

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. 181 – FEBRUARY 2006

STRIKE ACTION

Purpose of this Circular

1. This Circular has been issued to remind local authorities of the provisions in the Local Government Pension Scheme Regulations relating to strike action, following the notice by local government unions to ballot for strike action. Unison has indicated that the first day of any strike action would be 28 March 2006.

Strike action – pension implications under the LGPS

2. Absence from duty due to strike action for one or more complete days¹ is initially treated in the same way as any other unpaid, unauthorised absence i.e. the service does not count in any way for pension purposes.
3. There is, however, a provision in the Local Government Pension Scheme Regulations 1997² which enables an employee to elect to pay pension

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INVESTOR IN PEOPLE

¹ See paragraph 13 of this Circular if the strike absence lasts for less than 1 day

² See regulation 18 of the Local Government Pension Scheme Regulations 1997 or regulation 17 of the Local Government Pension Scheme (Scotland) Regulations 1998

contributions at the rate of 16% of pay in respect of a period of absence from duty because of a "trade dispute". It will be for Employers to determine whether or not the absence of any particular employee falls within the definition of a trade dispute which is set out in Section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992.

4. If an employee wishes to make a payment so that the service counts for pension purposes, he/she must elect³ to do so within 30 days of the date he/she returns to work (or ceases employment if earlier), although the Employing Authority may extend this time limit.
5. The payment to be made by the employee is the equivalent of 16% of the employee's 'lost pay' i.e. the difference between the pay the person actually receives (if any) and the pay he / she would have received but for the absence, disregarding any guarantee payments under Part III of the Employment Rights Act 1996. No employer contributions are due from the Employing Authority in respect of that period.
6. The regulations do not prescribe how the 16% payment is to be made and it is open to the Employing Authority to require payment in one sum or to accept payment by instalments. The payment will attract full tax relief in the same way as normal contributions.
7. However, to comply with Inland Revenue rules, the total of all contributions made to the LGPS by the employee during the year to 5 April 2006, including Additional Voluntary Contributions (AVCs) etc, must not exceed 15% of the employee's actual remuneration for that year⁴. Any employee caught by this limitation can, with the agreement of the Employing Authority, pay the balance of the sum due in the 2006/07 tax year (provided, of course, the person is still employed by the authority in 2006/07).
8. It is important to note that employees who have a contract to pay additional contributions to uprate pre-1st April 1972 service for lump sum purposes or who have a contract to buy "added years" must pay the additional contributions due under the contract on the pay they would have received had they not been on strike regardless of whether or not they opt to pay the 16% strike contribution.⁵ Also, any AVCs or Shared Cost AVCs that are being paid to provide additional life cover should continue to be paid in order to ensure that life cover does not lapse.

³ If a person dies before making an election within the relevant time limit, the person's personal representatives may make the election. Also, the termination of a person's contract of employment because of a trade dispute does not prevent the person opting to pay the 16% strike contribution provided he / she both becomes re-employed by the same employer and rejoins the LGPS not later than the day after the trade dispute ends.

⁴ See regulation 16 of the of the Local Government Pension Scheme Regulations 1997 or regulation 15 of the of the Local Government Pension Scheme (Scotland) Regulations 1998

⁵ Similarly, the Employing Authority element of any old shared cost added years contracts (if any still exist) would also have to be paid by the Employing Authority.

Actions to be taken by Employing Authorities

9. Employing Authorities should inform those members of the LGPS who are absent from duty due to strike action for one or more complete days of their right to pay 16% pension contributions in relation to the pay 'lost' during the strike period. The implications of not opting to pay the contributions should also be pointed out i.e. the service will not count for pension purposes. This means that a one day strike, for example, will:

- extend by one day the date when a member attains 3 months or, in Scotland, 2 years membership being the period of membership necessary to be entitled to a benefit under the Scheme
- extend by one day the date when a member attains 5 years membership, being the period of membership necessary to be entitled to an enhanced ill health pension under the Scheme
- in some cases, extend the date the 85 year rule is attained by one day⁶ and
- very marginally reduce the eventual benefits due from the Scheme because the person will have one day less membership and, if the member leaves within 12 months of the end of the strike period, the pensionable pay used to work out the member's scheme benefits could be slightly less than would otherwise have been the case⁷.

10. If the employee elects to make the 16% payment it will be treated as contributions to the Fund and should be included in the normal monthly contribution return remitted to the Administering Authority. Whilst there is no legal requirement to inform the Administering Authority's Pensions Section that the employee has been on strike and has made the 16% contribution payment,

⁶ For example, the 85 year rule for a person who would have attained 25 years membership at age 60 and 53 days will not, as a result of a one day strike, be met until age 60 and 54 days, when the person's age in whole years (60) and membership in whole years (25) equals 85 years; conversely, the 85 year rule would not be affected by a one day strike where, for example, a person has 24 years membership at age 60 and 350 days since the 85 year rule will not be met until the person's 61st birthday when age in whole years (61) plus membership in whole years (24) equals 85 years.

⁷ Regulation 22(3) of the Local Government Pension Scheme Regulations 1997 / regulation 21(3) of the Local Government Pension Scheme (Scotland) Regulations 1998 requires that where a member has been absent from work during any part of the year ending with the day he / she ceases to be an active member of the scheme the pensionable pay to be used in the calculation of benefits is that relating to the last 365 days he / she is entitled to count as membership in the Scheme. Thus, the final years pay of a person who goes on strike on 28 March 2006, who pays contributions for the strike day, and who leaves on 30 September 2006 would be the whole time equivalent pensionable pay in respect of the period 1 October 2005 to 30 September 2006. If the person did not pay contributions for the strike day the pensionable pay would be that in respect of the period 30 September 2005 to 27 March 2006 and 29 March 2006 to 30 September 2006. The latter calculation could be marginally less than the former if the pensionable pay in respect of the day of 30 September 2005 was less than that for the day of 28 March 2006.

Administering Authorities may nonetheless request Employing Authorities to do so in order that the details of the strike dates and the actual amount of the 16% contributions paid can be entered on the employee's computerised pension record. This will ensure that the system is able to calculate a more accurate pensionable pay figure for year end procedures and for use in the automatic generation of Annual Benefit Statements.

11. If the employee does not elect to make the payment the Employing Authority should notify the employee that the strike period will not count for pension purposes and also notify the Administering Authority so that they may record the strike period on the scheme member's computerised pension record.
12. Employing Authorities should, for the purposes of paragraphs 9 to 11 above, follow any advice issued by their Pension Fund Administering Authority including the use of any standard letters and forms provided by the Administering Authority. If standard letters / forms are not provided, Employing Authorities may wish to use those attached to this Circular as a template.
13. Where the strike absence lasts for less than a day, contributions are payable on the remuneration received for the remainder of the day. In such cases, Employing Authorities are not required to issue any notification to the employee or to the Pensions Section as the whole day is automatically treated as pensionable service.

Terry Edwards
Assistant Director (Pensions)
February 2006

Specimen Letter

**NOTIFICATION FROM THE EMPLOYER TO AN EMPLOYEE WHO HAS BEEN
ABSENT DUE TO A TRADE DISPUTE**

Dear

The Local Government Pension Scheme Regulations 1997*
The Local Government Pension Scheme (Scotland) Regulations 1998*

I write with regard to your recent absence from duty due to a trade dispute on
.....

The above regulations provide that the period of absence will not count for pension purposes unless you elect within 30 days of the date of your return to work (or the date you cease employment if earlier) to make a payment which is the equivalent of 16% of the remuneration which you would have received but for the absence. If this payment is made the period of absence will count as pensionable service.

You should note that if you do not opt to make the payment the service will not count for pension purposes and this would mean that a one day strike, for example, would:

- extend by one day the date when a member attains 3 months membership in the Pension Scheme or, in Scotland, 2 years membership. This is the period of membership you need in the Scheme to be entitled to a benefit under the Scheme. Of course, this will be of no relevance if you already have more membership than this
- extend by one day the date when a member attains 5 years membership in the Scheme, being the period of membership necessary to be entitled to an enhanced ill health pension under the Scheme. This is, of course, of no relevance if you already have more membership than this
- in some cases, extend by one day the date when a member could retire before age 65 on an unreduced pension i.e. add one day to the date on which a member's combined age and membership in the Scheme, both in whole years, add up to 85 (known as the "85 year rule"), and
- very marginally reduce the eventual benefits due from the Scheme because you would have one day less membership and, if you leave within 12 months of the end of the strike period, the pensionable pay used to work out your scheme benefits could be slightly less than would otherwise have been the case.

I enclose an option form for your completion and return. If you wish to receive further information regarding the cost before making your decision please let me know.

Yours sincerely,

District Treasurer [or appropriate title]

* Delete as appropriate
Specimen Form

**LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997
LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 1998**

ABSENCE DUE TO A TRADE DISPUTE - PAYMENT OF CONTRIBUTIONS

Please cross out the paragraph which does not apply.

- A. I wish to make a payment as prescribed by the above regulations in order that my period of absence due to a trade dispute will count as pensionable service.

- B. I do not wish to make a payment as prescribed by the above regulations and understand that my period of absence due to a trade dispute will not count as pensionable service.

SIGNATURE DATE

BLOCK LETTERS PLEASE

NAME

ADDRESS

.....

.....

..... POST CODE

PAYROLL REFERENCE NO:.....

This form should be returned to:

Specimen Letter

**NOTIFICATION FROM AN EMPLOYER TO AN EMPLOYEE WHO HAS ELECTED
TO MAKE A PAYMENT IN RESPECT OF PERIOD OF ABSENCE DUE TO
A TRADE DISPUTE**

Dear

Local Government Pension Scheme Regulations 1997*
Local Government Pension Scheme (Scotland) Regulations 1998*

Thank you for completing the form opting to pay pension contributions for the period of your absence from duty due to a trade dispute. The amount payable by you is £ and this will be collected from your next instalment of salary / wages. The period will now count for pension purposes.

Yours sincerely,

District Treasurer [or appropriate title]

* Delete as appropriate

Specimen Letter

NOTIFICATION FROM AN EMPLOYER TO AN EMPLOYEE WHO HAS NOT ELECTED TO MAKE A PAYMENT IN RESPECT OF PERIOD OF ABSENCE DUE TO A TRADE DISPUTE

Dear

Local Government Pension Scheme Regulations 1997*
Local Government Pension Scheme (Scotland) Regulations 1998*

I write further to my letter dated concerning your period of leave of absence due to a trade dispute. As you did not elect within the prescribed time limit to make the payment described in my letter, the period will not count in any way for pension purposes. You have the right of appeal if you feel this decision is incorrect in accordance with the above Regulations. A leaflet detailing the appeals process is attached.

A copy of this letter will be forwarded to the Pensions Section at who will record the break in your pensionable service on your pension record.

Yours sincerely,

District Treasurer [or appropriate title]

* Delete as appropriate

[Note to employers: contact your Pension Fund administrator for the appropriate appeals leaflet to include with this letter. A sample leaflet for England and Wales is included on the ODPM web site at <http://www.xoq83.dial.pipex.com/empgb.htm>]

**NOTIFICATION FROM THE EMPLOYER TO THE PENSIONS SECTION
OF A BREAK IN PENSIONABLE SERVICE FOLLOWING ABSENCE
DUE TO A TRADE DISPUTE**

Dear

**The Local Government Pension Scheme Regulations 1997*
Local Government Pension Scheme (Scotland) Regulations 1998***

In accordance with the above regulations, I write to notify you of a break in the pensionable service of the following employee.

EMPLOYEE'S NAME Mr/Mrs/Miss*

NATIONAL INSURANCE NUMBER

PERIOD OF ABSENCE FOR WHICH CONTRIBUTIONS WERE NOT PAID:

FROM TO

NAME OF EMPLOYER

I enclose a copy of the written notification which I have forwarded to the employee and (where available) a copy of the employee's option not to pay contributions.

Yours sincerely,

District Treasurer [or appropriate title]

*Delete as appropriate

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

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