

LOCAL GOVERNMENT PENSIONS COMMITTEE

Secretary, Charles Nolda

LGPC CIRCULAR NO. 101 - JUNE 2001

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PART TIMERS PENSION RIGHTS - FURTHER UPDATE

Purpose of the Circular

1. The purpose of this Circular is to update authorities in England and Wales of the current position in respect of the Employment Tribunal part-timers' pension rights cases. This Circular supplements Circular 96 issued in March 2001.

Notices of Appearance

2. The Secretariat is aware that a number of authorities in England and Wales have been issued with letters from Employment Tribunals requesting that they enter a Notice of Appearance in relation to the part-timer cases. As this did not appear to conform with the Employment Tribunals Information Bulletin Number Six (a copy of which was attached to Circular 96) the Secretariat wrote to the Regional Chairman of the Employment Tribunals in Nottingham who is co-ordinating the part-timer cases.
3. He has confirmed that local authorities in England and Wales are not required to enter a Notice of Appearance until such time as the Secretary of State indicates that he does not intend to plead objective

justification for exclusion from the pension scheme nor enter any other common points of defence.

4. It would appear, therefore, that once the two test cases have been heard and the stay on the non-test cases is lifted, local authorities in England and Wales will be required to enter a Notice of Appearance.
5. Ministers have agreed that, as second respondent, the Secretary of State will not be entering a defence of either no disparate adverse impact or objective justification in relation to permanent part-time staff who did not have access to the LGPS under the Regulations. The Secretary of State therefore takes the view that where the Regulations have required the exclusion of a permanent part-time local government employee from the LGPS, and that employee has brought or brings a claim within the 6 month time limit, they are entitled to membership of the LGPS from 8 April 1976 or the date they started the relevant employment if later¹, subject to the payment of the relevant contributions. In practice this will cover those permanent part-time employees who, prior to 17 August 1993 were contracted to work less than 15 hours per week. From 17 August 1993 such employees (other than casual employees and those contracted to work for not more than 3 months) were able to join the LGPS and, provided they did so before 17 February 1994, they could backdate membership to 1 January 1993 or the date they first commenced part-time employment, if later.
6. The Secretariat does not yet know whether the Secretary of State intends to enter a defence in respect of temporary part-time workers (employed for not more than 3 months) and / or casual employees.
7. What is clear, however, is that once the test cases have been heard and the stay on the non-test cases is lifted, it will be for each local authority to decide whether, as the first named respondent, they wish to enter a defence, even if the Secretary of State, as the second named respondent, does not enter a defence. This is because the Secretary of State cannot instruct authorities what line to take (no more than can the

¹ This is in accordance with the House of Lords ruling in the case of *Preston & Others v Wolverhampton Healthcare NHS Trust & Others* and *Fletcher & Others v Midland Bank Plc*. However, it raises the question of whether part-time manual workers who backdate membership can count the 1 year waiting period that used to apply to their full-time counterparts.

LGPC) as the cost of any additional employer contributions arising from retrospective access to the LGPS will be for those authorities to meet.

8. Once the main principles in the test cases have been decided, it will be necessary to consider how to deal with the outstanding cases and any potential future claims. The Secretariat will endeavour to provide guidance to authorities. It may be possible to establish an administrative procedure or regulations which will obviate the need for individual cases to be taken through the Employment Tribunal and, to this end, the Secretariat will continue to liaise with the Department of Transport, Local Government and the Regions.

Cases out of time

9. The Employment Tribunals Information Bulletin Number Six (see LGPC Circular 96) sets out the procedure which is to be followed in England and Wales in cases where the IT1 has been lodged with the Tribunal out of time i.e. more than 6 months after employment ended.
10. Authorities in England and Wales are reminded that if, by 8 August 2001, they have not received a copy of a show cause letter in any case where they believe the case must fail as a result of the House of Lords judgement, they should notify the Regional Office in which the case is registered.

Actions for authorities administering the LGPS

11. Administering authorities in England and Wales may wish to bring the content of this Circular to the attention of other employers in their Fund (other than local authorities to whom this Circular has been sent direct by the Secretariat).

Terry Edwards
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June 2001

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