

22 April 2008

To: addressees below

Our ref: Third tier ill health provision  
136/10/1 pt5

Dear Colleague,

**The Local Government Pension Scheme (Amendment) Regulations 2008 (SI 2008/1083)**

**Provision of a third tier of ill health retirement benefits, and other measures.**

1. Regulations have now been made under powers contained in sections 7 and 12 of the Superannuation Act 1972. They provide for a third tier of ill health benefit in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (*the benefit regulations*), plus amendments that clarify the intentions in Regulations 20 and 31 regarding ill health retirements, and other technical measures. The SI is available at the following website [www.opsi.gov.uk](http://www.opsi.gov.uk)
2. When the *benefit regulations* were made introducing two new tiered levels of ill health protections, an undertaking was given by Ministers that provision would also be made for a scheme member who leaves employment because they are assessed by an independent occupational health practitioner (IOHP) to be permanently incapable of their current job but medical evidence judges that alternative gainful employment could be obtained within a reasonable period of leaving.
3. The measures now introduced come into force on 1 April 2008 and apply to local authority employees who are permanently incapable of their local authority employment and are judged by an IOHP to be capable of gainful employment within three years of leaving that employment.
4. The terms of the 3<sup>rd</sup> tier have been developed having taken careful regard of all comments made in consultation responses with particular attention to employer organisations comments regarding costs and viability, and trades unions comments regarding fairness to scheme members.
5. The 3<sup>rd</sup> tier of ill health benefit will provide a pension until such time as the member obtains gainful employment, or at the point that an IOHP confirms that they are capable of gainful employment following a review. In providing a temporary benefit while the eligible scheme member seeks fresh employment,

this measure supports the wider government objective of providing people with the opportunity to work rather than not working.

6. The member will be required to notify their former employer when work was found giving details of length of contract, pay and hours worked.
7. If the employer judges that this employment is 'gainful' as set out in the regulations, they will stop payments.

### **Transitional protections**

8. Transitional provisions apply until 30 September 2008 to provide that the member is not in a worse a position than he would have been in if the 1997 regulations applied.

### **Review**

9. The previous employer is required to undertake a review when payments have been made for 18 months to check whether gainful employment had been obtained.
10. At the review, employers will seek a further opinion from an IOHP if gainful employment had not been obtained and this could result in the level of ill health being revised to the enhanced 2<sup>nd</sup> tier.
11. Employers have powers to stop payments when the member obtains gainful employment, or at the point that an IOHP confirms that they are capable of gainful employment following a review (this could not be beyond 3 years from the start of 3<sup>rd</sup> tier payments).

### **Monitoring of the proposed provision**

12. The effectiveness and practical application of the new tiered ill health provisions will require careful monitoring. To achieve this, CLG has set up an Ill Health Monitoring Group to assess the effectiveness of the new ill health provisions and to make recommendations for change if this is found necessary.

### **Statutory Guidance**

13. Statutory guidance will be prepared for practitioners.

### **Other changes to Regulation 20 and 31**

14. Other technical amendments have been made to clarify the intention in Regulation 20 (5) regarding protections for those members aged 45 as at 31 March 2008, and 20 (6) regarding the relevant medical condition, and Regulation 31 regarding certification by an IOHP in respect of early payment of pension for deferred members.

**Technical changes to the *benefit regulations***

16 A note on these changes is attached at Annex A.

Yours sincerely,

Lynda Jones

**Lynda Jones**  
**Head of Branch WPP3**

## Annex A

A number of technical changes have been made to the *Benefit Regulations* which were recommended by pension administrators since the regulations 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 in line with increases to official pensions rounding down 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 contribution 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 specified pension has come into payment;
- regulation 6 now makes the appropriate cross reference to the Admin Regulations;
- regulation 7 contains a technical provision replacing "benefit" with "annual pension";
- regulation 8 is amended to now 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 when allowing early pay periods to be used in calculating pension (to also include members covered by TUPE transfers), and see also changes made to regulation 16 and 18;
- 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 (including TUPE transfers), and requires regard to other regulations permitting release of pension;
- 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 previously 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, as well as some corrective items raised by the Joint Committee on Statutory Instruments, including a change to the Administration Regulations.