pay";
- regulation 35 is amended to make clear that in paying guaranteed amount of death benefit regard is given to post commutation pension;
- regulation 36 is amended in same way as regulation 33;
- regulation 39 now includes specific reference to GAD guidance in dealing with trivial commutation;
- a new regulation 41 is inserted bringing forward pension debit provision into Benefits Regulations rather than in Administration Regulations; and
- a new regulation 42 is inserted to ensure no double counting of periods of membership which was being considered for inclusion in the Administration Regulations.

The opportunity has also been taken to amend a saving provision in the Transitional Provisions to ensure consistency of approach between a member switching funds where they had already entered into an added years contract and a member with preserved rights linked to AVC contract or rule of 85 protection up to 2016.

**ADMINISTRATION AND TRANSITIONAL REGULATIONS**

These Regulations have now been made and laid and will come into force on 1 April. You should already be in receipt of an electronic copy. If not, you can download a set from our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) and go to the What's New Page and look under 14 February (SI 2008 Nos. 238 & 239).

**COMMENTARY GUIDANCE**

The long-awaited Commentary Guidance will be published on 1 April when the new-look LGPS goes 'live'. As you know, it will accompany the Benefit, Transitional and Administration regulations. It will also be posted onto both the Departmental website ([www.communities.gov.uk](http://www.communities.gov.uk)) and our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) so there will always be a copy to refer to. As this will need to be a living document, we would welcome your comments and observations on it so that we can keep it up to date and relevant at all times. Once published – please email any comments you might have to Nicola Rochester ([Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk)).

**ADMITTED BODY STATUS REVIEW**

January's edition of this newsletter informed that the informal consultation exercise on Admitted Body Status provisions was underway. An informal consultation document on 18 January that examines specific concerns raised about the implementation of ABS provisions and sets out three possible broad approaches which might be developed to address those concerns.

A wide range of stakeholders including councils, unions and employers are invited to submit their views on the approaches set out in the consultation document and provide additional ideas on potential ways forward to help ensure the provisions meet the needs and support the interests of local authorities, contractors, employees and taxpayers.

The consultation document and accompanying questionnaire are available at [www.communities.gov.uk/publications/localgovernment/admittedbodystatus](http://www.communities.gov.uk/publications/localgovernment/admittedbodystatus). Alternatively, you can request your copy of the consultation document by emailing Darren Kristiansen at [Darren.Kristiansen@communities.gsi.gov.uk](mailto:Darren.Kristiansen@communities.gsi.gov.uk) or telephone Darren on tel: 020 7944 8173.

This informal consultation exercise closes on **Thursday, 10 April 2008**.

If you are organising an event before 10 April and would welcome further information about the consultation exercise, please contact Darren Kristiansen on the details provided above. Subject to availability Darren would be pleased to attend any events taking place and provide advice, guidance or presentation on the consultation exercise.

### **SUSTAINING THE LGPS IN ENGLAND & WALES**

Our informal consultation document on “Sustaining the LGPS in England and Wales” was published last month. You should all be in receipt of a copy along with a separate document which refers to the proposed timetable. Both documents are available on our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) on the What’s New Page under 4 March. **You will need to forward copies of both the consultation and timetable to your Finance Director.** The closing date for responses is **30 May 2008**. The consultation will also be discussed at next month’s Policy Review Group meeting.

### **POLICY REVIEW GROUP**

The next meeting of the Policy Review Group will take place on 9 April in which the Group will examine the initial results of GAD’s re-assessment of Ro85 costs exercise. Administering authorities should already have given their permission to the release of essential data via their actuaries.

Please note that all meeting papers discussed at the Policy Review Group have now been posted onto our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) under the Policy Review Group Page.

### **WORKFORCE PAY & PENSIONS & OTHER**

Don’t forget we relocated to Eland House on 18 February – address as below:-

**5<sup>th</sup> Floor  
Eland House**

**Bressenden Place  
London  
SW1E 5DU**

Please remember to use our new address when corresponding with us by post. However, telephone and fax numbers and email addresses remain the same.

Finally, on a separate note, if there are any other pension items which you feel should be covered in a future issue of Pensions Changes – then please email Nicola Rochester – [Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk) .

See you next month!

**Workforce Pay and Pensions – Branch 2  
March 2008**

**Early retirement on the grounds of ill-health Appendix B**  
*Independent Dispute Resolution Procedure (IDRP) leaflet*

**The Local Government Pension Scheme – Appeals Procedure**

**Introduction**

*This guide is to help you understand the procedures for settling any disagreement or complaint you may have about decisions your employer or the Authority that administers the Local Government Pension Scheme (the Scheme) have made about you or your benefits under the Scheme. Bath & North East Somerset County Council administers the Scheme and throughout this guide is referred to as the Administering Authority. The address of the Administering Authority is: The Avon Pension Fund, Floor 3 South Riverside, Temple Street, Keynsham. Letters regarding disagreements or complaints should be marked for the attention of Alan South.*

**Decisions**

*From the day a person starts a job with an employer, to the day benefits or dependant's benefits are paid, the employer and the Administering Authority have to make decisions under the Scheme rules that affect you.*

**What to do when you are notified of a decision**

*When you (this includes dependants) are notified of a decision you should check, as far as you can, to see if you think it is based on the correct details and that you agree with it.*

**What to do if you are unhappy with a decision**

*It is normally a good idea to make an informal enquiry in the first place. Most problems can be resolved in this way as they can be explained or put right quickly and easily by the employer or the Administering Authority. So we suggest that you either telephone the number on the letter or form which your employer or the Administering Authority sent to you notifying you of their decision.*

*If, having made an informal enquiry, you remain unhappy with the decision (or the lack of one) then, under Stage 1 of the Internal Dispute Resolution Procedure, you have the right to have the decision looked at afresh by a person nominated by the body who took the decision against which you wish to appeal. In this guide we refer to that person as the "nominated person". The post title and address of the "nominated person" for all employees except those at first and second tier are: Tom Wallen, Pensions Officer, Room G65, Romney House, Romney Avenue, Lockleaze, Bristol, BS7 9TB (Telephone 0117 92 23489). For first or second tier employees the nominated person is: Bob Britton, head of human resources, Romney House, Romney Avenue, Lockleaze, Bristol, BS7 9TB.*

*If you are not happy with the "nominated person's" decision at Stage 1 you can then appeal to the Administering Authority to have your case reviewed afresh at Stage 2 of the Internal Dispute Resolution Procedure. The review would be undertaken by a person not involved in the Stage 1 decision. At either stage you will be able to contact the Occupational Pensions Advisory Service, 11 Belgrave Road, London, SW1V 1RB, Telephone 0845 601 2923 who will be able to assist you with any difficulty that remains unresolved. If you are unhappy following the Administering Authority's Stage 2 decision, you can then take your case to the Pensions Ombudsman.*

**Are there any time limits I should be aware of?**

*Yes. If you wish to use the dispute rules you must make your application to the "nominated person" within 6 months after you were notified of the decision you are complaining about. If*

*your complaint is that a decision has not been made, you must make your application within 6 months of the time the decision ought to have been made. You should not, therefore, leave things too long before making your application to the “nominated person”. That person can extend the 6 months time limit for a reasonable period if they consider that it is reasonable to do so.*

*The “nominated person” should give you a decision within 2 months of receiving your written complaint or write to you at the end of 2 months telling you the reasons for a delay in reaching a decision and giving you the date when they expect to be able to let you know the outcome.*

*If you get neither a letter giving the “nominated person’s” decision nor a letter giving the reason for a delay within 3 months of the date you made the application, or if you don’t receive the “nominated person’s” decision within 1 month of the date they said they expected to give you a decision, you can apply directly to the Administering Authority without waiting any longer (see below).*

**What power does the “nominated person’s” decision have?**

*The “nominated person’s” decision is binding on you, the employer and/or the Administering Authority unless you disagree with the Stage 1 decision and make an appeal to the Administering Authority at Stage 2 of the process. This means that if the “nominated person’s” decision is contrary to the decision originally taken by your employer or by the Administering Authority they must either deal with your case on the basis of the decision made by the “nominated person” or, where the decision relates to the exercise of a discretion by the employer or the Administering Authority, the employer or Administering Authority will be required to reconsider its decision.*

**Appeal to the Administering Authority (Stage 2 of the process)**

*If you are unhappy with the “nominated person’s” decision, you can ask the Administering Authority to take a further look at the facts of the case. Such a request must be made within 6 months of the date of the “nominated person’s” decision letter. If the “nominated person” has failed to make a decision and has not issued you with an interim reply within 3 months of the date of your appeal application, you then have 6 months from the end of the initial 3 month period within which to lodge an appeal with the Administering Authority. If the “nominated person” has issued you with an interim reply, but does not issue a determination within 1 month of the date they said they would, you then have 6 months after the end of that 1 month period within which to lodge an appeal with the Administering Authority.*



**The LOCAL GOVERNMENT PENSION SCHEME  
IHR update - 22.04.2008**

**Introduction**

**Amendment regulations in respect of ill-health retirement (IHR) were laid before parliament on the 16<sup>th</sup> of April.** Strictly speaking these will not come into force until the 7<sup>th</sup> of May 2008 but **they will then take effect from 1<sup>st</sup> April 2008.**

The Local Government Pension Scheme Regulations 2007 make provision for an IHR pension where a LGPS member is judged permanently incapable of their local government employment. The level of benefits awards will depend on the level of the persons ill-health and will provide **3 different levels of IHR benefits** broadly in-line with the anticipated arrangements.

This update is designed to explain the IHR provisions created by these amendments.

**The revised provisions**

Individuals are can only qualify for IHR benefits from this pension scheme if they have at least 3 months of continuous contributory membership to the LGPS, or if they have transferred other pension benefits over to this scheme.

The term “reasonable period” has been removed from the old IHR definition and replaced with the phrase “within 3 years”. The 3 benefit tiers are therefore defined as:-

	Those eligible	Terms	Review
1 <sup>st</sup> tier	Permanently incapable of LA employment and there is no reasonable prospect of them obtaining gainful employment before NRA.	100% enhancement to accrued retirement benefits	No
2 <sup>nd</sup> Tier	Permanently incapable of their current employment. Will not be capable of “gainful employment” within 3 years, but are likely to be able to obtain such work before NRD	25% enhancement to accrued retirement benefits	No
3 <sup>rd</sup> Tier	Permanently incapable of their current employment, but likely to be able to obtain gainful employment within the next 3 years.	Accrued retirement benefits at the point of leaving <b>paid for a maximum of 3 years.</b> Payments stopped when gainful employment is obtained, or possibly on review of medical condition.	Yes, after 18 months, by Bristol City Council.

## **Definitions**

The 1997 LGPS regulations define ***permanently incapable*** as - the member will, more likely than not, be incapable until, at the earliest, his 65<sup>th</sup> birthday.

***Gainful employment*** is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months.

## **The review process for tier 3 (defined by the pensions regulations)**

People are required to inform BCC if they obtain "Gainful employment" after being awarded third tier IHR benefits. Payments would be stopped if gainful employment was obtained.

If payments are continuing after 18 months BCC needs to obtain another medical certificate from a qualified physician. This could result in tier 2 benefits being awarded if their medical condition places them in this category at the time of the review. Alternatively the pension benefits could be discontinued if the individual was capable of gainful employment at the time of the review, or remain in payment at the same level if the person still meets the definition for the 3<sup>rd</sup> tier of pension benefits.

However, no arrears would be paid if the level of benefits is increased at the time of this medical review.

## **Transitional protection**

All those who are IHR before 1<sup>st</sup> October 2008, under the revised criteria, will receive the pension benefits available under the 1997 regulations if those benefits are better than the pension benefits of the new scheme. This protection will continue to apply indefinitely for those who: were over age 45 on the 1<sup>st</sup> April 2008; were members of the scheme before this date; and who fall into the first or second tier under the new IHR provisions.

In other words, the criteria for determining whether an IHR pension is due will be determined by the new regulations, but the level of pension benefits paid may be calculated under the old rules in some circumstances.

## **Outstanding issues**

The new definition of IHR protection protects part-time workers who have moved to a part-time post wholly or partly as a result of the condition which has resulted in their IHR. The medical certificate from the Avon Pension Fund will therefore need to be amended to cover this scenario and they have informed me that they will shortly issue a revised form as a result of this change.