HSC

Pension Service

HSC Pension Scheme

A Guide to Ill-Health Retirement

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1. Scope

1.1 Purpose

The purpose of this document is to provide -

- details of the updated "1995 Section" (*NBA 60) and the new "2008 Section" (*NBA 65) of the HSC Pension Scheme;
- details of the new two tier ill-health retirement arrangements which apply to **both sections**, for applications after 01 April 2008.

***NBA** = Normal Benefit Age at which a pension member may take their full pension on age grounds without actuarial reduction.

1.2 Applicability

This is a medical guide for -

- the clinical and occupational health practitioners who advise HSC Pension Scheme members and HSC employers, and;
- HSC Pension Service and their medical advisers

1.3 Glossary

HSC Pension Service – the Scheme Administrator

NBA - Normal Benefit Age at which a pension member may take their full pension on age grounds without actuarial reduction.

IHR – Ill Health Retirement

Special Classes - Are Scheme members in certain employments who joined the Scheme before 1 April 1995. These included physiotherapists, midwives, nurses and Mental Health Officers, (MHOs). The key implication of holding special class status was having the facility to take a non-actuarially reduced pension at age 55. This was withdrawn in 1995 for all new employees.

LEL - National Insurance Lower Earnings Limit

AVC - Additional Voluntary Contributions

2. Introduction

2.1 Background

On 21 September 2007, NHS Employers and the NHS trades unions announced the final agreement on a series of important changes to the NHS Pension Scheme in England and Wales, following extensive consultation.

On 11 March 2008 NHS Employers and the NHS trades unions signed off final agreement on a Partnership Review of Ill-Health Retirement, Injury Benefit and Sickness Absence, following extensive consultation. It details the proposed new ill health retirement arrangements.

Both these agreements have been accepted by HSC employers and HSC trade unions in Northern Ireland. Both agreements begin on 01 April 2008 across all three UK Health Service Pension Schemes, i.e. NHS Pension Scheme for England and Wales, Scotland and the HSC Pension Scheme in Northern Ireland.

2.2 Aims

The aims of this guide are -

- to provide details of the updated **"1995 Section"** and the new **"2008 Section"**;
- to provide details of the two tier ill-health retirement arrangements which apply to both schemes, for applications after 01 April 2008.

3. HSC Pension Scheme

3.1 The Key Changes

- There are two sections to the Scheme - an updated 1995 Section (based on 2008 amendments to the 1995 Regulations, and referred to hereafter in this document as the **'1995 Section'**) is being introduced for existing members and a 2008 Section (based on new 2008 Regulations and referred to hereafter in this document as the **'2008 Section'**) for new members
- The changes will come into effect on 01 April 2008
- The **'1995 Section'** for existing members - this is still a final salary Scheme with the same Normal Benefit Age (NBA) of 60 years (55 for special classes), but with new benefits, for example the option to take more pension as a tax free lump sum
- The **'2008 Section'** for new members - this is a final salary Scheme with an NBA of 65 and more flexibilities particularly in the run-up to retirement, for example the option for staff to step down to a less demanding role and take part of their pension
- Both sections will have identical, new tiered contribution rates - individual rates will be directly linked to individual earnings for a new way to fund new benefits and future costs
- New two tier ill-health retirement arrangements will apply to both sections.

3.2 Membership

For new members the **'2008 Section'** is open to:

- Any HSC employee aged between 16 and 75. This includes non-GP providers but does not include general dental practice staff
- HSC medical and dental practitioners, including trainees, some locums and assistants
- GP Practice staff

- Staff working for an Out of Hours provider, which has registered as an HSC Pensions employing authority

- Some Scheme members who leave the HSC to work for approved organisations outside the HSC, for example hospices. These organisations are known as Direction Employers.

For members of the **'1995 Section'** a one-off choice to move to the **'2008 Section'** is currently planned for October 2009. For those who transfer NBA will be age 65 the same as new members joining the **"2008 Section"** after 1 April 2008.

3.3 Features of the '1995 Section'

This is a final salary (best of last 3 years) arrangement, with NBA retained at age 60, index linked yearly increases and early payment from age 50 (with actuarial reductions). The following are new features -

- contribution rates-1/80ths pension per year plus 3/80th lump sum, but the pensioner can take a higher lump sum, up to 25% of the value of their pension in exchange for a lower monthly pension payment.

- survivor benefits extended to include, as well as spouses, civil partners or nominated partners where there is financial dependency or inter-dependency.

- an increased ability to voluntarily enhance their pension without a contribution limit up to 100% of pensionable pay by buying additional pension or Money Purchase AVCs. Existing 'added years' contracts will be honoured but no new contracts were permitted after 31 March 2008.

- Pension protection on voluntary step-down of role approaching retirement

3.4 Features of the '2008 Section'

This Section is even more flexible than the **'1995 Section'**. The key features are -

- Employment up to age 75 contributes to reckonable service up to a total of 45 years

- No earnings limit

- Final salary index linked scheme (but based on the average of best 3 consecutive years within the last 10 years)
- NBA at 65 with option for voluntary early retirement with an actuarially reduced pension from age 55
- Accrual rates at 1/60th per reckonable year but no fixed lump sum
- Total flexibility to take up to 25% of value of their pension as a lump sum
- Improved survivor and civil partner benefits as in the updated scheme
- 'drawdown'- a pensioner may take part of their pension only, whilst continuing in different HSC employment OR
- pensionable re-employment- they can rejoin the Section if they intend to return to HSC employment after retiring

3.5 Implications for Ill-Health Retirement

Both Schemes allow greater flexibility in the approach to NBA, and offer various means of scaling down their commitment, whilst protecting pay and pension. For the HSC employee and scheme member whose health condition is affecting their ability to offer regular and effective service, these flexibilities may represent an alternative, or a means of delaying ill-health retirement.

4. Partnership Review of Ill Health Retirement, Injury Benefit and Sickness Absence

4.1 Aim

The key aim of this agreement was to ensure the continuation of the provision of high quality ill-health benefits whilst strengthening the aim of facilitating a return to work wherever possible, and therefore mitigating risks to the service and the HSC Pensions Scheme posed by premature and unnecessary ill health retirements.

The following are covered in the agreement:

4.2 Managing sickness absences

Minimum standards for all HSC employers have been set out, and will sit within the HSC terms and conditions legal and contractual responsibilities. They cover legal responsibilities of employers towards staff, key employer behaviours in the management of sickness absences, key employee behaviours in the management of absences and a framework for the management of sickness absences.

Regarding the last of these, the key elements of this framework are -

- Structured review process - locally agreed procedures should have a series of reviews during an employee's sickness absence period, culminating in a final review, to decide, with medical evidence and occupational health advice on the way forward, in terms of a phased return to work, with or without adjustments, redeployment, termination of contract/ill-health retirement application.
- Rehabilitation to support employee's remaining in or returning to work, with early intervention and providing staff with direct access through dedicated resources to key interventions, such as physiotherapy and CBT (cognitive behavioural therapy).
- Phased return to work- flexible interim working arrangements whilst remaining in pay.
- Redeployment

- Sick pay entitlements- the sickness management process is to proceed with an awareness of the employee's sick pay entitlements, to ensure reviews are conducted regularly and completed within 12 months, before their sick pay ends. Circumstances are also given for consideration of the extension of sick pay provision.

- Occupational Health Support- recognising the positive impact of a well managed occupational health service. Where termination of contract is considered appropriate, the involvement of occupational health in obtaining medical evidence to support the decision to terminate is encouraged, and where ill-health retirement is deemed appropriate, to promote a successful application.

- Risk management - including integrated reporting arrangements for incidents and injuries at work

- Data collection by means of appropriate management systems

- Monitoring and review of policies - to identify areas of improvement

4.3 Ill-Health Benefit Arrangements

The creation of a tiered arrangement for the determination of ill-health benefits recognises that the different levels of benefits for members should be dependent on the severity of their condition and the likelihood of them being able to work again.

See the next three chapters for the detailed structure.

4.4 Ill Health Retirement Data

Application forms for ill-health retirement and injury benefit have been amended and systems introduced to collect relevant data to inform the process of further review of these arrangements.

5. Ill Health Retirement (IHR) Arrangements

5.1 Introduction

There are two types of ill health retirement pensions available to staff or former staff of the HSC -

(1) Ill Health Retirement Benefits for active Pension Scheme members, and

(2) former Pension Scheme members may apply for early payment of preserved benefits

Ex-members who left the HSC before 01 April 2008, and thus to whom the regulations of the **'1995 Section'** still apply, will, for some years to come, be those who will make application for the early payment of their preserved benefits. Therefore, there is no change to those arrangements, and this document will not, in its initial edition, detail those arrangements any further.

5.2 Ill Health Retirement Benefits for active members at 01 April 2008

The provisions within the **'1995 Section'** are -

Regulation 13A -

13A. (2) A member to whom this regulation applies who retires from superannuable employment before normal benefit age shall be entitled to pension under this regulation if -

(a) the member has at least 2 years qualifying service or qualifies for a pension under regulation 12; and

(b) the member's employment is terminated because of physical or mental infirmity as a result of which he is -

(i) permanently incapable of efficiently discharging the duties of that employment (the "tier 1 condition"); or

(ii) permanently incapable of regular employment of like duration (the "tier 2 condition") in addition to meeting the tier 1 condition

5.3 Ill Health Retirement Benefits for active members, joining or transferring to the '2008 Section' post - 01 April 2008

The provisions within the **'2008 Section'** are -

Regulation 52 for officers and Regulation 182 for practitioners -

(1) A pension payable under this regulation shall be known as an ill-health pension and may be paid at two different tiers known as a tier 1 ill-health pension and a tier 2 ill-health pension.

(2) An active member who has not reached the age of 65 and who has ceased to be employed in HSC employment is entitled to immediate payment of a tier 1 ill health pension that is payable for life if -

(a) the member's employment is terminated because of that physical or mental infirmity,

(b) in the opinion of the Department the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently,

(c) the member has at least 2 years of qualifying service, and;

(d) the member has claimed the pension.

(3) An active member who has not reached the age of 65 is entitled to immediate payment of a tier 2 ill-health pension if -

(a) in addition to meeting the condition in paragraph (2)(a), in the opinion of the Department the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration,

(b) the member's employment is terminated because of that physical or mental infirmity,

(c) the member has at least 2 years of qualifying service, and;

(d) the member has claimed the pension

5.4 Details of the Two Tier IHR Arrangements to cover both Active Pensions Schemes' Groups

For the purposes of simplicity, and recognising the substantial similarities of both Schemes, the following chapters bring the two together where possible. There is a major difference in the age to which permanent incapacity is measured - it is to the NBA, which for the '**1995 Section'** is 60 years and the **'2008 Section'** 65 years.

5.4.1 The Two Tier Definitions of Permanent Incapacity

	Definition
Tier 1	Applicant with at least 2 years qualifying service assessed as being unable to do their own job. Entitlement to benefits where – The Department is satisfied that the member is suffering from physical or mental infirmity that make them permanently incapable of efficiently discharging the duties of that employment (see chapter 6 for explanation of that employment)
Tier 2	Applicant with at least 2 years qualifying service assessed as being unable to do any 'regular employment of like duration'. (see chapter 7 for definition of regular employment of like duration) Entitlement to benefits where - In addition to meeting Tier 1, the Department is satisfied that the member is suffering from mental or physical infirmity that makes them permanently incapable of engaging in regular employment of like duration.

Within the scope of Tier 2 there is recognition that the ability to undertake some therapeutic work can assist scheme members to manage their condition. This will allow members to earn up to the lower earnings limit (LEL) for national insurance contributions (2008/09 £4,680).

6. Tier 1 Considerations

6.1 Introduction

In this chapter, terms and phrases that appear in bold text are highlighted for the purpose of later definition or explanation.

The tier 1 condition is the lower tier of IHR benefit.

In order to determine whether a member meets the tier 1 condition the HSC Pensions medical adviser is to have regard to a number of factors and disregard the personal preferences of the member for or against engaging in **that employment** (by which is meant their HSC job - see explanation in later section).

6.2 Factors

The factors (**no one of which shall be decisive**) to be taken into account are -

- Whether the member has received appropriate medical treatment (see below for definition) in respect of addressing the member's incapacity for that employment,
- The member's -
  - Mental capacity; and
  - Physical capacity;
- Such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of addressing the member's incapacity for that employment, irrespective of whether such rehabilitation is undergone; and
- Any other matter that the Department considers appropriate

6.2.1 Appropriate Medical Treatment

'**Appropriate medical treatment**' means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Department considers -

- that it would be reasonable for the member to refuse,
- would provide no benefit to restoring the member's capacity for efficiently discharging the duties of the members employment before the member reaches normal benefit age, and;
- that through no fault on the part of the member, it is not possible for the member to receive before the member reaches NBA.

Further detail may be found at paragraph 10.3.4.

6.2.2 Permanently

'Permanently' means the period until NBA.

For the 'special classes', for the purpose of assessing permanent incapacity for ill-health retirement, NBA means the period to age 60.

6.3 Understanding the Regulations for Tier 1

(1) ***No one of which shall be decisive*** - this clause imposes a duty on the medical adviser to consider all the factors. The medical adviser cannot look just at one factor and indicate that it is either decisive for or against a tier 1 assessment. This does not exclude, however, a circumstance where one factor may assume much greater importance than another. If a factor is assessed as confirming permanent incapacity for the HSC job, then other factors are likely to be met as well. For instance if the member's illness is so debilitating that their physical capacity is and will remain poor, they are also unlikely to be able to engage in rehabilitation. In contrast if the member's illness indicates that they are unlikely to have significantly impaired physical capacity in the future, and there is no reduced mental capacity they are also likely to become fit for a rehabilitation programme.

(2) ***Disregard the personal preferences of the member for or against engaging in that employment (by which is meant their HSC job- see explanation in later section);*** highlights that the assessment is a medical one, but it is reasonable to indicate that this refers only to any element of personal preference which is not influenced by the medical issues which fall to be considered.

(3) ***Mental Capacity*** refers to, the effects of a member's medical condition, in terms of

impairing/preserving their mental processes, thus affecting their mental functioning and thus their scope for on-going occupational performance in their HSC job.

(4) ***Physical Capacity*** refers to the effects of a member's medical condition, in terms of impairing/preserving their physical processes, thus affecting their physical functioning and their scope for on-going occupational performance in their HSC job

(5) ***Such Type and Period of Rehabilitation in relation to their incapacity for their HSC job*** refers to a programme of occupational health assessment and therapy to restore occupational functions (this may involve acquiring new skills as adjustments), and a range of workplace modifications/additional provision to assist the member to return to their HSC job, which would be reasonable for the employer to consider in consultation with the member and the rehabilitation advisers. The further clause in the Regulations, irrespective of whether such rehabilitation is undergone refers either

(a) to circumstances where an employer may not have had the opportunity to devise and implement rehabilitation because of the continuing ill-health of the member, or

(b) to circumstances where a rehabilitation programme may have been possible medically, but either the employer or the employee felt unable to participate.

(6) ***Any other matter*** refers to any matter, beyond the factors specified in the Regulations, relevant to the individual's circumstances and appropriate to the application for IHR. An example of this may be the time period to the NBA. Not only may this be too short to complete clinical treatments, but also to complete an effective rehabilitation programme. In contrast the time period to NBA may be entirely adequate to accommodate both treatment and rehabilitation initiatives.

(7) ***Retires from pensionable employment***: the member's contract must have ended on the grounds of ill health.

(8) ***Efficiently discharging the duties ('1995 Section'): Discharging the duties of the member's employment efficiently ('2008 Section'):*** refers to a work performance that is competent.

(9) ***'That employment' for Tier 1***: refers to the HSC job, to which the member's contract of employment relates. As it is the job description which is submitted with the application, it is important that the employer submits the job description that wholly conforms to that member's substantive contract of employment.

7. Tier 2 Considerations

7.1 Introduction

In this chapter, terms and phrases that appear in bold text are highlighted for the purpose of later definition or explanation.

In order to determine whether a member meets the tier 2 condition - **permanent incapacity for regular employment of like duration,** the HSC Pensions medical adviser is required to have regard to a number of factors and disregard a number of other factors.

The tier 2 pension is the higher level of IHR benefit.

7.2 Factors to have due regard for

The factors (**no one of which shall be decisive**) to be taken into account are -

(1) Whether the member has received appropriate medical treatment (see below for definition), in respect of addressing the member's incapacity for regular employment of like duration

(2) Such reasonable employment as the member would be capable of engaging in if due regard is given to the member's -

(a) Mental capacity;

(b) Physical capacity;

(c) Previous training, and

(d) Previous practical, professional and vocational experience,

- irrespective of whether or not such employment is actually available to the member;

(3) Such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of addressing the member's incapacity, (irrespective of whether such rehabilitation is undergone) having regard to the members -

(a) Mental capacity, and

(b) Physical capacity

(4) Such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's -

(a) Mental capacity;

(b) Physical capacity;

(c) Previous training, and

(d) Previous practical, professional and vocational experience, and

(e) Any other matter that the Department considers appropriate

7.2.1 Factors to be disregarded

The factors to be disregarded are -

(1) the member's personal preference for or against engaging in any particular employment; and

(2) the geographical location of the member.

7.2.2 Appropriate Medical Treatment

'Appropriate medical treatment' means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Department considers -

(1) that it would be reasonable for the member to refuse,

(2) would provide no benefit to restoring the member's capacity for -

(a) efficiently discharging the duties of the members employment before the member reaches normal benefit age, and;

(b) regular employment of like duration

(3) that through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age.

Further detail may be found at paragraph 10.3.4.

7.2.3 Permanently

'Permanently' means the period until normal benefit age.

For the 'special classes', for the purpose of assessing permanent incapacity for ill-health retirement, NBA means the period to age 60.

7.2.4 Regular Employment of Like Duration

"Regular employment of like duration" means, where prior to retiring from pensionable employment the member was employed -

(1) in the HSC on a whole-time basis, then the regular employment to consider is on a whole-time basis;

(2) in the HSC on a part-time basis, then the regular employment to consider is on a part-time basis,

- regard being had to the number of hours, half days and sessions the member worked in that pensionable employment.

7.3 Understanding the Regulations for Tier 2

Having already concluded that a member meets the tier 1 criterion, the HSC Pensions' medical adviser, is required, additional to the tier 1 assessment, to consider whether the member may or may not be fit for regular employment of like duration. In making that additional assessment, the Regulations require the medical adviser to have regard for a set of factors, but within 3 of those factors (b, c and d), where the word **reasonable** is used each time, there is a further set of factors which seeks to describe how that reasonableness is assessed.

The Factors to be regarded in respect of Tier Two 'regular employment of like duration' are:

(1) Receipt of appropriate medical treatment

(2) Such **reasonable** employment that the member would be capable of engaging in

(3) Such type and period of rehabilitation that would be **reasonable** for the member to undergo

(4) Such type and period of training **reasonable** that would be reasonable for the member to undergo

(5) Any other matter

The following table is a representation of how these factors relate to each other.

Factors to have regard for		Factors to have regard for
Appropriate medical treatment		
Reasonable employment	1 →	Mental capacity Physical capacity Previous training Previous practical professional and vocational experience
Reasonable rehabilitation	2 →	Mental capacity Physical capacity
Reasonable training	3 →	Mental capacity Physical capacity Previous training Previous practical professional and vocational experience
Any other matter		

The following is a further explanation of how -

(1) Reasonable employment

(2) Reasonable rehabilitation and

(3) Reasonable training

- may be considered.

(1) ***Reasonable employment*** - In relation to considering what reasonable employment the member may or may not be fit for in the period to NBA, the medical adviser has to assess that reasonableness by having regard to any employment for the following further set of factors; the member's mental capacity, physical capacity, previous training, and previous practical, professional and vocational experience. However, the medical adviser must also look forward to consider if:-

(2) ***Reasonable rehabilitation*** could be undertaken in the future. However, to do this the medical adviser must again consider the member's mental capacity and physical capacity to assess how these factors would impinge on the type and period of such rehabilitation, on whether the member would be able to engage in it, irrespective of whether that rehabilitation is actually undergone. Also, in terms of the future the medical adviser must go on to consider:

(3) ***Reasonable training*** - which relates to what further training the member may reasonably engage in. However, to do this the medical adviser must again consider the member's mental capacity, physical capacity, previous training and previous practical, professional and vocational experience to date (in terms of process as detailed in 1 above), to assess how these factors would impinge on the type and period of such training, on whether the member would be able to engage in it or not, irrespective of whether that training is actually undergone.

Put another way, what is reasonable is that no member would be expected to engage in regular employment of like duration, a type and period of rehabilitation and a type and period of training that was beyond their mental or physical capacity. If they did they would likely become more ill or illness would relapse.

The reasonableness of this approach is that it ensures that the boundaries -

(1) of whatever regular employment of like duration,

(2) of whatever type and period of rehabilitation, and

(3) of whatever type and period of training are considered

- will make it unlikely that the member would suffer adversely were they to engage in such activities.

The converse would, however, also be reasonable, namely that a member would be expected to engage in regular employment of like duration, a type and period of rehabilitation

and a type and period of training that was not beyond their mental or physical capacity.

The set of factors to be disregarded are -

(1) the member's personal preference for or against engaging in any particular employment; and

(2) the geographical location of the member.

These highlight that the assessment is a medical one, but it is reasonable to indicate that this first bullet refers only to any element of personal preference that is not influenced by the medical issues that fall to be considered. The geographical location may be disregarded, as it is not appropriate to this assessment for the medical adviser to consider what particular jobs may be available where the member lives.

The following are further elucidations relevant to the tier 2 assessment.

(1) ***No one of which shall be decisive*** - this clause imposes a duty on the medical adviser to consider all the factors. The medical adviser cannot look just at one factor and indicate that it is either decisive for or against a tier 2 assessment. This does not exclude, however, a circumstance where one factor may assume much greater importance than another. If a factor is assessed as confirming permanent incapacity for regular employment, then other factors are likely to be met as well. For instance if the member's illness is so debilitating that their physical capacity is and will remain poor, they are also unlikely to be able to engage in rehabilitation. In contrast, if the member's illness indicates that they are unlikely to have significantly impaired physical capacity in the future, and there is no reduced mental capacity they are also likely to become fit for a rehabilitation programme.

(2) ***Mental Capacity*** refers to, the effects of a member's medical condition, in terms of impairing/preserving their mental processes, thus affecting their mental functioning and thus their scope for on-going occupational performance by reference to not only to their NHS job, but also any regular employment of like duration.

(3) ***Physical Capacity*** refers to the effects of a member's medical condition, in terms of impairing/preserving their physical processes, thus affecting their physical functioning and their scope for on-going occupational performance by reference not only to their HSC job, but also any regular employment of like duration.

(4) ***Previous training*** refers to all training (such as from university, college, apprenticeship, in-house), which the member accomplished before and during tenure

of the HSC job(s).

(5) ***Previous practical, professional and vocational experience*** refers to all activities that have enabled the member to maintain competence in the job(s) undertaken, and, where applicable, progress in grade/seniority within their particular occupational roles. The words practical, professional and vocational are included to reflect the wide variety of occupational types. Whilst some members may have all three of practical, professional and vocational experience, others may not. For example, only certain occupational types would have professional experience (which requires the prerequisite of professional qualifications.

(6) ***Such Type and Period of Rehabilitation in relation to their incapacity for regular employment of like duration***, refers to a programme of occupational health assessment and therapy to restore occupational functions (this may involve acquiring new skills), and a range of workplace modifications/additional provision, which would be reasonable for an employer to consider in consultation with the member and the rehabilitation advisers. The further clause in the Regulations, irrespective of whether such rehabilitation is undergone acknowledges the circumstance that may pertain in many cases, which is that such rehabilitation may not yet have a context in which to happen, making this aspect of the assessment a prospective one, which could or could not reasonably happen. Also the personal preference and geographical location of the member may not be conducive to such activity occurring, but that has to be disregarded.

(7) ***Such Type and Period of Training*** - Training here refers to educational activities in an occupational context, but may require adjustment to take account of a member's disability. It is training of a type and period, which would not only require to be reasonable in terms of the member's mental and physical capacity, but would also use components of their previous qualifications, skills and occupational experience, to gain expertise for work within a wider context which would include beyond the HSC. The further clause in the Regulations, (irrespective of whether such training is undergone) acknowledges the circumstance that may pertain in many cases, which is that such training may not yet have a context in which to happen, making this aspect of the assessment a prospective one, which could or could not reasonably happen. Also the personal preference and geographical location of the member may not be conducive to such activity occurring, but that has to be disregarded.

(8) ***Any other matter*** refers to any matter, beyond the factors specified in the Regulations, relevant to the individual's circumstances and appropriate to the application for IHR.

An example of this may be the time period to the NBA. Not only may this be too short to complete clinical treatments, but also to complete an effective rehabilitation programme. In contrast the time period to NBA may be entirely adequate to accommodate both treatment and rehabilitation initiatives.

7.4 Terminal Illness

Where a member becomes terminally ill, and medical evidence is available that they have a reduced life expectancy, they will be allowed to commute their pension for a one off lump sum. Although it is not specified in the Regulations, if on the balance of probabilities, the life expectancy is less than 12 months, it is appropriate for a medical adviser to make comment about this poor prognosis, to facilitate commutation on the basis of reduced life expectancy, if such is requested.

7.5 Transition to New IHR Arrangements

Applications for ill health retirement received by 31 March 2008 will be treated under **the pre two-tier arrangements.**

8. Pensioners who Work

8.1 Introduction

The following are mostly issues that relate to circumstances where a member engages in some form of employment after being awarded ill-health retirement. Those in receipt of a Tier 1 IHR pension award are free to engage in employment outside the HSC without any abatement of their pension. Tier 1 pensioners may also engage in HSC work other than their own job but are subject to restrictions as below.

8.2 Abatement of pension whilst in HSC employment

Earnings from HSC employment after IHR (up to NBA) may lead to abatement of pension. The amount of pension that can be abated is restricted to the proportion of pension above that which would be payable following actuarial reduction.

8.3 Movement between tiers (1) - *movement from tier 1 to tier 2*

There may be limited circumstances where medical advisers assess that a member may become eligible for a tier 2 pension within a limited time-period of no more than 3 years after approval of a tier 1 pension. This is a decision that would be made **at the time of initial application.**

It is agreed that the HSC Pensions medical advisor will have the option of giving leave for a one off reassessment within 3 years to consider tier 2. In these instances, the HSC Pensions medical advisor will be satisfied that the member meets the tier 1 criteria, but that the nature of the condition makes it difficult to assess the longer-term outcome in terms of ability to permanently undertake regular employment of like duration. It is up to the member to request such a reassessment within 3 years at a time of their choosing and to submit further medical evidence. Such a reassessment would consider the condition(s) upon which the original decision was made and would be informed by the further medical evidence. Neither subsequent conditions, nor deterioration related to ageing would be taken into account.

The central issue for the HSC Pensions medical adviser will be the level of uncertainty about the prognosis of the relevant medical condition and resultant incapacity for regular

employment of like duration in the period to the NBA. These will be cases where a period of time, within 3 years may well give clarity about the likelihood or not of significant progression or improvement occurring or not. These will benefit from the 3 year reassessment.

Any decision to award a tier 2 pension at reassessment would take effect from the date of reassessment.

The recommendation of a Tier 1 with leave for a reassessment for the consideration of Tier 2 within 3 years does not place any additional constraint on the pensioner's ability to engage in other work in comparison with a straight Tier 1 award; however, if the pensioner is mindful to request a reassessment, and is working at that time, then that pensioner should be aware of the requirement to make an earnings declaration should they be successful in attaining a Tier 2 award. Whilst the Regulations require the pensioner to submit medical evidence at the time of the request for a reassessment, the HSC Pensions medical adviser will also wish to have information about what the pensioner's occupational activities have been, since the Tier 1 award was made, in order to assess the likelihood of the Tier 2 criteria having now (at reassessment date) been reached in terms of permanence to NBA.

8.4 Movement between tiers (2) - *movement from tier 2 to tier 1*

Those in receipt of tier 2 pensions will be able to undertake some employment. However, earnings from employment may impact upon pension entitlement. The pensioner will be subject to an annual earnings declaration. This process would continue until age 60 for those who remain members of the **'1995 Section'** and 65 for members of the **'2008 Section'**.

(1) Pensioners in receipt of tier 2 benefits who return to substantive employment outside of the HSC. In these circumstances -

(a) A pensioner has the ability to earn up to the equivalent of the National Insurance Lower Earnings Limit (LEL; stands at £4,680 in tax year 2008/9) each tax year without losing access to a tier 2 pension

(b) If pensioners exceed the LEL they will move down to tier 1 entitlements - a substitute Tier 1 pension at the point the limit is exceeded

(c) Pensioners will be afforded an opportunity before NBA to re-access tier 2 benefits if it subsequently proves that they are unable to continue in that employment.

(d) To support a reinstatement of the original Tier 2 pension from the substitute Tier

1 pension, a pensioner must have supplied medical evidence. The HSC Pensions medical adviser will consider this evidence, in relation to the original Tier 2 condition assessment and advise if it represents that the pensioner does meet the criterion of being permanently incapable of regular employment of like duration.

(2) Pensioners in receipt of tier 2 benefits who return to substantive employment within the HSC -

(a) Where a pensioner earns below LEL in any tax year from any HSC employment, entitlement to tier 2 will only remain for 12 months from the start of that employment. After that time any HSC earnings will lead to a reduction to a substitute tier 1 pension

(b) If pensioners exceed the LEL during this 12 month period they will move to a substitute tier 1 pension at the point the limit is exceeded

(c) Pensioners will be able to ask HSC Pensions to be assessed for a return to the original Tier 2 pension if it subsequently proves that they are unable to continue in that employment.

(d) The pensioner would have to apply to HSC Pensions within this 12 month period to be assessed for a return to the original Tier 2 pension

(e) To support a reinstatement of the original Tier 2 pension from the substitute Tier 1 pension, a pensioner must have supplied medical evidence. The HSC Pensions medical adviser will consider this evidence, in relation to the original Tier 2 condition assessment and advise if it represents that the pensioner does meet the criterion of being permanently incapable of regular employment of like duration.

8.5 Service Enhancements

The minimum qualifying service for ill-health retirement will remain at 2 years. The current minimum qualifying service of 5 years for ill health retirement enhancements has been removed.

Tier	Entitlement
1	Accrued service only, with no actuarial reduction
2	In addition to the tier 1 award members will receive an enhancement of 2/3 prospective service*. The enhancement for a part time member will follow current arrangements. The enhancement will be in the proportion that their service at whole time equivalent length bears to their service at calendar length. For existing scheme members' transitional arrangements will apply, allowing for the member to receive the lesser of 4 years and the difference between the date of retirement and normal benefit age. These arrangements will remain in place until 2016 and will be reviewed as part of the proposed governance arrangements attached to the HSC Pension Scheme's valuation cycle.

* the service enhancement is capped at full prospective service to age 60 for those who remain members of the '**1995 Section'** and 65 for members of the '**2008 Section'.**

8.5.1 Rationale for minimum 4 year enhancement

This transitional higher tier arrangement for existing members recognises that the largest group accessing ill health retirement benefits are in the 56-60 age group and that these individuals are moving away from the current option of a 6 and 2/3 years enhancement.

9. Applying for Ill-Health Retirement

9.1 Guidelines for the Completion of Part C of AW33 - 09

9.2 Introduction

The form for applying for IHR- AW33 has been revised to accommodate the changes for the two tier arrangements. It will be referred to as AW33-09. What follows is not only an aid to the completion of the form itself, but also a wider consideration of the process of ill-health retirement referral, i.e. -

- What it consists of, and;
- How to plan it

It is written with the assumption that the medical practitioner assisting the applicant with the referral will most commonly be the HSC Trust/employer occupational health provider's occupational health practitioner, usually an occupational physician, but it is acknowledged that GPs and specialist clinicians may also complete the form.

9.2.1 AW33 - 09

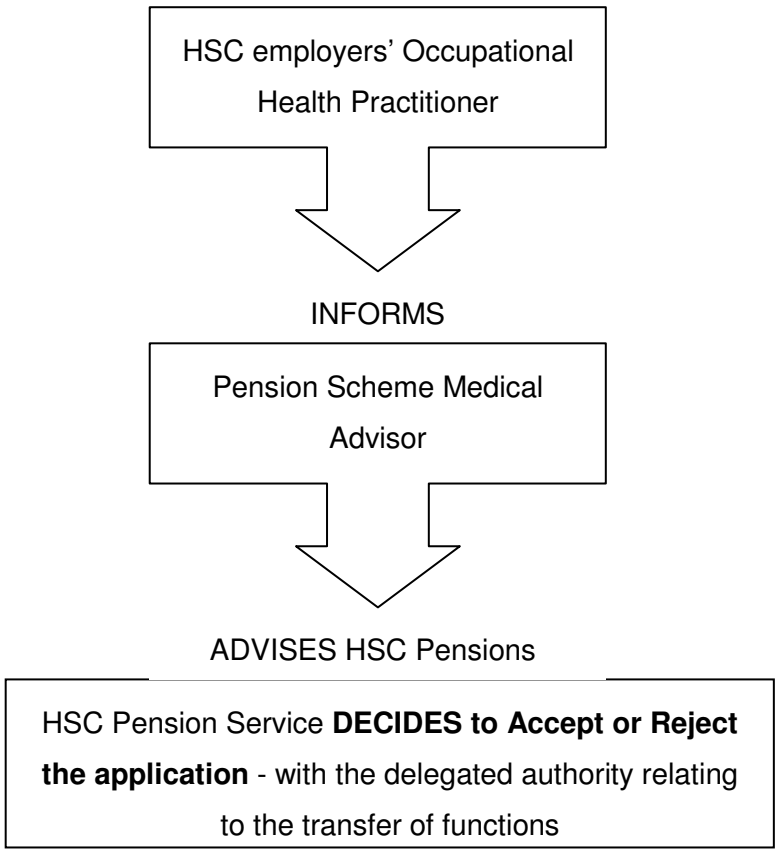
Pre-two tier, the AW33 existed in a number of different forms and Trusts most commonly used the latest version. The introduction of this new 2009 form is of a different order in that a new level of permanent incapacity has to be accommodated. AW33 -09 should also be distinguished from the AW33–PB which is the form to be used for the Early Payments of Preserved Benefits, and the PB1, which relates to claims for Permanent Injury Benefit.

The new form will still have three parts, Part A completed by the Employer, Part B by the applicant, and Part C by the medical practitioner assisting the applicant with the referral. The rest of this chapter concerns the completion of Part C.

9.2.2 Scope

The decision to accept or reject an application for ill-health retirement rests with the HSC Pensions Service and their medical advisers. However strong the opinion of the HSC occupational physician, or the clinician completing the form, that ill-health retirement is

warranted, the decision does not rest with that doctor. Even if the occupational physician has contributed to a risk assessment and the Trust has decided that the employee is no longer capable of performing the duties of their HSC employment, the decision on ill-health retirement still rests with HSC Pensions and their medical advisers. The purpose of the AW33-09 may be seen, therefore, as the means by which the practitioner completing Part C seeks to present the HSC Pensions medical adviser with the key features and merits of the case.



9.2.3 The Occupational Physician's role in Ill Health Retirement Applications

It is expected that the Occupational Health provider for the particular HSC employer will usually have had involvement with an employee through the series of reviews relating to their sickness absence and/or their work performance problems (see Part A of the form where such details are expected to be provided). This involvement will also be expected to have reached the stage of a final review, where the issue becomes one of severance on health grounds, with the occupational health practitioner, usually the occupational physician or consultant occupational physician, taking the role of, where appropriate, assisting with the

process of applying for IHR.

The elements that have to be assessed by the HSC Pensions medical advisers are fourfold:

(1) is there physical or mental infirmity

(2) having an incapacitating effect on the regular and efficient discharge of the applicant's HSC employment, AND beyond that to

(3) any regular employment of like duration,

(4) which is permanent, i.e. to the NBA, i.e. age 60 years for those in the **'1995 Section',** and age 65 for those in the **'2008 Section'.**

Once severance on health grounds becomes relevant, the occupational physician will likely inform the employee of relevant issues around ill health retirement. Where an employee decides to apply for ill health retirement, completion of part C of the application form by the occupational physician is likely to be very helpful to the medical advisers to the pension scheme.

The occupational physician is advised to have regard to these elements, and -

(1) whether appropriate medical treatment has been exhausted,

(2) a type and period of rehabilitation,

(3) adjustments considered, tried or reasonably discounted by the employer

(4) redeployment

The occupational physician may already have sought evidence from the applicant's medical attendants to inform management of the occupational health issues and it is likely to be helpful to the HSC Pension Scheme's medical adviser to have copies of these reports attached to section C. The occupational physician is invited to make a list of the included documents.

It is important that the occupational physician provides an objective and justified (with reference to factual evidence) report at part C.

In line with Access to Medical Reports and Data Protection Acts, the applicant has the right to deny consent to submit the report, have sight of a report, request amendment of factual inaccuracies or append their objections to the report and may ask for a copy of the report.

9.2.4 Preparation

A helpful approach to the completion of the AW33-09 is to 'work up' the referral, to assess what information is required, what information has already been obtained during management of sickness absence and, where there are gaps, to redress the deficiencies before submitting the application. It may be helpful for the occupational physician to consider the following -

(1) Assessing if there is enough current clinical information from his/her own contact with the applicant; if not then to make arrangements to see the applicant. It is appreciated that it may not be easy to arrange this if there has been a long absence, but an AW33-09 completed based on the occupational physician's own contact many months back is more difficult to evaluate than one based on an up to date meeting with the applicant. There will also have to be an arrangement to allow the applicant to see the completed report, if they have declared that choice on the form.

(2) Assessing if there is information from other clinicians so that the occupational physician is not dependent solely on information conveyed by the applicant. If there is no such information then it may be useful to seek corroborative reports from the GP and/or specialists.

(3) Assessing if there is an appropriate level of medical input into the management of the applicant's health conditions. The HSC Pensions medical adviser will usually take this to mean the involvement of specialists in the applicant's clinical management. Rather than just indicating the name and address of the appropriate specialist, it may be useful for the occupational physician to include some accurate quotes of actual text from the specialist's correspondence/reports or better still attach a photocopy of the specialist letter/report itself. Such an approach is particularly important in cases where the diagnosis of the medical condition can only be made in descriptive terms, as in chronic pain syndrome, mechanical low back pain or work related stress. It is so important here to establish the chronicity, severity and functional consequences of the condition, and thereby the likelihood of a poor prognosis. What if there is no specialist involvement? The occupational physician may ask him/herself the question, 'Can I really affirm that all that can be done for this applicant has been done, without the involvement of specialist services?' This is the key - the purpose of considering the involvement of a specialist should not be to satisfy a presumed requirement of the HSC Pensions medical adviser for consultant involvement. Rather the primary impetus is the clinical one, 'Can something more be done for the employee?' The extent to which an

occupational physician seeks a fresh consultant opinion or advises one through the applicant's GP, is a matter of clinical judgement for the occupational physician. It may also be useful to have a rationale from the GP as to why, hitherto, the clinical management has not included specialist referral.

(4) Assessing whether a careful evaluation of the employee's condition in relation to the ability to perform their job, and the scope for improvement in relevant functionality with full therapeutic intervention. Where therapeutic options remain but even following recovery with treatment the applicant is unlikely to be able to meet the demands of their HSC duties and at the same time remain well, it is important that the occupational physician makes this clear and justifies this. If the occupational physician preparing the referral is relatively inexperienced in dealing with such referrals, it may be useful to include an evaluation by a senior colleague who is a specialist in occupational medicine. It may be possible to differentiate between the likelihood of further treatment providing improvement in respect of returning to alternative work, but not to the applicant's own job.

(5) The extent to which the applicant may be able or not to engage in regular employment of like duration, having regard to all the factors laid out in the Regulations - See Chapters 5 and 7. This evaluation can clearly be informed by contact with the applicant, functional assessment and learning about their training, skills, aspirations and any limitations (perhaps not relevant to their HSC duties). The assessment of the extent to which an applicant may be capable of engaging in other work, has to disregard the applicant's choice, geographical situation or the availability of work.

9.2.5 Completing the AW33-09

It is important that the doctor who completes Part C checks through the other two sections, particularly, in Part A -

(1) the job description (does it conform to the applicant's substantive contract of employment) ,

(2) the listing of absences,

(3) the details of the structured review process,

(4) the final review,

(5) if a period and type of rehabilitation has or has not been undertaken, and;

(6) the employers declaration.

With reference to the job description, it will be useful if the occupational physician can elucidate any particular aspect of the job, which relates directly to the applicant's medical condition and his/her incapacity.

As Regulations require regular employment to be assessed by 'like duration' to the applicant's HSC job, it is important for the OP to check that details of the hours, half days and/or sessions worked are included in Part A.

It is also useful to pick up on how the applicant's job has been adjusted (if such has been possible), and to give an impression of -

(1) whether or not a period and type of rehabilitation was provided,

(2) whether or not the applicant was able to function in an adjusted role for a significant period of time,

(3) whether or not the applicant was able to perform in the range of adjusted duties and,

(4) that the applicant was able to attend regularly or not.

As regards the listing of absences, it will be useful to add comments about:

(1) The pattern/length of absence(s) and for what reason(s). The occupational physician may be able to detail the extent of their professional involvement in the structured review process relating to the sickness absence(s), including whatever recommendations were made,

(2) Whether, on the contrary, the applicant is still working. Here the occupational physician will be expected to specifically address the factors affecting the applicant's capacity to provide regular and effective service and to perform the full range of duties (with reasonable adjustments). In particular, if the applicant is continuing to work, but is being significantly 'carried' by colleagues, or is in work because of temporary work place measures which the employer cannot sustain it is important to make this clear.

(3) If the applicant has ceased employment to make clear the reason, e.g. incapacity, resignation or indeed dismissal.

(4) How the applicant has completed Part B, with its declaration and consent sections will inform the occupational physician on the extent to which they can obtain further medical evidence and make arrangements for the applicant to see the Part C completed report and/or receive a copy.

Some occupational health providers operate paperless systems, relying on scanned

electronic records and reports. The AW33-09 remains a hard copy form. Where there may not be printing facilities in the clinic where the occupational physician sees the applicant, the occupational physician may have to make particular arrangements to obtain items of these electronic records to submit with AW33-09.

9.2.6 Completion of Part C

An electronic version of Part C will be available from HSC Pension Service website and may be completed electronically, printed off as hard copy and attached to the hard copy of the AW33-09.The following section is written as if the person completing Part C is an occupational physician. This is for convenience of expression, and is not intended to deter clinicians from completing the section, if asked to do so. For Occupational Physician read Part C author. In all responses, it will be most useful if the occupational physician can clearly distinguish what the applicant conveys, objective findings (investigation and clinical assessment) and medical opinion.

Where a medical opinion is given simultaneous presentation of the facts that inform that opinion will add weight to that opinion.

The format of the rest of this section is a laying out of the actual questions from Part C, with the following space containing a framework for the occupational physician to follow, in writing their responses.

(a) Please list all currently diagnosed medical conditions giving the date of onset for each

It is expected that either a single diagnosis or a list of diagnoses will be provided together with the date of onset of symptoms and the date of formal diagnosis for each condition.

Where descriptive, symptomatic or vague terms are used in place of specific diagnoses, e.g. mechanical back pain, chronic low back pain and chronic or regional pain syndrome it will add to the value of the entry if a fuller description of the chronicity and severity of the condition is also elaborated. Such terms as stress or work related stress are not advised as medical diagnoses, rather conventional mental health diagnostic labels are better, where they can be used. Stress factors are important to include but may be referred to later.

(b) Provide details of the reported reason for the current incapacity.

It is important here to detail -

- The cited causes for sickness absence and reasons for occupational health referral
- which of the currently diagnosed medical conditions contribute to functional impairment and which do not
- the reasons why the current incapacity has come about,
- whether the reasons are medical, and
- what factors impact on continuing incapacity

It is not uncommon for the presentation of a case to convey that an applicant has coped with a condition or conditions at work for a long period of time but that incapacity has suddenly occurred with no clear indication of what additional medical factor has brought about that incapacity. It is important to make any new circumstances or additional factors clear for example:

- worsening of that condition, or;
- a new condition interacting with it, or;
- an additional job requirement imposing additional functional demands,

The HSC Pensions medical adviser will need to understand the answer to the question *'Why has this referral been made now?'*

If the applicant is still working, it is relevant to make comments here.

(c) Provide details of the past course of any medical conditions currently reported as giving rise to incapacity.

This information places the current medical condition(s) in a context, which allows the implications for the future to be more easily understood, in terms of both the condition and the impact on the job. This list is not exhaustive.

- Whether this is a first episode or a further exacerbation
- How the medical condition(s) has varied over time, with a description of baseline state and nature, severity, duration and frequency of any exacerbations,
- Whether there are/have been any precipitating, aggravating or maintaining

factors and details of these

- It may be useful to include detail of how the job has been affected in the past by the condition(s) and conversely whether and how the condition(s) has been affected by work demands.

(d) Provide details of reported symptoms, objective clinical findings, investigation findings, reported functional impairment and objectively confirmed functional impairment

Whilst this is a comprehensive question, the emphasis is on providing details relevant to the conditions affecting incapacity.

Here the relevance of a current face-to-face encounter with the applicant can be appreciated

It is expected that the extent and severity of the condition(s) will be described. With a condition like osteoarthritis, for example, detailing the pattern of joint involvement would also be expected.

If the applicant has been seen, investigated and diagnosed through specialist services, and there is a report from that source which sets out the diagnostic information, it is useful to cross-refer to it, if a copy can be included with the form

The occupational physician may consider to -

- Record the date of the last face to face assessment,
- Record the reported symptoms, including the extent to which they vary and factors important in any variation,
- Record the objective clinical findings.
- Record the results of relevant investigations. In musculoskeletal conditions, particularly spinal conditions, the results of MRI scanning can be useful, in allowing assessment as to whether an applicant has a spinal condition that may cause risk to the spinal cord and/or nerve roots or not.
- Where investigations are ongoing give details
- Record the functional restrictions as reported and as observed by yourself (in terms of bodily function and impairment of ability to carry out activities) and

comment on how these relate to objective clinical and investigation findings. Again comment on variability if appropriate.

- Provide details of your assessment of the effects of the incapacitating conditions of the activities of daily living (re DDA 1995 amended)
- Any other information you consider may be relevant

(e) Please describe all relevant (to currently incapacitating conditions) therapeutic intervention to date giving details of the nature of treatments, dates, durations, compliance, response and any adverse effects

Here it is not just treatment in a narrow sense of medication, but the broad perspective of clinical interventions. The occupational physician is invited to describe:

- A chronology of the GP/specialist/specialist services management from onset to date
- A clear indication of the management of this current episode separate from management of past episodes. For example where the applicant has received antidepressant treatment five years ago and no medication for a current episode of depression it is important to make this clear.
- What therapeutic options remain available if any
- of the available options what is actively planned with approximate time scale e.g. for operations such as joint replacements, having regard to NBA.
- Factors such as compliance and adverse effects of treatments, which have impacted on outcome to date
- The outcome to date and expected outcomes for available interventions not yet completed
- Lifestyle measures (e.g. alcohol avoidance, regular exercise) which are likely to benefit the applicant.

The occupational physician is referred to what the Regulations say about appropriate medical treatment (see paragraphs 6.2.1 and 7.2.2), and may seek to distinguish between:

- clinical interventions that are reasonable for the applicant to refuse, and those

which have been declined for no medical reason,

- clinical interventions that are available and can be completed in the time available to NBA, as opposed to those that are not available locally, and through no fault of the applicant, cannot be completed before NBA,

- clinical interventions that may be characterized as hopeful, speculative, experimental, heroic and with an uncertain probability of success, and those that are appropriate, i.e. normal interventions and with a likelihood of a good outcome

- clinical interventions which may be important to improving the applicant's clinical condition and quality of life and those which may also enable the applicant to return to work. For example with joint replacement it may be the case that the job is so physical that it is not compatible with conserving the lifespan of the prosthesis. There will be, therefore, continuing incapacity despite an expectation of an excellent outcome in terms of daily living.

(f) What is the likely future course of this member's health and function, with normal therapeutic intervention over the period to normal benefit age (NBA)?

For some years to come the vast majority of applicants seeking IHR will be those members under the **'1995 Section'** with an NBA of 60 years, and thus the prognosis will relate to that age, even for the special categories of staff, who will still be able to retire on age grounds at 55. Once **'1995 Section'** members have the opportunity to transfer into the **'2008 Section'** from October 2009, increasing numbers will have NBAs of 65, along with a small number of new members. In general, it is not expected that the **'2008 Section'** members will be seeking IHR for some time to come.

In other words functional prognosis to age 60 is most likely to be relevant before 2009 and after this functional prognosis to age 60 or to age 65 may be relevant. **Occupational Physicians are advised to confirm NBA with the employer in each applicant's case.**

Where other medical attendants complete Part C it is advisable to seek confirmation from the applicant regarding NBA.

The prognosis is in terms of 'the balance of probabilities'. Again if a specialist has been involved and has made a prognosis as part of an expert opinion for the incapacitating condition, then it is very useful if the occupational physician records it or includes a photocopy of the report.

There can be a difference between the prognosis for the condition and the prognosis for the applicant's functional capacity. For example Diabetes Mellitus is a permanent condition but with reasonable available therapeutic intervention may have little or no effects on capacity for many HSC roles (perhaps with adjustments under DDA 1995 amended).

On the other hand a condition may remain stable but incapacity may increase because of the effects of other health conditions or unrelated factors.

There is also the issue of functionality. The applicant's health condition may improve with therapeutic intervention such that the applicant is reasonably well so long as certain precipitating factors are avoided.

This is seen for example in situations of work related stressors contributing to mental illness, or back conditions for manual handlers or work related upper limb disorder in computer operatives, or occupational asthma.

The occupational physician will enhance the referral by laying out the issues of risk, but with applicants who are still of a younger age, they may also give consideration to whether such risks will remain relevant to the whole period between the present and the NBA.

Be aware that the new IHR arrangements include a facility, in a circumstance where the Tier 1 condition (permanent incapacity for the HSC duties) is met, for the pension scheme's medical adviser to allow reassessment of the Tier 2 condition (permanent incapacity for regular employment of like duration) within a period of 3 years. The applicant must provide new medical evidence for any such reassessment.

With this in mind, when completing the initial application form Part C, the occupational physician may wish to include prognostic information which casts light on what may happen in the next 3 years.

(g) This question relates to functional abilities, to be completed by the occupational health doctor. GPs and clinical specialists may comment if they feel able to.

- How does this member's diagnosed medical condition(s) impact on their capacity to carry out their HSC duties?

Relate the functional restrictions from the medical condition(s) to the aspects of the applicant's job which are adversely affected.

- What recommendations have you made to the employer?

Indicate what you consider would have been medically appropriate to assist a return to work. This may include a period and type of rehabilitation, including assessment for various adjustments. If you consider there were no adjustments which could provide an effective return to work, please give your rationale.

Indicate the extent to which you are aware of what adjustments the employer has made (here the occupational physician may consider whether it would be helpful to include copies of the correspondence with management on the involvement they have had in the run up to the IHR referral). If there is an issue of the applicant deciding not to engage with rehabilitation or an adjustment, to what extent is that decision, one of personal choice, or dictated by substantive medical considerations.

- Are there any reported workplace issues and how have these been addressed?

Here it would be useful to indicate any adverse workplace circumstances including those of stress, and the extent to which these are medical, and have or have not been addressed. How has the issue of the risk of recurrence been addressed, and with what result?

- With normal therapeutic intervention, please comment on the likelihood of improvement in functional abilities before normal benefit age.

Sum up how the effects of the medical condition have resulted in and will continue to produce incapacity for particular functional aspect of the HSC job, or not.

Provide further comment, if applicable, on the wider implications for incapacity to work in regular employment of like duration or not, within the general field of employment.

(h) Please summarize information you consider relevant to this members long-term capacity for:

- the duties of their HSC employment
- any regular employment of like duration
- Please provide your rationale

This is a summing up of the referral and gives the occupational physician the opportunity to

lay out the main features of the case, both in terms of incapacity or not for their HSC duties, and, further regular employment of like duration. An opinion on whether they meet the tier 1 or tier 2 criteria is not required. That is the task of the HSC Pensions medical adviser. **However, the occupational physician is free to offer an opinion if that is considered appropriate.** This section gives the occupational physician the opportunity to present what he or she may consider to be the strengths or, indeed the weaknesses, of the case.

If the occupational physician is not satisfied with the quality or the amount of evidence, and has not been able to make up that deficiency, it would be useful to comment on that aspect, and on how the deficiency could be rectified.

Please attach copies of any consultant medical specialist reports or case notes which you have in relation to the member's present medical condition which might be useful in processing this application. Access to this information may prevent delays in reaching a decision on this person's application.

Please list the papers enclosed with this application:

In terms of accountability for medical evidence, the discipline of making this list is seen as important.

9.2.7 Terminal Illness

When an IHR application is successful, the member is invited to apply for their pension on form AW6. If, on the balance of probabilities, a member has a seriously reduced life expectancy (less that 12 months is generally taken as a marker) from the date of termination of employment, they may be eligible for a larger lump sum on the basis of this reduced life expectancy. HSC Pensions wish to have the information about whether the applicant fulfils the terminal illness criterion or not, already on file, so that any such request for a larger lump sum on the basis of reduced life expectancy may be processed without a further request for medical advice having to be sent back to the HSC Pensions medical adviser. That is why there is a section on the AW33-09 for this. In answering the question in Part C the occupational physician is asked to respond having a reduced life expectancy of less than 12 months in mind. However, it is acknowledged that life expectancy is often expressed by specialists in terms of the median survival rate for 5 or 10 years and the occupational physician may not know the life expectancy in relation to 12 months. If there is useful information on prognosis in a specialist letter or report, inclusion of a copy is recommended or the occupational physician may feel able to add a comment.

However, it is acknowledged that there are great sensitivities about this aspect, especially if the occupational physician indicates that the member is not aware of the prognosis. Providing details of the attending specialist, usually an oncologist, will be very useful.

If, prior to completing this form, the occupational physician seeks to clarify the terminal illness status of the applicant, it is important to ask the oncologist what the life expectancy is by reference to 12 months and the balance of probabilities.

9.2.8 The Remainder of Part C

Giving details of the consultants name, specialty, whether private or HSC, the address, including the Post Code, and the date when the applicant last saw that consultant is important to the medical adviser when it comes to the issue of assessing permanence and the need for obtaining further medical evidence.

Although there is only space for one consultant, please give the details of all the consultants, where more than one is involved with the medical conditions that are relevant to the application.

Similarly the details of the doctor completing the Part C must also be full and clear.

9.3 Closure

The information entered by the occupational physician at Part C is medically confidential from the employer, and thus it is expected that the occupational physician will undertake to post the completed AW33-09 and attachments to HSC Pensions Service.

10. Medical Advice

10.1 Introduction

Medical advice is required for eligibility to receive ill health retirement benefits in relation to the provisions within the **'1995 Section'** and the **'2008 Section'**. The Occupation Health Service (OHS) provide the medical advice on Ill Health retirement applications to the HSC Pensions Service.

10.2 Eligibility for Ill Health Retirement- Decision Options

The decision options available to the HSC Pensions Service, following receipt of all the submitted medical evidence, advice from their medical advisors, and where appropriate, their own requests for further medical evidence are as follows:

Accept Tier 1- the member meets the criteria for ill health retirement in respect only of that member's HSC employment.

Accept Tier 2- the member meets the criteria for ill health retirement in respect of that member's HSC employment, and in respect of regular employment of like duration

Reject - the member does not meet the criteria for ill health retirement

Tier 1 with advice to give leave to reassess for Tier 2 with further medical evidence within 3 years- where the HSC Pensions Service after seeking the advice from their medical adviser is satisfied that the member meets the tier 1 criteria, but that the nature of the condition makes it difficult to assess the longer term outcome in terms of ability to permanently undertake any regular employment of like duration. Such a reassessment, if requested by the member, would consider the condition(s) upon which the original decision was made and would be informed by further medical evidence. Neither subsequent conditions, nor deterioration related to ageing would be taken into account.

Terminal Illness - is the member terminally ill (see section 9.2.1)

10.3 Medical Assessment Principles

This section should be read in conjunction with Chapters 5, 6 and 7 on the Regulations and interpretation.

10.3.1 Setting

The assessment of permanent incapacity for ill-health retirement of HSC Pensions Scheme members has to embrace the very wide range of occupation types and levels of seniority within the HSC, a very large and diverse organisation. The extent to which this variety of occupation types and levels is to be found within a particular Trust or employer organisation depends on the nature of the employer type. Ambulance Trusts have few job types, whilst large Hospital Trusts have far more. For ill-health retirement assessment this requires accurate information about the substantive job description of each applicant, and appreciation of the opportunities and limitations of alternative or adjusted employments available to the employer, when considering the Tier 1 level.

10.3.2 Overall Approach

The HSC Pensions medical adviser shall approach each case under the new two tier arrangements, with a view to providing a comprehensive assessment that will embrace the full range of outcome options. This is called the 'omnibus' approach. If the evidence is clear that Tier 1 can be accepted, but there is insufficient evidence to judge anything about tier 2, then it will not be right to award Tier 1 without an attempt to get enough information to answer both Tier 1 and Tier 2 either in terms of accept or reject. When all the evidence that can be reasonably obtained has been assessed, and there is only clarity about the acceptance of Tier 1, then it may be appropriate to give leave for a reassessment for Tier 2 within 3 years. In this circumstance the HSC Pensions medical adviser will give a rationale for the need for reassessment.

10.3.3 Sufficient Evidence

The first principle therefore is that there must be a sufficiency of evidence to make an assessment on the basis of the balance of probabilities. There is no facility for the HSC Pensions medical advisers themselves to assess the member face to face, and thus there is a reliance on the documentation presented with the application. With consent, however, the

HSC Pensions medical adviser may chose to address what is assessed as a deficiency or a problematic issue in the evidence, by requesting further medical evidence.

This approach will allow the HSC Pensions medical adviser to make clear that all levels of possible outcome have been considered, and provide rationales, not only, to justify reaching an affirmative or negative tier 1 decision, but also to justify reaching an affirmative or negative tier 2 decision. Rationales for or for not choosing to set a reassessment period of 3 years, where applicable, will also be possible.

NB: In the event that insufficient evidence has been provided the HSC Pensions medical advisor should determine that the application does not meet the requirements for ill health retirement

10.3.4 Tier 1 Considerations

The next step is the assessment of whether the member is permanently incapable of their part-time or full time HSC job.

10.3.4.1 Consider Treatment issues

In many cases, the permanent incapacity to NBA will be assessed on the basis that the medical conditions will not improve sufficiently to restore functional capacity to return to that HSC job. Part of this assessment of permanence must be the extent to which normal treatment options have been either considered and discounted, or applied, and not had sufficient beneficial effect (see Chapter 6 for definition of appropriate medical treatment). If appropriate medical treatments are still available to be considered, (for instance, if there is a lack of evidence of the involvement of a specialist relevant to the member's condition) then doubt may arise as to whether permanent incapacity has been reached.

Issues of availability and choice are also important when it comes to the assessment of whether all appropriate medical treatment options has been considered. What is available on the NHS is generally what is taken as the standard for treatments, with NICE guidelines, where available, but if the application indicates the involvement of private provision or provision through the employer to direct access to dedicated resources (as referred to in Section 4.2) then it is not unreasonable to include consideration of such treatments. For choice issues, the HSC Pensions medical adviser would expect that the decision not to proceed with a treatment was made in an informed, logical manner in full discussion with the clinician concerned, and that these reasons are in a written form as part of the evidence.

It is not the place of the HSC Pensions medical adviser to suggest or decide what treatments are appropriate. That is a matter wholly for the applicant's clinicians. However, it is not unreasonable for the HSC Pensions medical adviser to observe that, whilst a particular common or standard treatment has not yet been used, and such may currently be entirely appropriate clinically, such a treatment may be used later, where there is still a considerable time span to NBA, during which time period further clinical decisions could be made in the direction of these as yet unused treatments.

10.3.4.2 Consider type and period of rehabilitation

Into the assessment will fall not only the diagnosis, treatment and prognosis of the medical condition, but the functional restrictions from them, which relate directly to that HSC job not only in terms of how the medical condition will reduce their capacity, but also the risk of the job adversely affecting or causing relapse of their medical condition.

Although the HSC Pensions medical adviser must have regard to what type and period of rehabilitation is provided by the employer, **it is not that medical adviser's role to decide the range of appropriate rehabilitation and what adjustments may flow from it, for a particular applicant. However, it is not unreasonable, in the context of the Review recommendations on the management of such work problems (see Section 4.2), for the medical adviser to be provided with evidence of what the employer has considered about the applicant's job, prior to the application for ill-health retirement having been made.**

The medical adviser will expect Part A and Part C of form AW33-09 to be sufficiently detailed to show that issues of rehabilitation have been considered.

10.3.4.3 Consider Dysfunctionality

Where medical conditions can improve or resolve with the member no longer at work in their HSC job, but those medical conditions are assessed as likely to re-emerge and deteriorate on re-engagement back into that job, permanent incapacity can be decided, not really on the basis of the condition being permanent, but the dysfunction in the job being permanent. This is particularly important in cases of psychiatric illness associated with work related stress.

10.3.4.4 Consider any other matter

The HSC Pensions medical adviser has to show regard for the particulars of each case.

One of the important considerations is the time scale to NBA, and whether sufficient time is left for treatment and rehabilitation matters to proceed to a stage that will or will not allow the member time to return to work and offer efficient service.

10.3.4.5 Tier 1 Conclusion

The HSC Pensions medical adviser shall summarise the considerations in a rationale and provide a conclusion in respect of Tier 1.

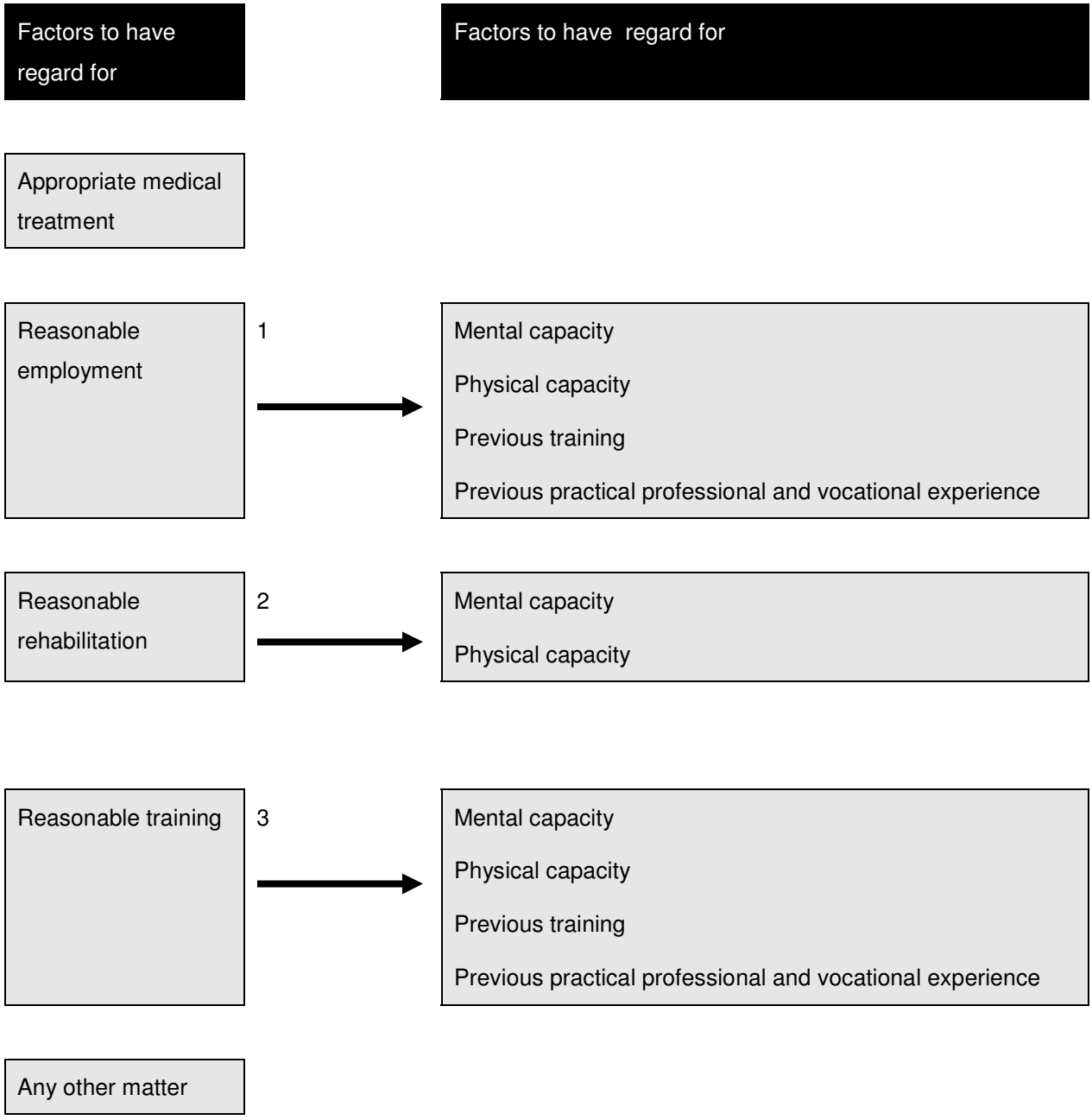
10.3.5 Tier 2 Considerations

Having considered all the above and assessed the member as meeting the criteria for Tier 1, the HSC Pensions medical adviser will additionally consider the relevance of the nature of the condition and pattern of functional disability to whether they do or do not apply to regular employment of like duration, and to do that the HSC Pensions medical adviser must consider the parameters of what is meant by regular employment of like duration as laid out extensively in Chapter 7.

These are the principles for taking an assessment forward to Tier 2 consideration

(1) Sufficiency of Evidence has been considered at the beginning of the process, and is considered again as Tier 2 is assessed

(2) Consider the list of factors as laid out in Chapter 7 and shown again below



(3) Consider treatment issues in a similar manner to 10.3.4.1, but with regard to how it may relate to regular employment of like duration,

(4) Consider then what the boundaries are for -

(a) reasonable employment of like duration (consider part time or full time in line with the HSC job);

(b) a reasonable type and period of rehabilitation, and;

(c) a reasonable type and period of training.

(5) The reasonableness of these 3 aspects will be achieved through careful consideration of the factors and the process as laid out in Chapter 7. This will allow the HSC Pensions medical adviser to assess to what extent the medical conditions/functional restrictions, already relevant to permanent incapacity for the HSC job, also extend out to reach these boundaries? If the functional restrictions permanently apply to reasonable employment, despite reasonable rehabilitation and training, then a Tier 2 assessment is reached.

(6) Ignore personal preference, job market and geographical variation

(7) Pragmatically consider the impact of severe conditions/poor prognosis/ and close proximity to NBA. Whilst no factor can be decisive on its own, it may well be the case that the effects of a severe medical condition are so overwhelming as to make it clear that it will impact on all the other factors, without these having to be considered in an individual detailed way.

(8) Consider any other matter particular to the case

10.3.5.1 Tier 2 conclusion

The HSC Pensions medical adviser shall summarise the considerations in a rationale and provide a conclusion in respect of Tier 2.

10.3.5.2 Tier 1 with 3 year reassessment

An additional part of the overall conclusion will be a rationale to indicate the medical adviser's reason for or for not giving leave for a reassessment within 3 years. The issues that may lead to such a recommendation have already been outlined.

10.4 Medical Reporting

The HSC Pensions medical adviser must conclude their assessment by inserting their rationales and decisions into a structured outcome Proforma (Part D of AW33-09), which conveys the omnibus nature of their considerations. The Proforma should be signed and issued to HSC Pensions Service. The content of the Proforma should include reference to -

- the documents used;
- their detailed considerations, and;

- their conclusions.

Considerations should include reference to -

1. Whether there is or is not an incapacitating condition. If there is then its nature

2. Reference to whether and in what way the member's performance of their job is or is not affected by that condition, showing that regard has been given to all the factors as laid out in the Regulations, and, further;

3. Whether the incapacity also extends or not to regular employment of like duration, showing that regard has been given to all the factors as laid out in the Regulations, and;

4. The issue of whether these effects will or will not be permanent to the NBA.

An acceptance for Tier 1 would follow from all criteria apart from 3 being met.

An acceptance for Tier 2 would follow from all 4 criteria being met.

A rejection would follow from any one of the 1st, 2nd and 4th criteria not being met.

10.4.1

On receipt of the proforma from the OHS, HSC Pensions Service will issue, where appropriate, a letter:-

- To the **Employing Authority** indicating only the decision and, where the application has been accepted, what they need to do next.

- If consent is provided, **to the occupational physician or clinician** who has completed Part C of AW33-09.

- **To the Member** with the decision and the detailed reasoning behind this.

11. Appeals

The appeal process for ill health pension applications is dealt with under the Internal Disputes Resolution (IDR) procedures. An applicant can appeal against a decision to reject an application (active and former members) or on a decision to award a Tier 1 pension only (active members only).

Provision of additional medical evidence is not compulsory, however, members will be advised that a decision not to award an ill health pension, or award of a Tier 1 pension, is unlikely to be overturned unless they provide additional medical evidence. In addition, any medical evidence must relate to the same condition in respect of which the initial application was made and must support incapacity at date of application.

Guidance notes on the IDR Procedures along with application forms DRP1 and DRP2 can be found on the HSC Pensions Service website:-

The Appeals process consists of two stages:-

STAGE 1

The member must complete Form DRP1 within 1 month of the original decision.

The Disputes Officer in HSC Pensions Service will be responsible for making the decision on Stage 1 appeals. If appropriate, the case will be referred back to the OHS for consideration by a different medical adviser from the person who advised on the original application.

The appeal application will state on which basis the appeal is to be considered, i.e. either:-

A. Initial application unsuccessful

B. Award of tier 1 pension only (where applicant feels Tier 2 should apply)

All the medical evidence associated with the original application along with any additional evidence, (and in some instances form DRP1) will be forwarded to the medical advisor seeking their advice.

If the Stage 1 application is unsuccessful the applicant can appeal under Stage 2 of the IDRP.

STAGE 2

The member must complete Form DRP2 within 6 months of the Stage 1 appeal decision.

A Scheme Manager in HSC Pensions Service will be responsible for making the decision on Stage 2 appeals. If appropriate, the case will be referred back to the OHS for consideration by an independent consultant.

The medical advisor who advised on the original application will make the arrangements for the case to be examined by an independent consultant.

The appeal application will state on which basis the appeal is to be considered, i.e. either:-

A. Initial application unsuccessful

B. Award of tier 1 pension only (where applicant feels Tier 2 should apply)

All the medical evidence associated with the original application, the Stage 1 appeal application along with any additional evidence, (and in some instances form DRP1 and/or DRP2) will be forwarded to the independent consultant (via OHS) for their advice.

If the Stage 2 application is unsuccessful the applicant can write to TPAS or the Pensions Ombudsman about their case.