

The Local Government Pensions Committee
Secretary: Mike Walker

CIRCULAR

Please pass on sufficient copies of this Circular to your Treasurer/Director of Finance and to your Personnel and Pensions Officer(s) as quickly as possible

No. 176 – AUGUST 2005

PART TIME PENSION CLAIMS

Purpose of this Circular

1. This Circular has been issued to notify authorities that Unison and the T&GWU have announced that, after taking actuarial advice and Counsel's opinion, they will not be pursuing the Beswick point. The stay in the Beswick cases has, in consequence, been lifted.

Background

2. These cases relate to:
 - **employees in England and Wales** who were working:
 - a) 15 or more but less than 30 hours per week for 35 or more weeks per year or
 - b) 30 or more hours per week for less than 45 weeks per year

and who had the right to join the LGPS from 1 April 1987 (although some authorities anticipated the right to join from as early as 1 April 1985 on the basis of DoE Circular 10/85). If they joined the LGPS prior to 2 October 1987 they could backdate contributions (and membership) to 1 April 1986, or to the beginning of the pay period when they first became eligible to

Employers' Organisation for local government
Layden House, 76-86 Turnmill Street, London EC1M 5LG
Interim Executive Director: John Ransford
Registered in England No 2676611
Registered office: Local Government House, Smith Square, London SW1P 3HZ



INVESTOR IN PEOPLE

join the LGPS if this was after 1 April 1986 i.e. the later of

- i) the date when they first commenced service that met the criteria in (a) or (b) above, or
- ii) the date they attained age 18, or
- iii) in the case of a manual worker, the date 12 months after the date they met the criteria in (a) or (b) above.

- **employees in Scotland** who were working:

- a) 15 or more but less than 30 hours per week for 35 or more weeks per year or
- b) 30 or more hours per week for 35 or more but less than 45 weeks per year

and who had the right to join the LGPS from 1 April 1986.

Employees who joined the Scheme before 1 April 1988 (before 1 April 1987 in Scotland), either as a full or part time employee, could count as "qualifying service" any service meeting the relevant criteria in (a) or (b) above which they had worked between 1 April 1974 and 31 March 1986 except

- i) service before the age of 18,
- ii) service prior to a break in service of 12 months or more, and
- iii) in the case of a manual worker, the first 12 months service at 15 hours or more per week.

"Qualifying service" qualified people for benefits i.e. it determined whether a person was entitled to a benefit under the Scheme and the date when the benefit could be payable. It did not, however, count in working out the amount of the benefit.

From 17 September 1990 (1 April 1990 in Scotland), those who had joined the Scheme before 1 April 1988 (1 April 1987 in Scotland), either as a full or part time employee, had the opportunity to buy-back any "qualifying service" (as defined above) so that it would count as "reckonable service" i.e. so that it would also count in working out the amount of the person's benefits.

Part time "qualifying service" between 1 April 1974 and 31 March 1978 could be purchased (and converted into "reckonable service") at the rate of 6% of pay on 31 March 1986 (or, in England and Wales, the day before the employee joined the Scheme if earlier) and part time service between 1 April 1978 and 31 March 1986 could be purchased at the rate of 12% of pay on 31 March 1986 (or, in England and Wales, the day before the employee joined the Scheme if earlier). Employers could agree to meet up to half of the employees' contributions.

3. The employees identified in paragraph 2 above who joined, or who could have joined, the LGPS prior to 1 April 1988 (prior to 1 April 1987) have already been afforded the opportunity of purchasing their previous part time service under the agreed 1990 buy-back terms, or would have been afforded the opportunity to do so if they had taken up the option to join the LGPS prior to 1 April 1988 (prior to 1 April 1987 in Scotland). The effect of paragraph 7.1 of Employment Tribunal Information Bulletin Number 9 appeared to be that an application from such employees would be able to succeed in respect of service up to 31 March 1986 (i.e. up to the date during which such employees were excluded from the Scheme on normal contribution terms but membership for whole time employees was compulsory) thereby affording them a second opportunity to purchase the service. However, in arriving at the decision in paragraph 7.1 of Bulletin 9 the Employment Tribunal had not been asked to consider the situation that applied under the LGPS where nationally agreed buy-back terms had previously been agreed and applied. The line that we had taken was that claims from applicants who joined or could have joined the LGPS prior to 1 April 1988 (1 April 1987 in Scotland) and who were either requesting a further opportunity to buy-back service of 15 or more but less than 30 hours per week for 35 or more weeks per year, or service of 30 or more hours per week for less than 45 weeks per year (or for 35 or more but less than 45 weeks per year in Scotland), or were contesting the amount of contributions paid under the original 1990 buy-back terms should not, in relation to that part of their claim, be acceded to unless a successful test case was brought before the Employment Tribunal.
4. In consequence of the large number of applicants pressing these points the Treasury Solicitor wrote to the Employment Tribunal in England and Wales in March 2004 requesting that the issues involved in these cases should be dealt with on a test-case basis.
5. A case management hearing was held on 29 July 2004 to consider the issues raised. It was agreed at the hearing that any claim in the local government sector in which:
 - a) the Applicant's claim included a period of service before 1 April 1986, and
 - b) the question of the Applicant's failure to buy-back "lost years" or the terms on which the Applicant bought back those "lost years" arises,should be stayed until further order. Thus, claims including a period of service before 1 April 1986 where the period (or part of the period) before that date included service of:
 - 15 or more but less than 30 hours per week for 35 or more weeks per year or
 - 30 or more hours per week for less than 45 weeks per year (or for 35 or more but less than 45 weeks per year in Scotland)

were stayed until further notice.

It was also agreed that any claim in the local government sector in which:

- a) the Applicant's claim did not include a period of service before 1 April 1986, and
- b) the Applicant failed to opt into the Scheme at the earliest opportunity

should be dealt with under the strike out arrangements for non-opters.

Stay lifted

6. Unions representing claimants have confirmed that they will not be pursuing the Beswick point. The stay on the Beswick cases has, therefore, been lifted and they should now be struck out in whole or in part¹ as appropriate on the basis that:
 - the claimants have already been afforded the opportunity to join the LGPS, and
 - where appropriate, they had been afforded the opportunity to buy back service under the 1990 buy-back terms, and
 - those buy-back terms were no less favourable than the agreed terms of settlement in the "Preston" public sector cases, and
 - no detriment has, therefore, been suffered.

TUPE cases remained stayed

7. The final appeal on the question of when time runs for the purposes of bringing part-time worker pension cases when a claimant's employment has been transferred under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will be heard by the House of Lords on 15 & 16 February 2006. Judgment is not expected until April.

Actions for administering authorities

8. Administering authorities in England, Wales and Scotland should either:
 - copy this Circular to employers in their Fund (other than to Local Authorities to whom this Circular has already been sent direct), or
 - bring the Circular to the attention of employers by directing them to the Circular on the LGPC website at:
<http://www.lg-employers.gov.uk/pensions/circulars.html>, or
 - bring relevant information contained in this Circular to the notice of employers via their normal information routes.

Terry Edwards, Assistant Director (Pensions), 15 August 2005

¹ See LGPC Circular 159 (Scotland) and Circulars 160 and 164 (England and Wales) regarding service prior to 6 April 1988 that can succeed i.e. where the contractual hours were less than 15 per week, or the contractual hours were 15 or more (in aggregate) and less than 30 hours per week but for less than 35 weeks per year.

Distribution sheet

Chief executives of local authorities (3 copies)
Pension managers (internal) of administering authorities
Pension managers (outsourced) and administering authority client managers
Officer advisory group
Local Government Pensions Committee
Trade unions
ODPM
COSLA
SPPA
Private clients

Website

Visit the EO's website at:
www.lg-employers.gov.uk/pensions/index.html

Copyright

Employers' Organisation for Local Government (the EO). This Circular may be reproduced without the prior permission of the EO provided it is not used for commercial gain, the source is acknowledged and, if regulations are reproduced, the Crown Copyright Policy Guidance issued by HMSO is adhered to.

Disclaimer

The information contained in this Circular has been prepared by the LGPC Secretariat, a part of the Employers' Organisation. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the Employers' Organisation for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this Circular. Whilst every attempt is made to ensure the accuracy of the Circular, it would be helpful if readers could bring to the attention of the Secretariat any perceived errors or omissions. Please write to:

LGPC
Employers' Organisation for local government
Layden House
76 - 86 Turnmill Street
London, EC1M 5LG

or email: terry.edwards@lg-employers.gov.uk
tel 020 7296 6744
fax 020 7296 6739