

**LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND)
CIRCULAR SPN/LG No. 3/2017**

WHO SHOULD READ: Secretary General, Convention of Scottish Local Authorities
Chief Executive, Scottish Local Authorities
Chief Executive, Water Authorities
Principal Reporter, Scottish Children's Reporter Administration
Chief Executive, Scottish Environment Protection Agency
Director General, Strathclyde Passenger Transport Executive
Clerk, Strathclyde Passenger Transport Authority
Chief Executive/Director, VisitScotland

ACTION: This circular should be brought to the attention of Pension Managers, Superannuation Sections and LGPS Employer Payroll Departments. You may also wish to draw it to the attention of the Directors of Finance and Administration

SUBJECT: Cohabiting partner pensions

About Circular No.3/2017:

The purpose of this circular is to notify all interested parties of further changes to the treatment of cohabiting partners in the Local Government Pension Scheme (Scotland) following the judicial review (Northern Ireland) on the Brewster case by the Supreme Court.

This circular outlines further changes being introduced in respect of cohabiting partner benefits in the Local Government Pension Scheme (Scotland) (LGPS(S)).

Nominated cohabiting partner benefits were introduced to the LGPS(S) from 1 April 2009 as part of the reforms introduced to public service pensions. The underlying conditions that had to be met to allow a nominated cohabiting partner pension to be paid, as set out in The

Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008, are:

Meaning of “nominated cohabiting partner”

25. (3) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B;*
- (b) A and B are living together as if they were husband and wife or as if they were civil partners;*
- (c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners; and*
- (d) either B is financially dependent on A or A and B are financially interdependent.*

In the above extract, “A” refers to the scheme member and “B” refers to their cohabiting partner.

In addition to these conditions, the LGPS(S) 2009 also required that a nomination form had to have been completed by the member to allow a claim to proceed. If a nomination form was not received, a nominated cohabiting partner pension could not be paid, even if the underlying conditions were met. The condition in paragraph (3) had to have been satisfied for a continuous period of at least 2 years which included the day on which the declaration was signed.

On 1 April 2015, when the new LGPS(S) 2015 came into force, the requirement for a nomination form was no longer required for all new claims received from that date. This means that entitlement to a cohabiting partner pension is now solely based on whether or not the underlying conditions are met and the fact that a nomination form has not been completed will not affect that claim.

The conditions, as set out in Schedule 1 of The Local Government Pension Scheme (Scotland) Regulations 2014, are:

“cohabiting partner” means a person whom the appropriate administering authority is satisfied fulfils the following conditions—

- (a) the person (P) has fulfilled the condition in paragraph (b) for a continuous period of at least 2 years on the date the member (M) died; and*
- (b) the condition is that—*
 - (i) M is able to marry, or form a civil partnership with P,*
 - (ii) M and P are living together as if they were a married couple or as if they were civil partners,*
 - (iii) neither M nor P is living with a third person as if they were a married couple or as if they were civil partners, and*
 - (iv) either P is financially dependent on M, or M and P are financially interdependent.*

On 8 February 2017, the Supreme Court decided that refusing a claim on the grounds that a nomination form had not been completed, despite the underlying conditions being met, is incompatible with Article 14 of the European Convention on Human Rights and therefore unlawful.

The Supreme Court decision applies to other public service schemes, including the LGPS(S) 2009.



Scottish Ministers have decided that this change should be applied to any case from 1 April 2009, that has previously met the underlying conditions but which would not have gained entitlement, due to the lack of a nomination form.

In those cases, the member concerned should contact their administering authority for further advice and guidance. It remains the case that, to enable a nominated partner pension to be paid, the underlying conditions **must** be met.

Administering Authorities are asked to ensure that the content of this circular is brought to the attention of all LGPS(S) employers and staff.

Kimberly Linge
Policy Manager, LGPS
18 April 2017

Contact Information:

Should you have any enquiries about this circular, or require further information, please contact Kimberly Linge, Policy Manager, LGPS or Annette Greenslade, Policy Manager, LGPS.

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