
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 141

**The Local Government Pension
Scheme (Scotland) Regulations 2018**

PART 1

Membership, contributions and benefits

Ill-health retirement

Early payment of retirement pension on ill-health grounds: active members

34.—(1) An active member who has qualifying service for a period of 2 years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the condition in paragraph (3) of this regulation.

(2) The amount of the retirement pension that a member to whom paragraph (1) applies, is determined by which of the benefit tiers specified in paragraphs (4) and (5) that member qualifies for, calculated in accordance with regulation 37 (calculation of ill-health pension amounts).

(3) The condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

(4) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before reaching normal pension age.

(5) A member is entitled to Tier 2 benefits if that member is likely to be able to undertake gainful employment before reaching normal pension age.

Role of the IRMP

35.—(1) A decision as to whether a member is entitled under regulation 34 (early payment of retirement pension on ill-health grounds: active members) to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's Scheme employer after that authority has obtained a certificate from an IRMP as to—

- (a) whether the member satisfies the condition in regulation 34(3); and, if so
- (b) whether the member is unlikely to be capable of undertaking gainful employment before normal pension age.

(2) An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

(3) If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval of its choice of IRMP.

(4) The Scheme employer and IRMP must have regard to guidance given by the Scottish Ministers when carrying out their functions under this regulation and regulation 36 (early payment of retirement pension on ill-health grounds: deferred members).

Early payment of retirement pension on ill-health grounds: deferred members

- 36.**—(1) A deferred member who, because of ill-health or infirmity of mind or body—
- (a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member; and
 - (b) is unlikely to be capable of undertaking gainful employment before normal pension age,
- may ask to receive payment of a retirement pension whatever the member's age.
- (2) A request under paragraph (1) must be made in writing to the deferred member's appropriate administering authority.
- (3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's appropriate administering authority must obtain a certificate from an IRMP as to—
- (a) whether the member is suffering from a condition that renders the member permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so
 - (b) whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age.

Calculation of ill-health pension amounts

- 37.**—(1) Subject to paragraphs (5) and (6), Tier 1 benefits are calculated by adjusting the active member's pension account as follows—
- (a) an amount is added to the balance in the account for the year in which the member's employment was terminated, equivalent to the amount of earned pension the member would have accrued between the day following the date of termination and normal pension age, if that member had been treated as receiving assumed pensionable pay, calculated in accordance with regulation 21(4) (assumed pensionable pay) or, as appropriate regulation 21(7) for each year and fraction of a year in that period and treating any election under regulation 10 (temporary reduction in contributions) as lapsed at the date of the termination of the member's employment; and
 - (b) retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.
- (2) Subject to paragraphs (5) and (6), Tier 2 benefits are calculated by adjusting the active member's pension account as follows—
- (a) for the year in which the member's employment was terminated, one quarter of the sum calculated in accordance with paragraph (1)(a) is added; and
 - (b) retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.
- (3) Benefits payable under regulation 36 (early payment of retirement pension on ill-health grounds: deferred members) are the retirement pension that would be payable to the member as if that member had reached normal pension age on the date the member made a request under regulation 36.
- (4) Where a member entitled to Tier 1 benefits subsequently becomes an active member, no addition is to be made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership.

(5) Where a member entitled to Tier 2 benefits (“the initial ill-health retirement”) subsequently becomes an active member, the addition made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with paragraph (6).

(6) The number of years for which a member to whom paragraph (5) applies is treated as having received assumed pensionable pay for the purposes of paragraph (1)(a) or (2)(a) shall not exceed—

- (a) the number of years at the date of the initial ill health retirement up to normal pension age; less
- (b) a quarter of the number of years calculated in accordance with sub-paragraph (a); less
- (c) the number of years during which the member has been an active member after the initial ill-health retirement.

(7) No adjustment is to be made to any sum by virtue of regulation [F121(8)] for any period after the date of termination of employment under regulation 34 (early payment of retirement pension on ill-health grounds: active members).

[F2(8) For the purposes of this regulation, regulations 38, 39 and 40, in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), no account is to be taken of any reduction in the pensionable pay the member incurred if the member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body.]

Textual Amendments

- F1** Word in reg. 37(7) substituted (with effect from 1.6.2018) by The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/161), regs. 1(2), **2(18)(a)**
- F2** Reg. 37(8) inserted (with effect from 1.4.2015) by The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/161), regs. 1(3), **2(18)(b)**

Changes to legislation:

There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018, Cross Heading: Ill-health retirement.