



**Supporting Attendance Toolkit SA09:
Ill Health Retirement
(Version: 2.0)**



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1.0	21 June 2021	n/a
2.0	April 2024	<p>Added to Section 1 - Additional Information on when cases will and will not be considered for ill health.</p> <p>Added to Section 2 - When it is appropriate to consider dismissing prior to ill health outcome</p> <p>Added to Section 2- additional information on employees with a terminal diagnosis</p> <p>Amended Section 6 – Regulations and added link</p>

Introduction: Ill Health Retirement

This guidance is designed to help Managers with the process of ill health retirement if they need to consider and discuss this option with one of their employees. It applies to all employees who are members of the Local Government Pension Scheme (Teachers have a separate Ill Health Retirement Process).

If an employee remains absent due to ill health, the service cannot sustain the absence and a return to work is not foreseeable, then the manager should consider whether ill health retirement should be considered and discuss this with the employee. It should be noted that the decision in relation to ill health retirement is separate from any decision to dismiss an employee on grounds of capability due to ill health.

Before making a referral for Ill Health please contact your Employment & Policy Adviser to discuss this process.

Section 1: Ill Health Retirement – Eligibility

Employees who are members of the Local Government Pension Scheme and who have a medical condition that makes them permanently unable to carry out the duties of their current post may be eligible for ill health retirement.

It is important that employees are made aware that whilst they have the right to request to be considered for ill health retirement not all absence cases will merit this. Information will initially be sought from occupational health as to whether the employee remains unfit for work and that the absence is likely to become a long-term incapacity case, this would indicate that Ill Health may be considered. However, before an ill health referral is made all other options would be explored i.e redeployment, reasonable adjustments, reduction in hours etc.

To qualify for ill health benefits an employee must meet the two-year vesting period. The employer, based on an opinion from an independent registered medical practitioner, must be satisfied that the employee will be permanently unable to do their own job until their normal pension age and that they are not immediately capable of undertaking gainful employment. Ill health benefits can be paid at any age and are not reduced on account of early payment.

The assessment for ill health retirement is based on current available medical evidence. The determination as to whether an employee meets the criteria for ill health in accordance with the regulations, lies with the Independent Registered Medical Practitioner, however the decision to dismiss the employee and grant ill health retirement lies with the employer.

Section 2: Making an Ill Health Referral

It is important to note that the ill health retirement request process may take some time and the manager may continue with the process of dismissal on capability due to ill-health grounds if the employee is unable to perform the duties of their post due to ill health and all other options have been explored and exhausted. As stated above the decision as to whether an employee is eligible for early release of benefits is separate from the decision regarding the employee's ongoing employment and therefore termination can take place before a decision on ill health is reached.

Dismissal pending an ill health decision should only be in exceptional circumstances (e.g. terminal diagnosis or serious ill health), and not the norm, particularly if the only reason for progressing with

the dismissal pending an ill health decision is because the timescales within the Supporting Attendance policy have not been adhered to.

Please note that unless the employee has been given a terminal diagnosis or is suffering from serious ill health a standard occupational health referral must be made before a referral for Ill health can be considered. Employment & Policy will provide guidance on when it is appropriate to proceed straight to an ill health referral.

Before a decision can be made as to whether an employee can be given ill health retirement the employer must obtain a Certificate of Ill Health (S18) from an Independent Registered Medical Practitioner (IRMP) and accompanying advice report. Please note that employees with a terminal diagnosis can provide a copy of the Benefits Assessment for Special Rules in Scotland (BASRiS) form, and this can be used in place of the S18, negating the need to make an ill health referral. Employees are not obligated to provide this form.

In order to obtain this information an Ill Health referral needs to be made by the manager. When making an ill health referral certain questions should be asked and answered by the IRMP. It is important to note however, that these reflect the questions that the decision maker is ultimately responsible for deciding in order to satisfy the requirements of the regulations. Bear in mind that the IRMP is not being asked to confirm the termination or otherwise of the member's employment, that is the employer's decision.

Questions that should be asked and answered in the advice report are:

- Are there any conflicting medical opinions in the available medical evidence?
- Are there any treatments not been tried by the member which, in your opinion, should be tried? If so, please provide a list of treatments/ medications.
- Is it reasonable to expect the member to undertake the treatment?
- If there is uncertainty about the employee's prognosis, due to other treatments which have yet to be tried, please provide your professional opinion as to the expected efficacy of those treatments?
- If not already available, please obtain up-to-date medical reports from the employee's specialist and/or GP and confirm that these have been fully reviewed by the IRMP.

The IRMP must also provide copies of all available evidence that was reviewed in assessing the case.

The above should be asked in addition to providing the relevant information asked for in the referral document. Please note that it may not always be necessary to ask the above questions, for example the employee has been given a terminal diagnosis and life expectancy is less than 1 year.

Prior to the referral being made the employee will need to complete the HM4001 consent form for occupational health and this must be submitted along with the referral. The consent form can be obtained from Employment & Policy.

Section 3: Making a Decision

Once all of the IRMP's advice and evidence has been received the manager must make the decision as to whether ill health retirement benefits are to be awarded and, if so, on what tier based on the Supporting Attendance SA09 SA Toolkit_Ill Health Retirement_updated 2024.docx

IRMP's medical opinion and all of the supporting evidence.

a) In order to make a decision the Manager will need to firstly understand the reasoning of the IRMP when making their decision. In order to do this, the Manager must ensure that:

- The IRMP has provided a detailed narrative report to accompany the S18 – Certificate of Ill Health (**Brief and imprecise reports do not form the foundation for a fully informed decision and can be construed as dismissive and inconclusive by the member**).
- Where the IRMP is of the opinion that the applicant could work in their current role with adjustments, or in an alternative role that is likely to be available with that employer, advice on this is included in the report.

b) Once the Manager is satisfied that the above has been provided (**if they are not satisfied they should revert back to the IRMP**) the following must be considered by the decision maker in order to make a decision and satisfy the requirements of the regulations:

1. Have you ensured that you have obtained all of the available evidence, commissioned further reports if required and/or given the member the opportunity to provide more?
2. Have you reviewed and based your decision on all of the evidence, not just the IRMP's report, or certificate? - He/she has the right to give more weight to some evidence than others when considering their decision, i.e. a specialist report may hold more weight than the opinion of a GP, but the advice of an occupational expert may override both.
3. Where you have doubts about the advice, have you sought a further report/ clarification?
4. Have you applied the right test of law i.e. not the criminal law test of "beyond a reasonable doubt", but the civil law test of "on the balance of probabilities"?
5. Has the IRMP applied the right test i.e. 'on the balance of probabilities'?
6. Has the IRMP fully considered and written about the probable effect of untried treatments?

In addition to the above and in accordance with the regulations, the employer is required to consider and decide two questions before entitlement to ill health retirement benefit can be awarded:

- Does the independent registered medical practitioner consider that the member's ill health or infirmity of mind or body render the member permanently incapable of discharging efficiently the duties of the employment that the member was engaged in? (regulation 35(3)); and
- Does the independent registered medical practitioner consider that the member's ill health or infirmity of mind or body renders the member not immediately capable of undertaking any gainful employment? (Regulation 35(4)).

The answer to these questions will determine the level of ill health benefit awarded. The two different levels of benefit are:

- **Tier 1: The member is unlikely to be capable of undertaking gainful employment before reaching his or her normal pension age?**
Ill health benefits are based on the pension the member will have already built up in their **pension account** at the date of leaving the scheme plus the pension they would have built up had they been in the main section of the scheme until they reached their **normal pension age**.

- **Tier 2: The member is likely to be capable of undertaking gainful employment before reaching his or her normal pension age?**

Ill health benefits are based on the pension the member will have already built up in their **pension account** at their date of leaving the scheme plus 25 per cent of the pension they would have built up had they been in the main section of the scheme until they reached their **normal pension age**.

Managers must complete the “Ill Health Decision” checklist (SA 09(a)), attached below, and provide a copy to Employment & Policy for review and discussion before a final decision is reached.

An additional Q&A has also been provided at Appendix 1 below to assist managers when reviewing the evidence.

Section 4: Informing the Employee of the Decision

When a decision has been reached the employee must be advised of this in writing.

If the decision has been made in advance of the Capability 2 Meeting the employee can be verbally advised of the decision at the meeting but this must be confirmed in writing to them.

The outcome letter must clearly explain the decision to the employee including confirmation of the Questions detailed in Section b) above.

The next steps in the process should also be provided (as required under LGPS(S) 2018 Regulation 68, Notification of first instance decision), so that the employee understands their right of redress if they do not agree with the decision.

A template letter will be provided by Employment & Policy.

Section 5: Right of Appeal

In addition to the right of appeal against their termination of employment an employee has the right under The Local Government Pension Scheme (Scotland) Regulations to appeal any decision that has been made by their employer which affects their pension benefits including decisions in respect of Ill Health Retirement.

This is a two-stage appeals process. The first stage is under the Internal Disputes Resolution Procedure and must be made to the Council’s appointed person within six months of the date the employee is formally notified of the decision against which they are appealing. The second stage is to the Scottish Public Pension Agency.

Employees are likely to appeal when the decision has been made to either not grant them ill health retirement or to only grant them Tier 2.

The appointed person is responsible for reviewing the appeal but may require seeking clarification from the manager that made the original decision and ask them to obtain further medical evidence in relation to the employee.

The Stage 1 Appeals pro-forma can be obtained from Employment & Policy.

Section 6: Relevant Regulations

The relevant regulations in Ill Health cases are regulations 31(9), 34, 35, 37, 67, 68, schedule 1 and schedule 5 of The Local Government Pension Scheme (Scotland) Regulations 2018

The regulations lay out the requirements in regard to the qualifying service that is needed to be considered for ill health (which is currently 2 years), the criteria that requires to be met, the levels of ill health, the role of the IRMP and how ill health benefits are calculated for both active and deferred members.

They also provide information on the right of appeal and the role of the appointed person.

Section 7: Manager Checklist for Ill Health Retirement Decision

SA 09 (a) - Manager Checklist for Ill Health Retirement Decision

The determination as to whether an employee meets the criteria for ill health in accordance with the regulations, lies with the Independent Registered Medical Practitioner (IRMP), however the decision to dismiss the employee and grant ill health retirement lies with the employer.

The purpose of this checklist is to ensure managers have considered all information available and make an informed decision as to whether ill health retirement should be granted.

This checklist must be completed and discussed with Employment & Policy before reaching a final decision as to whether an employee should be granted ill health retirement.

Manager Details			
Manager Name		Job Title	
Employment & Policy Adviser			

Employee Details			
Employee Name		Employee Ref No.	
Job Title		Service/Division	
Date Absence Commenced		Reason for Absence	

DETAIL OF ILL HEALTH REPORT			
HML Case Reference No/Nos.		Date Report received	

INFORMATION TO BE CONSIDERED

Please consider the undernoted and tick yes/no to each question	YES	NO
SECTION A		
1. Has the IRMP has provided a detailed narrative report to accompany the S18 – Certificate of Ill Health?		
2. Where applicable, in cases where the IRMP is of the opinion that the applicant could work in their current role with adjustments, or in an alternative role that is likely to be available with NLC, is advice on this included in the report?		
If you are not satisfied with question 1 and 2, you should revert back to the IRMP)		
SECTION B – Once you are satisfied that the above has been provided. Please consider the following:		
1. Have you ensured that you have obtained all the available evidence, commissioned further reports if required and/or given the member the opportunity to provide more?		
2. Have you reviewed and based your decision on all of the evidence, not just the IRMP’s report, or certificate? - He/she has the right to give more weight to some evidence than others when considering their decision, i.e. a specialist report may hold more weight than the opinion of a GP, but the advice of an occupational expert may override both.		
3. Where you have doubts about the advice, have you sought a further report/ clarification?		
4. Have you applied the right test of law i.e. not the criminal law test of “beyond a reasonable doubt”, but the civil law test of “on the balance of probabilities”?		
5. Has the IRMP applied the right test i.e. ‘on the balance of probabilities’?		
6. Has the IRMP fully considered and written about the probable effect of untried treatments?		
7. Does the IRMP consider that the member’s ill health or infirmity of mind or body render the member permanently incapable of discharging efficiently the duties of the employment that the member was engaged in? (regulation 35(3))		
8. Does the IRMP consider that the member’s ill health or infirmity of mind or body renders the member not immediately capable of undertaking any gainful employment? (Regulation 35(4)).		
SECTION C - DECISION		
Based on the information considered above, please review the statements below and select your decision by placing a tick in the box against your decision. Please note only select one of the following statements.		
1. Tier 1: The member is unlikely to be capable of undertaking gainful employment before reaching his or her normal pension age.		2. Tier 2: The member is likely to be capable of undertaking gainful employment before reaching his or her normal pension age
3. This employee does not satisfy early release of pension benefits on the grounds of permanent ill health retirement.		4. I require further information in order to make a decision and will revert back to the IRMP to request further information.

Declaration

I can confirm that I have considered all information above to enable me to make an informed decision on whether to grant Ill Health Retirement:

Signed Date

Appendix 1: Ill Health Retirement – Q & A's for First Instance Decision Makers

Q1. How is the term 'efficiently' in relation to 'discharging efficiently the duties of employment' to be determined?

A. i.e. in a well-organized and competent way.

Q2. How is the term 'likely' defined? The standard legal definition of greater than 50%, or the Equality Act definition of 'could well happen'?

A. i.e. probably the case or could well happen.

Q3. If a member is likely to be able to recover and be capable of gainful employment if they engage with treatment, but refuses to do so, or appear not to be engaging, and are unlikely to do so, do they meet the criteria or not?

A. Any opinion from an IRMP must be objective and independent. It should be based on available evidence and should be in line with current medical approaches.

Where there is evidence that a good recovery should be expected, and the main reason why the member is unable to recover is solely the result of inappropriate belief, maladaptive behaviours, failure to accept standard treatment, or failure to engage reasonably with treatment, it would not be reasonable to consider the member permanently unfit.

Q4. If a member refuses treatment on the grounds of religious belief, can they be considered to meet the criteria for an award?

A. Where there is evidence that a good recovery should be expected, and the main reason why the member is unable to recover is solely the result of failure to accept standard treatment or failure to engage reasonably with treatment, whether on grounds of religious belief or otherwise, it would not be reasonable to consider the member permanently unfit?

Q5. Can the IRMP disagree with the GP or specialist?

A. SPPA would regard this as purely a professional matter for the IRMP to decide. If they did disagree, then they would need to set out why.

Q6. If the IRMP has seen the member in the past for a different condition, can they still be deemed independent under the LGPS(S) 2018 regulations?

A. The same IRMP who provided the original opinion would not be regarded as independent and the member would need to be referred to another IRMP.

Q7. Can we have some clarity as regards a situation where a member is medically fit for gainful employment but has no aptitude for it?

A. Generally, aptitude is not due to be considered by the IRMP of itself. However, if aptitude and/or

attitude emerge as the indicators of an illness/disease, then it would appear that these should be noted down by the IRMP in his medical report. It is then for the decision maker to review the IRMP's report and to take these matters of aptitude/attitude into account when making their decision on ill health retirement.

Q8. Can ill health retirement only be awarded if the IRMP states that the member is eligible, in effect, expecting the IRMP to make the decision?

A. It is the Scheme employer who makes the decision to terminate an active member's employment on the grounds of ill health. They cannot make this decision without having first obtained a certificate from an IRMP qualified in occupational health medicine, however they are not bound to follow this recommendation if they have sound reasons to disagree and may seek a further medical opinion.

If the Scheme employer decides to terminate a member's employment on the grounds of ill health, it is also for them to decide whether to award Tier 1 or Tier 2 ill health retirement benefits.

The guidance specifically refers to Regulation 34 of the LGPS(S) Regulations 2018 however, the Scheme employer should also assess other factors (as part of the decision-making process). These should include medical reports from hospital specialists/consultants, and whether any reasonable adjustments have also been considered of where appropriate (as part of the Disability Discrimination Act), along with any HR reports on absenteeism, sickness, performance records etc.

Q9. Can a member appeal if they are still an active member?

Regulations 67 and 69 apply. Regulation 67 specifies that; "Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation."

Regulation 69, Applications to resolve disagreements "applies where there is a disagreement about a matter in relation to the Scheme between a member (and an alternative applicant) and a Scheme employer or the administering authority."

Whilst neither of these require that a member must have left the scheme to appeal, however should a member still be working, it is unlikely that they would meet the criteria for ill-health benefits under Regulation 34, Early payment of retirement pension on ill-health grounds: active members.