

Ill-health Pension Process: Guidance Note 3A

Tier 3 Reviews: Leavers 1 April 2008 – 31 March 2014

PURPOSE

1. To assist with the process of reviewing Tier 3 ill-health pensions for those that retired under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.
2. If the member’s employment ended **after** 31 March 2014, please refer to Ill-health pension process: Guidance note 3B.
3. This guidance note follows on from those processes described in Ill-health Guidance Notes 1 and 2.

KEY POINTS

- The points at which a Tier 3 pension can be reviewed are explained.
- The mandatory 18 month review and 3rd anniversary discontinuation of pension are explained.
- Discontinuation of pension on taking up gainful employment is explained.
- Upgrading to a tier 2 pension is explained.
- Referral to an Independent Registered Medical Practitioner for Tier 3 review is explained.
- An Ill-health Tool Kit, containing recommended wording for letters and all necessary forms.

OTHER RELEVANT DOCUMENTS

4. The following documents and processes have relevance to this issue.

Form TR3REV08A	The Tier 3 Review certificates to be used: <ul style="list-style-type: none"> - For Still in Payment - 18 Month Review, and For Still in Payment – member request that uplift to Tier 2 be considered (outside of 18 month review process) - For Pension Discontinued within last 3 years – member request that uplift to Tier 2 be considered OR early payment on health grounds (Must be before Normal Retirement Age, i.e. age 65) - For Pension Discontinued 3 or more years ago – member request that early payment on health grounds be considered (Must be before Normal Retirement Age, i.e. age 65).
Form TR3REV08B	
Form TR3REV08C	
Form TR3NOT	Form to inform LGSS Pensions Service of outcome of review where there is no TR3REV08A/B/C (e.g. when a decision is taken that you consider the individual to be in gainful employment)

Form TR3REF	Form to refer case to an Independent Registered Medical Practitioner (IRMP).
Form IHRC3	To get member's consent for release of medical records relating to a Tier 3 review.
Form BENDEC3	For use when upgrading from Tier 3 to Tier 2.
Ill-health Toolkit	A collection of letters, forms and leaflets to use in the ill-health process found at: http://pensions.cambridgeshire.gov.uk/index.php/employers/looking-after-members/leavers/ill-health-tier-3-reviews/ http://pensions.northamptonshire.gov.uk/index.php/employers/looking-after-members/leavers/ill-health-tier-3-reviews/

BACKGROUND

- During the ill-health dismissal process you will have decided whether a member was entitled to an immediate pension and, if so, what tier of pension to award. If it was a tier 3 pension, and the member's last day of pensionable employment was before 1 April 2014, this note applies.

THE REGULATIONS

- Detailed regulations apply. These are contained in Regulations 20 and 31(1) and (5) to (8) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 as amended, and also in Regulation 56 of the Local Government Pension Scheme (Administration) Regulations 2008 as amended.
- An up-to-date version of these regulations are available online here:
<http://timeline.lge.gov.uk/LGPS2008Reqs/BATidx.htm>
- There are also documents prepared by the Department for Communities & Local Government (DCLG) which supported the ill-health process prior to 1 April 2014, and continue to have relevance to those that became entitled to an ill-health pension in relation to employment that ended between 1 April 2008 and 31 March 2014. These are:
 - Statutory Ill-health Guidance – statutory guidance referred to in the 2007 regulations.
 - Ill-health FAQs – Answers to commonly asked questions.
 - Supplementary Guidance for Independent Registered Medical Practitioners qualified in occupational health medicine (IRMPs) – A joint publication with the Faculty of Occupational Medicine

The most recent versions of the above documents are available here:

<http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/statguide.htm>

9. Throughout this document the regulations and guidance referred to are the above unless otherwise specified. To understand these regulations in the context of a tier 3 review it is particularly important to understand the three key terms that are defined in regulation 20 (14):

- Gainful Employment : This is defined as meaning “paid employment for not less than 30 hours in each week for a period of not less than 12 months”.

It is important to note that this means ANY paid employment – it could be a minimum wage job with any other employer. It is almost certain that this definition will cause a problem for members accepting that they are medically capable of gainful employment where they have not yet had any success in obtaining employment. Questions 32-34 in the [DCLG Ill-health FAQ Edition 3](#) document and paragraphs 53-59 of the [Statutory Ill-health Guidance](#) have useful guidance on how to assess when the gainful employment test is satisfied.

- Independent Registered Medical Practitioner: For an employer to make an ill-health pension decision they must have the opinion of an independent registered medical practitioner (IRMP) in accordance with Regulation 20 (5). Throughout this Guidance Note, unless quoting from the legislation, the IRMP will be referred to as the Independent Doctor.

Cambridgeshire Pension Fund determined many years ago that, in order to maintain consistency across the Fund, there would be a sole provider of approved Independent Doctors. The contract that delivers this was bound up with Cambridgeshire County Council’s contract for Occupational Health service provision, which is currently with **Heales Medical Ltd**. The principle of this approach changed following a Pension Fund Board decision with effect from 30 October 2012, however the contractual position is that Heales will remain the sole provider of approved Independent Doctors to all Cambridgeshire Fund employers until the existing contract comes to an end on 30 November 2015.

Northamptonshire Pension Fund allows employers to seek approval for their chosen Independent Doctor/provider of Independent Doctors by providing full written details to the Deputy Head of Pensions. If written approval is granted on behalf of the Fund, referrals can then be made to that Independent Doctor/provider.

Note that Regulation 56(1A) of the Local Government Pension Scheme (Administration) Regulations 2008 specifically allows a doctor who provided the original opinion and signed the relevant certificate that supported the Ill health pension decision made by an employer to also sign the certificate for the Tier 3 review.

- Permanently Incapable : This means “that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday”. The [Statutory Ill-health Guidance](#) makes it clear in:
 - Paragraph 12 that “all the regulations referred to in this guidance are subject to the civil law burden of proof. As such, the determination of questions is based on the “balance of probabilities” test and not on the stricter criminal law test of “beyond reasonable doubt” and
 - Paragraph 23 that “in addressing questions about permanent incapacity, whether in terms of the local government employment or gainful employment elsewhere, consideration must ... be given not to the immediate or foreseeable future, but to the date when the member attains their normal retirement age”.

APPLYING THE REGULATIONS

10. A tier 3 ill-health pension has several review points. Once the individual reaches age 65 there are no longer opportunities for review.
11. At any point in the three years following dismissal, and before age 65, Regulation 20(8)(a)(i) makes it clear that payment is discontinued if you consider that the member is in gainful employment. It is:
 - the member’s responsibility to tell you if they get employment, they will have been told this in their pension award letter;
 - your responsibility as the former employer to decide if you consider that employment to be gainful employment and, if you do, to
 - a. inform LGSS Pensions Service that payment is to be discontinued, and.
 - b. decide whether you wish to recover any overpayment of pension in respect of any period before payment is discontinued during which you consider the member to have been in gainful employment.
12. Regulation 20(11) makes it clear that you can choose to uprate a tier 3 pension to a tier 2 one on the basis of the medical condition that resulted in 3rd tier payment (therefore also making it permanent) providing you do so no later than three years after payment of a tier 3 pension is discontinued, or before age 65 if this is earlier. The regulations are quiet on when an uprating would be considered. We recommended that you should:
 - Automatically consider it at the 18 month review if the member is not in gainful employment;
 - Decide whether to consider it at the three year anniversary if payment of the pension is not discontinued before then;
 - Consider it if the member asks before either payment of the pension has discontinued or a period of three years has passed from discontinuation of the pension.

13. 18 months after dismissal Regulation 20(7) makes it a specific requirement for the ex-employer to review a tier 3 pension and decide whether to:
 - discontinue payment of the pension;
 - discontinue payment of the pension and recover overpayments due to gainful employment having been taken up;
 - allow the pension to continue to be paid;
 - consider upgrading to a tier 2 pension.
14. At the third anniversary payment of the pension will be discontinued if it is still in payment, unless a decision is made to upgrade it to a tier 2 pension on the basis of the medical condition that resulted in 3rd tier payment.
15. Once discontinued for more than 3 years there is no provision for the pension to be upgraded to a tier 2 pension on the basis of the medical condition that resulted in 3rd tier payment. **However**, payment of the pension can recommence if the member becomes permanently incapable of undertaking any gainful employment, regardless of whether that is because of the original medical condition, or an unrelated medical condition and this is certified by an approved Independent Doctor.

THE PRACTICALITIES

Ill-health Toolkit

16. Like the rest of the ill-health pension process the tier 3 review relies on a large number of forms, letters and leaflets. The ill-health tool kit includes all of the paperwork needed for tier 3 reviews for pre 1 April 2014 retirees, apart from acknowledgements and keeping members informed letters which you will need to develop yourself. Included in the Toolkit are:
 - “IH Toolkit – Pre 1 April 2014 Tier 3 Retirements Review Letters & Forms”. This document has specific letters with associated forms for you to move to your own headed paper and design.
 - A leaflet to accompany correspondence about the tier 3 review process.

Notification of Employment other than at 18 Month Tier 3 Review

17. When the member notifies you that they have obtained employment you should first decide if they have given you sufficient information to assess whether it is gainful employment (see below). If not, issue them with the “Tier 3 – notification of employment TR3GE questionnaire” letter and form.
18. Once you have the questionnaire back you then make the decision on whether you consider that your ex-employee is in gainful employment as described at 47-50. If you decide they are, you also need to decide on any overpayment recovery process (see 51-53).
19. If you decide the individual is in gainful employment send the letter “Tier 3 – notification of employment (gainful)” with the appropriate paragraphs selected depending on whether you will be recovering pension, provide a copy to LGSS Pensions Service with a completed Form TR3NOT.

20. If the individual is not in gainful employment send the letter “Tier 3 – notification of employment (not gainful)”.

Uprate to Tier 2 Request

21. A member who is under age 65 and was awarded a tier 3 pension, may request within a certain timescale that their tier 3 pension be uprated to a tier 2 pension.
22. Check the member is within the time limits: The tier 3 pension must be either still in payment or have been discontinued less than three years ago.
23. You should get IHRC3 and Legal & General ill health liability insurance forms signed by the member first and refer the case to the Independent Doctor as detailed below. You are asking them to complete either form TR3REV08A, if the Tier 3 pension is still in payment, or TR3REV08B if payment of the Tier 3 pension has discontinued less than 3 years ago. You are seeking information you can use to make the decision as to whether they were/are/will be likely to be capable of undertaking gainful employment by the third anniversary of their pensionable employment ending.
24. If you decide to uprate to a tier 2 pension it will be uprated only from the date of your decision. Having made such a decision, use the “Tier 3 – Tier 2 decision + BENDEC3” letter and form from the IH Toolkit to notify the individual of your decision and give them the form they will need to complete. You also need to complete the relevant Ex-Employer’s Tier 3 Review Decision Part of the TR3REV08BA or TR3REV08B and send the whole form to LGSS Pensions Service.
25. If you decide not to uprate to a tier 2 pension, use the “Tier 3 – not Tier 2” letter and form from the IH Toolkit to notify the individual of your decision. You also need to complete the relevant Ex-Employer’s Tier 3 Review Decision Part of the TR3REV08BA or TR3REV08B and send the whole form to LGSS Pensions Service.

18 Month Tier 3 Review

26. When to start the 18 month review is not straightforward. Ideally you will be in a position to make your decision 18 months after the dismissal date. In reality there are so many external factors involved that it will be hard to get this exact. We recommend starting the review process at least 2 months before the 18 month anniversary of the member’s last day of pensionable employment.
27. The Regulations are explicit about process. You should start by writing to the individual and asking them to complete an employment questionnaire, IHRC3 and Legal & General ill-health liability insurance form. Use the “Tier 3 – 18 month review + TR3REQ questionnaire” letter and questionnaire from the IH Toolkit.
28. Once you have the form back you then make the decision on whether your ex-employee is in gainful employment as described in 47-50 below.

29. If they are in employment and you have decided that you consider it to be gainful employment, you also need to decide on any overpayment recovery process (see 43). Having made these decisions, send the letter “Tier 3 – 18 month review (gainful)” with the appropriate paragraph selected/amended depending on whether you will be recovering pension. You also need to complete TR3NOT and send it to LGSS Pensions Service to discontinue payment of the pension.
30. If the individual does not respond to the “Tier 3 – 18 month review + TR3REQ questionnaire” letter, within 14 days, you should check the address against that currently held by LGSS Pensions Service and issue a reminder/copy. If no response is received by the 18 month point inform LGSS Pensions Service that payment should be temporarily suspended until a response has been received and considered.
31. If the individual has confirmed that they are not in paid employment, or you have decided that you do not consider the employment they are in to be gainful employment, you need to refer the case to an Independent Doctor. Hopefully completed IHRC3 and Legal & General ill health liability insurance forms will have been returned as requested in the letter that accompanied the employment questionnaire. If not, you need to get them completed by the individual; send letter “Tier 3 – 18 month review IHRC3 required”.
32. If the individual does not complete the IHRC3 by the 18 month point inform LGSS Pensions Service that payment should be temporarily suspended until a completed form has been received and the Independent Doctor has completed the necessary certificate – this is likely to take two or three months.
33. Once you have the completed IHRC3, complete a TR3REF form and Part A of the TR3REV08A and send all three forms to the appropriate Independent Doctor; Cambridgeshire Pension Fund employers should send to:

Heales Medical Ltd
Citibase
101 Lockhurst Lane
Coventry
CV6 5SF

Telephone: 0844 842 1755 - Extension: 5000
Email: coventryoh@heales.com

34. Heales should not need any other paperwork as they will have everything that is relevant from when they dealt with the original Ill health pension referral prior to retirement.

35. Once you have TR3REV08A back from the Independent Doctor` you need to decide what you intend to do. The certificate only gives the Independent Doctor's opinion of the individual's ability to undertake gainful employment based on the medical factors and whether they still meet the permanently incapable criteria. It is for you to use this opinion and other information available to you to make your decision. Once you have made your decision, complete Part D of the TR3REV08A, confirm your decision to the pensioner in writing using the appropriate letter from the IH Toolkit and send a copy of both the completed TR3REV08A and the decision letter to LGSS Pensions Service.

36. The choices you have are:

- the pensioner is not likely to be capable of undertaking gainful employment within three years of the date of dismissal. In most cases the doctor will have ticked B2. If you decide this you have the option of uprating to a Tier 2 pension. Tick box D1 on the form and the pension will be uprated from the date of your signature. You should issue the "Tier 3 – 18 month review (Tier 2 decision + BENDEC3)" letter and form to the pensioner.
- the pensioner is currently capable of undertaking gainful employment. In most cases the Independent Doctor will have ticked:
 - B1, B3 and B6; OR
 - B1, B4 and B6; OR
 - B1, B5 and B6.

Tick box D2 on the form and payment of the pension will be discontinued from the date of your signature. You should issue the "Tier 3 – 18 month review (capable of gainful)" letter. In these cases please telephone the LGSS Pensions Service to avoid an overpayment caused by missing a payroll close deadline.

- The pensioner is not currently capable of undertaking gainful employment BUT is likely to be capable of undertaking gainful employment within three years of the date of dismissal. In most cases the Independent Doctor will have ticked B1, B3 and B7. Tick box D3 on the form and forward it to LGSS Pensions Service; the pension will continue to be paid up to the three year anniversary unless you further review the pension. You should issue the "Tier 3 – 18 month review (continue to 3rd anniversary)" letter to the pensioner.

3rd Anniversary Review

37. There is no specific action for you at the third anniversary unless you want to automatically carry out an assessment on whether to upgrade to a tier 2 pension. If you want to do this follow the process as outlined at 21 to 25.

38. Unless LGSS Pensions Service hear otherwise, the tier 3 pension will be automatically discontinued at the third anniversary.

Review at member request after payment of their Tier 3 pension has been discontinued, but before normal retirement age and either:

- a) 3 or more years after payment was discontinued, or**
 - b) within 3 years of payment being discontinued where request relates to a different medical condition to that which led to the Tier 3 award**
39. At this point the member will be classified as 'a pensioner member with deferred benefits'. They will either be out of time to have their pension uprated to a tier 2 one, or not eligible for such an uprating as the request relates to a different medical condition to that which led to the original Tier 3 award, however they can seek to have payment of their deferred pension on ill health grounds if they are 'suffering from a condition that renders the member permanently incapable of undertaking any gainful employment'. The terms "permanently incapable" and "gainful employment" are as set out in 9. above.
40. You should write to the individual asking them to complete an employment questionnaire and IHRC3 (no Legal & General ill-health liability insurance form is required since uprating to Tier 2 is not an option). Use the "Tier 3 – Re-instatement requested IHRC3 required" letter and associated questionnaire from the IH Toolkit.
41. Once you have the questionnaire and IHRC3 back, you then make the decision on whether you consider your ex-employee to be in gainful employment as described in 47-50 below.
42. If you decide that you **do** consider your ex-employee to be in 'gainful employment', this would prevent early payment of the pension on health grounds. You should inform them of your decision using the "Tier 3 – Re-instatement on health grounds refused" letter from the IH Toolkit.
43. If either the ex-employee is not in employment or they are, but you do not consider it to be 'gainful employment', complete a TR3REF form and Part A of the TR3REV08C and send both forms to the appropriate Independent Doctor;

Cambridgeshire Pension Fund employers should send to:

Heales Medical Ltd
Citibase
101 Lockhurst Lane
Coventry
CV6 5SF

Telephone: 0844 842 1755 - Extension: 5000
Email: coventryoh@heales.com

Heales should not need any other paperwork as they will have everything that is relevant from when they dealt with the original Ill health pension referral prior to retirement.

44. Once you receive the completed TR3REV08C and report back from the Independent Doctor, consider the information and make the decision as to whether you consider the ex-employee to be, more likely than not, permanently incapable of undertaking any gainful employment before age 65.
45. If you decide the member does meet the criteria for payment of their pension, complete Part D of the TR3REV08C, confirm your decision to the pensioner in writing using the “Tier 3 – Re-instatement on health grounds granted” letter from the IH Toolkit and send a copy of both the completed TR3REV08C and the decision letter to LGSS Pensions Service.
46. If you decide the member does **not** meet the criteria for payment of their pension, complete Part D of the TR3REV08C, confirm your decision to the pensioner in writing using the “Tier 3 – Re-instatement on health grounds refused” letter from the IH Toolkit and send a copy of both the completed TR3REV08C and the decision letter to LGSS Pensions Service.

SPECIFIC GUIDANCE

Making the Gainful Employment Decision

47. Once you have information on employment you need to assess the information and decide if you consider that the individual has entered into gainful employment. You are looking for:
 - The employment to be properly paid e.g. it is not volunteering or subsidised employment e.g. as a result of sheltered employment; AND
 - The employment to be for 30 hours or more per week (on average); AND
 - There to be a contract for a year or more.
48. Questions 32-34 in the DCLG FAQ document and paragraphs 53-59 of the Statutory Guidance that can be found at the link below have useful guidance on how to assess gainful employment. Particularly in the case of fixed term contracts and term-time working:

<http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/statguide.htm>
49. In some circumstances:
 - You may need to delve more deeply before making a decision;
 - Have to decide that someone is not yet in gainful employment but set a review point to check if employment has turned into gainful employment e.g. if someone is on a short term contract which may be extended or renewed;
 - You may decide someone gets gainful employment once they have been employed for a year with an average of 30 hours per week (this does not get backdated to the start of the employment)

50. If you decide that it is gainful employment you also need to decide when to discontinue the pension from and whether to recover any of the pension paid:
- Normally you should choose to discontinue the pension and recover from the individual the **gross** pension paid from the day they entered gainful employment to the date the pension is discontinued (note: the member will be able to reclaim any tax paid on these payments from HMRC).
 - You could choose to discontinue the pension from the day they entered gainful employment but not recover the overpaid pension.
 - Question 12 of the FAQ document also recognises that “if the employer has had to ask for further information to be able to assess whether the employment is ‘gainful employment’ as described in the regulations, the employer may wish to consider ceasing payments at the point when the information received confirms gainful employment.”

Recovery of Overpaid Pension

51. You are responsible for collecting the overpaid pension.
52. Once you have decided to discontinue payment of the pension you should contact LGSS Pensions Service to inform us of the decision, particularly the date of discontinuation, and request details of any overpayment. We will provide the figures within five working days.
53. When you notify the pensioner you will need to provide details of how payment is to be made. It is your decision whether to raise an invoice for the payment or use some other method. Once collected you return the sum recovered to the Pension Fund – please send it with your monthly contribution pay over, clearly annotated in the comments on the schedule (PEN18).

LGSS Pensions Service
John Dryden House
8-10 The Lakes
Northampton
NN4 7YD

Tel: 01604 366537

Email: pensions@northamptonshire.gov.uk

Appendix A: Ill-health Toolkit for Tier 3 Reviews - Leavers 1 April 2008 – 31 March 2014

Contents

Documents available here:

Cambridgeshire Pension Fund

<http://pensions.cambridgeshire.gov.uk/index.php/employers/looking-after-members/leavers/ill-health-tier-3-reviews/>

Northamptonshire Pension Fund

<http://pensions.northamptonshire.gov.uk/index.php/employers/looking-after-members/leavers/ill-health-tier-3-reviews/>

Ill-health Pension Process: Guidance Note 3A

Tier 3 Reviews: Leavers 1 April 2008 – 31 March 2014

Detailed guidance on when and how Tier 3 pensions are to be reviewed

Letters - Pre 1-4-2014 Tier 3 retirements review

A set of wording for letters and associated forms to be used during the Tier 3 Review process as detailed in Ill-health Pension Process: Guidance Note 3A:

Tier 3 – notification of employment TR3GE questionnaire	Letter and questionnaire to send to pensioner following notification of employment if insufficient detail in their notification to determine if the employment is to be considered 'gainful employment'.
Tier 3 – notification of employment (gainful)	Letter to send to pensioner confirming payment of pension is being discontinued following notification of employment that has been considered as 'gainful employment'.
Tier 3 – notification of employment (not gainful)	Letter to send to pensioner to confirm payment of pension will continue following notification of employment that has been considered as not being 'gainful employment'.
Tier 3 – not Tier 2	Letter to send to pensioner to confirm does not meet criteria for uprating to Tier 2 pension.
Tier 3 – Tier 2 decision + BENDEC3	Letter to send to pensioner confirming uprating of pension to Tier 2 following request.
Tier 3 – 18 month review + TR3REQ questionnaire	Initial letter and questionnaire to send to pensioner for 18 month review. To be accompanied by IHRC3 and Legal & General ill health liability insurance form.

Tier 3 – 18 month review (gainful)	Letter to send to pensioner confirming payment of pension is being discontinued as they are considered as being in 'gainful employment' at the 18 month review.
Tier 3 – 18 month review (capable of gainful)	Letter to send to pensioner confirming payment of pension is being discontinued as they are considered as being capable of undertaking 'gainful employment' at the 18 month review.
Tier 3 – 18 month review (continue to 3rd anniversary)	Letter to send to pensioner to confirming payment of their Tier 3 pension will continue to 3 rd anniversary unless gainful employment obtained.
Tier 3 – 18 month review (Tier 2 decision + BENDEC3)	Letter to send to pensioner confirming uprating of pension to Tier 2 as a result of 18 month review.
Tier 3 – 18 month review IHRC3 required	Letter to send to pensioner requesting IHRC3 and Legal & General ill health liability insurance forms – includes information on what will happen if IHRC3 not returned.
Tier 3 – Re-instatement requested IHRC3 required	Letter to send to a member who requests that their discontinued Tier 3 pension be brought back into payment early on health grounds. Includes request to complete IHRC3 form.
Tier 3 – Re-instatement on health grounds granted	Letter to send to member confirming re-instatement of discontinued Tier 3 pension due to health.
Tier 3 – Re-instatement on health grounds refused	Letter to send to member confirming decision not to re-instate payment of Tier 3 pension due to health.