

Local Authority Members (Gratuity) (Amendment) Regulations 2006 and additional ex-gratia payment

Summary for Local Authorities

This summary is not a legal interpretation of the Regulations

- Introduction** These Regulations, made under the Local Government Act 2001, provide for the payment of a single gratuity to or in respect of persons who cease to be members of local authorities in certain circumstances. Local authorities are requested to circulate a copy of the summary for members to all members of the local authority as soon as practicable.
- Eligibility** A member who ceases to hold office on or after the date of the making of the 2006 Regulations with at least two years' qualifying service having -
- (a) reached the age of 50 years, or
 - (b) become incapable of performing his or her duties as a member due to permanent infirmity of mind or body, or
 - (c) died in office
- will qualify for a gratuity. In the case of (c) above, the member's legal personal representative will be granted the gratuity.
- Qualifying Service** Qualifying service means service (*including fractions of years*) given as a member of a local authority on or after 4 May 2000.
- Reckonable Service** Qualifying service is converted to reckonable service for the purposes of calculating the gratuity. This is necessary because a person may have been a member of different categories of local authorities. Since the gratuity will in all cases be calculated on the applicable annual rate of RP for a member of a city or county council, it is necessary to equate periods in respect of which a person was a member of a local authority other than a city/county council with city/county council service. The following Table shows how this is done:

Table 1

Category of Local Authority	Reckonable Service Credit
<ul style="list-style-type: none"> • County and City Councils. 	<ul style="list-style-type: none"> • The full amount of the Qualifying Service reckons.
<ul style="list-style-type: none"> • Town/Borough Councils mentioned in Part 3 of Schedule 7 to the Local Government Act, 2001 and the town councils of Athlone and Ennis. 	<ul style="list-style-type: none"> • One-half of the Qualifying Service reckons.
<ul style="list-style-type: none"> • Town Councils of towns mentioned in Chapter 2 of Part 1 of Schedule 6 to the Act, excluding Athlone, Bray, Dundalk, Ennis and Tralee; and including the town councils of Balbriggan, Droichead Nua, Greystones, Leixlip, Mullingar, Portlaoise and Shannon. 	<ul style="list-style-type: none"> • One-quarter of the Qualifying Service reckons.
<ul style="list-style-type: none"> • All remaining Town Councils. 	<ul style="list-style-type: none"> • 3/22nds of the Qualifying Service reckons.

For example, if a member who ceases to hold office had 5 years' Qualifying Service as a member of Meath County Council and 10 years' Qualifying Service as a member of Navan Town Council, his or her reckonable service will be 7.5 years, i.e. $5 + 10/4$.

It should be noted that qualifying service in excess of 20 years is disregarded. Where this arises, the excess is disregarded in the way which is most favourable to the member.

For example, if a member had 15 years' qualifying service as a county councillor and 10 years' qualifying service as a borough councillor, the excess of 5 years will be deducted from the borough councillor qualifying service.

Addition to Service

Where a member with at least 3 years' and less than 20 years' qualifying service ceases to hold office on account of having become incapable of performing his or her duties as a member due to permanent infirmity of mind or body, the local authority may add a period to his or her qualifying service. **The sum of the added service and the member's qualifying service shall not exceed 20 years.** The following Table shows how the addition is calculated:

Table 2

Actual Amount of Qualifying Service	Addition to Service Allowable
<ul style="list-style-type: none"> • Not less than 3 years and not more than 5 years. 	<ul style="list-style-type: none"> • The lesser of – <ul style="list-style-type: none"> ▪ A period equal to the person’s qualifying service, or ▪ A period equal to the potential qualifying service the person would have had if he or she had continued in office until age 65.
<ul style="list-style-type: none"> • Not less than 5 years and not more than 10 years. 	<ul style="list-style-type: none"> • The greater of (A) or (B) below – <ul style="list-style-type: none"> (A) The lesser of – <ul style="list-style-type: none"> ▪ 10 years less the person’s qualifying service, or ▪ a period equal to the potential qualifying service the person would have had if he or she had continued in office until age 65 (B) The lesser of – <ul style="list-style-type: none"> ▪ 3 years and 122 days, or ▪ a period equal to the potential qualifying service the person would have had if he or she had continued in office until age 50.
<ul style="list-style-type: none"> • 10 years or more. 	<ul style="list-style-type: none"> • The lesser of – <ul style="list-style-type: none"> ▪ 3 years and 122 days, or ▪ a period equal to the potential qualifying service the person would have had if he or she had continued in office until age 50.

Any addition to service will fall to be converted to reckonable service in the same way as qualifying service is converted, assuming the added service was given in the office which the person ceases to hold (see Table 1).

For example –

- (a) If a member of Dundalk Town Council ceases to hold office due to permanent infirmity at age 45 with 12 years’ qualifying service, a period of 3 years and 122 days (3.3342 years’) will fall to be added to his or her qualifying service. The 12 years’ qualifying service converts to 6 years’ reckonable service (one-half of 12) and the 3.3342 years’ added service converts therefore to 1.6671 (i.e. one-half of 3.3342) years’ reckonable service .
- (b) If a member of Ballinasloe Town Council ceases to hold office due to permanent infirmity at age 45 with 17 years’ qualifying service, a period of 3 years will fall to be added to his or her qualifying service (while 3 years and 122 days would have been the addition in accordance with Table 2 above, the overall limit of 20 years between qualifying and added service means that the maximum addition is 3 years). The 17 years’ qualifying service converts to 4.25 years’ reckonable service (one-quarter of 17) and the 3 years’ added service converts therefore to 0.75 (one-quarter of 3) of a year’s reckonable service.

Gratuity

Gratuity service is the service by reference to which the gratuity is

Service is calculated and comprises the person's qualifying service and, where applicable, addition to service, **converted to reckonable service**.

For example, a member of Clare County Council ceases to hold office due to permanent infirmity at the age of 48 years and 124 days with 8.3671 years' qualifying service (2.3288 of which were with Kilrush Town Council, 3.0055 of which were with Ennis Town Council and the remainder of which, i.e. 3.0328, were with Clare County Council). The qualifying service of 8.3671 years converts to 5.1178 years' reckonable service as shown in the following Table:

Table 3

Local Authority	Qualifying Service	Reckonable Service
Clare County Council	3.0328 years	3.0328 years
Ennis Town Council	3.0055 years	1.5028 years
Kilrush Town Council	<u>2.3288 years</u> 8.3671 years	<u>0.5822 years</u> 5.1178 years

In addition, a period of 1 year and 241 days (1.6603 years) will fall to be added to his or her qualifying service.

Per Table 2 the addition is calculated as follows:

The **greater** of (A) or (B) below –

(A) The **lesser** of –

- 10 years less 8.3671, *i.e. 1.6329 years* or
- a period equal to the potential qualifying service the person would have had if he or she had continued in office until age 65, *i.e. 16.6603 years*
- **The lesser is 1.6329 years.**

(B) The **lesser** of –

- 3 years and 122 days, *i.e. 3.3342 years* or
- a period equal to the potential qualifying service the person would have had if he or she had continued in office until age 50, *i.e. 1.6603 years*
- **The lesser is 1.6603 years.**

The greater of (A) or (B) is 1.6603 years.

Since the person ceased to be a member while serving with Clare County Council, the added service of 1.6603 years converts to an equivalent amount of reckonable service. This gives a total of 6.7781 years gratuity service on which the gratuity is based.

Calculation and Payment of Gratuity

The method of calculation of the gratuity is straightforward. Once the gratuity service is determined, it is applied to the following formula in order to determine the gratuity (this formula applies to gratuities granted with effect from the date of the making of the 2006 Regulations)–

$$\frac{A \times B \times 4}{20}$$

20

where –

A is the applicable annual rate of Representational Payment (RP) for a member of a city or county council and

B is the number of years of the person's gratuity service, or, if less, 20 years.

For example –

- (a) A member of Navan Town Council ceases to hold office due to permanent infirmity at the age of 47 years with 12 years' qualifying service. He or she qualifies for an addition to service amounting to 3 years. This combined service of 15 years converts to 3.75 (one-quarter of 15) years' gratuity service. The applicable annual rate of RP for a member of a city or county council is €16,427. The gratuity amounts to €12,320.25. Rounding apart, this is the same amount as if the gratuity had been based on the actual qualifying service and addition to service and the actual RP rate applicable to him or her (i.e. $15 \times €1,106 \times 4/20 = €12,318$)
- (b) A member of Clare County Council ceases to hold office due to permanent infirmity at the age of 48 years and 124 days with 8.3671 years' qualifying service - as per the example in the section on **Gratuity Service**. This converts to 5.1178 years' gratuity service. He or she qualifies for an addition to service of 1.6603 years. His or her total gratuity service amounts to 6.7781 years. The applicable annual rate of RP for a member of a city or county council is €16,427. The gratuity amounts to €22,268.77.

Grant and payment of the gratuity will be made by the appropriate local authority (as defined in the Regulations) in all cases as soon as possible after the person ceases to be a member.

Preservation of Gratuity

Where on or after the date of the making of the 2006 Regulations, a person ceases to be a member before the age of 50 years with at least two years' qualifying service, other than due to permanent infirmity or death, he or she will not qualify for a gratuity immediately. Instead, the gratuity will be preserved until he or she reaches the age of 50 years (or earlier if he or she dies before that age) and will become payable at that stage. The calculation will be the same as if the person had reached the age of 50 years on the date he or she ceased to be a member and will be updated by reference to the RP rate for a member of a city or county council on the date he or she reaches the age of 50 years.

For example, if –

- a person's gratuity service was 8 years on ceasing to be a member
 - the RP rate for a member of a city or county council on the date he or she reaches the age of 50 years is €20,000,
- the gratuity will be determined as €32,000 ($€20,000 \times 8 \times 4/20$).

Any entitlement to a preserved gratuity will cease if the person becomes a member again before reaching age 50. In such cases, the earlier service will be aggregated with the subsequent service.

Death in Service

A death in service gratuity is payable to the legal personal representative of a member who dies in office. With effect from the date of the making of the 2006 Regulations, no minimum qualifying service is required for this gratuity and the minimum gratuity payable is the member's rate of RP. In effect, the gratuity is the greater of -

- the gratuity that would have been payable if the member had ceased to hold office on grounds of permanent infirmity and
- the member's rate of RP.

Further gratuity on becoming a member again

Where a person who was granted a gratuity subsequently becomes a member of a local authority, he or she may, provided the conditions relating to the grant of a gratuity are met and the number of years of qualifying service which the person had at the time the original gratuity was granted, together with any addition to service allowed at that time, was less than 20 years, qualify for another gratuity. The gratuity will be calculated in the normal way – see section on **Calculation and Payment of Gratuity**. However, in determining the gratuity service, account will be taken of the lesser of -

- the number of years of the person's qualifying service in respect of his or her subsequent membership together with any addition to such service where retirement is due to permanent infirmity, or
- 20 years' qualifying service less the number of years' qualifying service which the person had at the time the original gratuity was granted and any addition to service allowed at that time where retirement was due to permanent infirmity.

For example –

- (a) A person ceased to be a member of Meath County Council and was granted a gratuity based on 12 years' qualifying service. He or she subsequently becomes a member of Navan Town Council and ceases to be a member at the age of 58 years with 6 years' qualifying service. The 6 years' qualifying service with Navan Town Council equates to 1.5 years' gratuity service. Therefore, a further gratuity based on 1.5 years' gratuity service may be awarded.
- (b) A person ceased to be a member of Galway County Council at the age of 51 and was granted a gratuity based on 18 years' qualifying service. He or she subsequently becomes a member of Ballinasloe Town Council and ceases to be a member at the age of 61 years with 5 years' qualifying service. A maximum of 2 years' qualifying service with Ballinasloe Town Council is reckonable (i.e. 20 years less the 18 years included in the original gratuity). This equates to 0.5 of a year of gratuity service ($2 \times \frac{1}{4}$). A further gratuity based on 0.5 of a year of gratuity service may be awarded.

**Additional
ex-gratia
payment**

An additional **ex-gratia payment** may be made in respect of service given before 4 May 2000 in the case of those members whose membership ceases on or after the date of the making of the 2006 Regulations on the basis set out in the following Table:

Table 4

	Service with a county council or a county borough corporation	Service with a borough corporation (other than a county borough corporation) or an urban district council	Service with a town commissioners
For each year of pre 4 May 2000 service up to 20 years – the amount payable for each such year is	€14.23	€57.11	€178.56
For each year of pre 4 May 2000 service in excess of 20 years - the amount payable for each such year is	€76.15	€38.08	€19.04

Where a person was a member of more than one local authority (e.g. a county council and an urban district council), only one of those periods may be reckoned in calculating the ex-gratia payment and that will be in respect of the membership which is most favourable.

In addition, the maximum service allowable for the ex-gratia payment is 40 years. However, any period of service from 4 May 2000 which is reckoned for the purposes of a gratuity under the Regulations will be taken into account in assessing the 40 year limit. For example, if a member resigns with 9 years' qualifying service post 4 May 2000, the maximum service which will count towards the ex-gratia payment is 31 years.

Example of Calculation of Ex-Gratia Payment

A member of a Borough Council has 28.36 years' service as a member, 21.69 of which are pre 4 May 2000 and 6.67 of which are post 4 May 2000. The member receives a gratuity under the Members Gratuity Regulations in respect of the post 4 May 2000 service. The member is entitled to an ex-gratia payment in respect of the 21.69 years' service pre 4 May 2000 (In this connection, all of the 21.69 years pre 4 May

2000 service may be reckoned because total service - pre and post 4 May 2000 - does not exceed 40 years).

The ex-gratia payment amounts to **€7,544.56**, calculated as follows:

20 x €357.11 (Borough Corporation/Borough Council rate for service up to 20 years)

plus

1.69 x €238.08 (Borough Corporation/Borough Council rate for service in excess of 20 years).