

WIRRAL COUNCIL

PENSIONS COMMITTEE

29 SEPTEMBER 2008

REPORT OF THE DIRECTOR OF FINANCE

ILL HEALTH RETIREMENT REGULATIONS UPDATE

1. EXECUTIVE SUMMARY

- 1.1. This report informs Members of the latest information on the new ill health arrangements introduced by the Department for Communities and Local Government (DCLG) on 1 April 2008.

2. BACKGROUND

- 2.1. The DCLG originally issued the LGPS (Benefits, Membership and Contributions) Regulations 2007 on 4 April 2007, dealing with the introduction of new tiered ill health regulations from 1 April 2008.
- 2.2. Members last considered this matter at the Pensions Committee on 24 June 2008 (Minute 9 refers).

Ill Health Retirement - Experience to Date

- 2.3. Between 1 April 2008 and 31 August 2008 MPF received and processed 52 ill health retirements under the new ill health regulations.

Of the 52 cases four, (all of which were tier 3 cases) have received Ill health benefits calculated under the 1997 Regulations transitional protection provisions rather than temporary tier 3 benefits.

- 2.4 The breakdown of cases under the three tiers is as shown in the table below -

Ill Health Tier	Number of cases & notes
Tier 1 - 100% enhancement	44 cases - (3 received enhancement under the 1997 Regulations as they were aged at least 45 on 1 April 2008 under ongoing protection rules)
Tier 2 - 25% enhancement	4 cases - with over age 45 ongoing LGPS 1997 membership underpin
Tier 3 - no enhancement	4 Cases - with the 1997 Regulations applied instead under 6 months transitional protection

- 2.5 The experience from 1 April 2008 to date may not be representative of the split to be expected between tiers in the long term, with nearly 85% of all the cases dealt with so far falling in the highest and most expensive tier for employers with 100% of prospective membership up to age 65 awarded.

3. STATUTORY GUIDANCE

- 3.1. The amendment regulations issued on 16 and 22 April 2008 dealt with the outstanding matter of **tier 3 benefits**, and also confirmed the definition of “within a reasonable period of leaving employment” as being three years.
- 3.2. A draft version of the promised Statutory Ill Health Guidance was issued by the DCLG on 1 July 2008 (Appendix 1 attached) and comments were requested by 12 August 2008. A copy of the response submitted on 7 August 2008, raising several technical questions is attached for Members information (Appendix 2). A set of questions and answers intended to clarify the intention of the regulations has also been produced by the DCLG and a copy is attached at Appendix 3.
- 3.3. One particular concern to employers will be the fact that the regulations provide for a tier 3 case to be re-determined, at any time up to age 65 based on further medical evidence as a tier 2 benefit with 25% enhancement even if the benefit has previously been terminated.
- 3.4. The third tier benefit (**tier 3**) provides for payment of a pension based on the annual equivalent of the member’s accrued pension benefits at the point of leaving employment, This is payable by the Pension Fund (rather than as previously proposed by the employer), for a maximum period of up to three years or until either gainful employment is obtained or as a result of the outcome of a medical review decision if earlier.
- 3.5. Under Regulation 31, an ill-health benefit can also be paid to a person who has left a local government employment with an entitlement to a deferred benefit, who becomes permanently incapable of discharging efficiently the duties of their former employment before becoming entitled to payment of that benefit.
- 3.6. The employer must obtain a medical opinion from a suitable medical practitioner to confirm that the member is both:

permanently incapable because of ill health from discharging efficiently the duties of the relevant employment and if so,

whether that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching age 65, or for at least three years whichever is sooner.

4. TRANSITIONAL PROTECTION ARRANGEMENTS

- 4.1. The Amendment Regulations set out transitional arrangements to be applied where a determination is made by an employer under Regulation 20 between 1 April 2008 and 30 September 2008. In those cases where the new ill health regulations would place the member in a worse position than under the 1997 regulations, they shall continue to have effect as if they were still in force.

- 4.2. To date therefore, nobody retired on ill health grounds since 1 April 2008 has actually been awarded less than they would have received under the previous regulations.
- 4.3 For any ill health determinations made by employers from 1 October 2008 onwards the new regulations only will be applied and there will be scope for people to be worse off if they are awarded other than the highest tier 1 benefits. An increase in appeals can therefore be expected.

5. REVIEW OF TIER 3 ILL HEALTH AWARDS

- 5.1. The Regulations require employers to review tier 3 benefits after they have been in payment for 18 months. The third tier of ill-health benefit will provide a pension until such time as the member obtains gainful employment, or the point that an Independent Occupational Health Practitioner (IOHP) confirms that they are capable of obtaining gainful employment following a review. **Employers will have powers to stop payments** in these circumstances.
- 5.2. A review process should be started when payments have been made for 18 months. At the review, if it is found that the third tier member is not in gainful employment, the **employer will be able to seek a further opinion** from an IOHP which could result in the benefit being terminated or the level of benefits being revised to the enhanced second tier. Enhanced payments awarded following a review would not be backdated but would be payable from the later determination following advice from the IOHP.
- 5.3. At the end of three years the tier benefit will either be discontinued until normal retirement age or be revised to the tier 2 level depending on the results of a further medical review which the employer will be required to carry out. The employee can require the employer to review their medical condition at any time up to age 65.

6. FINANCIAL IMPLICATIONS

- 6.1. The Actuary has incorporated assumptions of the impact of the new regulations when completing the 31 March 2007 Actuarial Valuation to determine employers' contribution rates for the period 1 April 2008 to 31 March 2011. These may need to be revised at the next valuation depending on actual experience. To date nearly 85% of all cases have been awarded the highest tier 1 benefit with 100% enhancement.
- 6.2. It will not be until the 31 March 2010 actuarial valuation, at which time the cost sharing mechanism will also be implemented, that the long term future costs of the LGPS including the ill health changes are likely to become clear.
- 6.3. The reduction of the qualifying period for ill health pensions from two years to three months presents a clear cost implication for employers if substantial numbers of employees opt in to the Scheme just prior to ill health retirement to gain the benefit of a significantly enhanced pension (up to 100% of their potential future membership up to age 65) after as little as three months membership.

6.4. The long term cost implications for employers and future funding implications of these changes will be reviewed as part of the Cost Sharing Arrangements by the Local Government Review Group in the light of experience.

7. STAFFING IMPLICATIONS

7.1. Implementation of the amended ill health regulations including a more complicated tiered award system and the tier 3 review requirement is likely to increase the workload for both the Pension Fund and the employers and result in increased appeals.

8. EQUAL OPPORTUNITY IMPLICATIONS

8.1. There are none arising from this report.

9. COMMUNITY SAFETY IMPLICATIONS

9.1. There are none arising from this report.

10. HUMAN RIGHTS IMPLICATIONS

10.1. There are none arising from this report.

11. LOCAL AGENDA 21 IMPLICATIONS

11.1. There are none arising from this report.

12. PLANNING IMPLICATIONS

12.1. There are none arising from this report.

13. BACKGROUND PAPERS

13.1 DCLG Letter dated 1 July 2008 and draft Statutory Ill Health Guidance.

13.2 DCLG Questions & Answers aide- memoir document - August 2008.

14. MEMBER SUPPORT IMPLICATIONS

14.1. There are none arising from this report.

15. RECOMMENDATION

15.1 Members are requested to note the report.

IAN COLEMAN
DIRECTOR OF FINANCE