

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. 178 – DECEMBER 2005**

## **CHANGES TO THE LGPS, PART-TIMER PENSION CASES, ETC.**

### **Purpose of this Circular**

1. This Circular has been issued to notify authorities of:
  - the introduction of civil partners' pensions into the LGPS in England, Wales and Scotland
  - changes to the LGPS in England and Wales that require administering authorities to publish governance and communication policies
  - draft amendments to the LGPS in England and Wales to replace the revoked April 2005 changes
  - the response to the Employment Tribunal from the Local Government Pensions Committee regarding further issues raised in relation to the "Beswick" part-time pension claims

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

## **Civil Partner's pensions**

2. The Local Government Pension Scheme (Civil Partnership) (Amendment) (England and Wales) Regulations 2005 [SI 2005/3069] come into force on 5 December 2005 and amend:
  - The Local Government Pension Scheme Regulations 1997
  - The Local Government Pension Scheme (Transitional Provisions) Regulations 1997
  - The Local Government (Discretionary Payments) Regulations 1996
  - The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2000.
3. The Local Government Pensions Etc. (Civil Partnership) (Scotland) Amendment Regulations 2005 also come into force on 5 December 2005 and amend:
  - The Local Government Pension Scheme (Scotland) Regulations 1998
  - The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998
  - The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998
4. The Civil Partnership Act 2004 allows same-sex partners to register a civil partnership. With effect from 5 December 2005, same-sex couples wishing to form a civil partnership are able to notify the Registration Service accordingly; the earliest date a registration ceremony can take place is 21 December 2005.
5. Section 1 of the Civil Partnership Act 2004 defines a civil partnership as a relationship between two people of the same sex ("civil partners") which is formed when they register as civil partners of each other in England or Wales, Scotland, Northern Ireland or outside the United Kingdom under an Order in Council (registration at British consulates etc or by armed forces personnel) or they are treated as having formed such a partnership by virtue of having registered an overseas relationship.
6. Entering a civil partnership generates certain rights, including pension rights for the surviving civil partner of a member of an occupational pension scheme. Amendments are therefore required to the regulations referred to above. The broad principles are set out below and a more detailed commentary is included at Annex 1.

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

The amendments to the above Regulations provide benefits for civil partners in the event of the death of an active member or the death of a deferred or pensioner member who ceased membership on or after 1 April 1998. However, the pension payable to the surviving civil partner will only be based on the deceased member's post 5 April 1988 membership.

Just as pension rights are shareable on divorce, pension rights on the dissolution of a civil partnership will also be shareable.

We have asked the ODPM whether the Government Actuary intends to issue revised factors for the purpose of calculating such items as pension sharing on divorce / dissolution, pension credits, transfers in and out, commutation of trivial pensions, and surrender. We understand the ODPM is currently following this up.

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

The amendments to the above regulations have the effect of providing survivor benefits to civil partners as detailed in the section above in the event of the death of a deferred or pensioner member who ceased local government employment between 6 April 1988 and 31 March 1998.

**Local Government (Discretionary Payments) Regulations 1996**  
**The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998**

The injury allowance and gratuity provisions of the above regulations have been amended to allow for benefits to be paid in respect of civil partners.

**Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000**  
**The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998**

The amendments to the above regulations provide survivor benefits for a civil partner in the event of the death of a former employee who ceased employment / membership after 5 April 1988 and who has been awarded a credited period (compensatory added years). Short and long term civil partner's annual compensation will be calculated in the same way as for widow's and widower's short and long term annual compensation.

**Governance policy in England and Wales**

7. The Local Government Pension Scheme (Amendment) (No. 2) Regulations 2005 [SI 2005/3199] require each administering authority in England and Wales, after consulting with such persons as they consider appropriate, to prepare, maintain and publish, by no later than 1 April 2006, a governance

policy setting out whether they delegate their function or part of their function in relation to the maintenance of the pension fund to a committee, sub-committee or an officer.

8. If they delegate to a committee, sub-committee or an officer, the statement must record:
  - a) the frequency of any committee or sub-committee meetings;
  - b) the terms of reference, structure and operational procedures of the delegation; and
  - c) whether the committee or sub-committee includes representatives of employers participating in the Fund or scheme members<sup>1</sup>, and if so, whether those representatives have voting rights.
9. The statement must be revised and re-published following any material change to the administering authority's policy on any of those matters set out above.
10. Guidance will be issued to administering authorities by the CIPFA Pensions Panel early in the new year.

### **Communication policy in England and Wales**

11. The Local Government Pension Scheme (Amendment) (No. 2) Regulations 2005 [SI 2005/3199] require each administering authority in England and Wales to prepare, maintain and publish a statement by no later than 1 April 2006 setting out their policy on communicating with members, members' representatives, prospective members and employers participating in the Fund.
12. The policy statement must, in particular, set out their policy on:
  - a) the provision of information and publicity about the Scheme to members<sup>1</sup>, representatives of members and employers participating in the Fund;
  - b) the format, frequency and method of distributing such information or publicity; and
  - c) the promotion of the Scheme to prospective members and to their respective employers.
13. The statement must be revised and re-published following any material change to the authority's policy on any of the matters set out above.

---

<sup>1</sup> This should be interpreted as including active, deferred and pensioner members, but not Pension Credit Members (i.e. as per the definition in Schedule 1 of the Local Government Pension Scheme Regulations 1997) and not limited to the narrower definition of active members only (see regulation 2 of the LGPS Regulations 1997).

## **LGPC Communications Manager**

14. Readers may wish to know that the LGPC has appointed a new Communications Manager, Irene Wass, who prior to joining the LGPC on 5 December 2005 was the Senior Pensions Officer at Derbyshire County Council. Irene will be working on national LGPS communication materials and the completion of a national website for scheme members. If you wish to contact Irene her 'phone / fax number 01246 414902, her mobile number is 07920061203 and her e-mail address is [irene.wass@lg-employers.gov.uk](mailto:irene.wass@lg-employers.gov.uk)

## **Draft amendment regulations to replace the revoked April 2005 changes to the LGPS in England and Wales**

15. On 5 December 2005 the ODPM issued draft amendment regulations to replace the revoked April 2005 changes to the LGPS in England and Wales. The draft amendment regulations, a covering letter and a detailed regulatory impact assessment can be viewed at <http://www.xoq83.dial.pipex.com/whatsnew.htm> as can a subsequent "addendum" letter from the ODPM dated 10 December 2005.
16. In summary, the draft regulations propose that from 6 April 2006 (unless a different date is shown below):
  - employees will be able to join and remain in the scheme up till their 75<sup>th</sup> birthday
  - the 15% limit on employees contributions should be removed
  - the contribution rate that employees who go on strike should pay if they wish the strike days to count as pensionable service should be the standard employees contribution rate plus the common employers' contribution rate as specified in the Fund's last valuation report (rather than a set rate of 16% as currently specified in the LGPS Regulations)
  - benefits must be paid by age 75 and benefits for employees who defer drawing benefits beyond age 65 should be actuarially increased (i.e. just as benefits drawn before age 65 may be subject to an actuarial reduction to reflect the fact that they will be paid for longer, benefits drawn after age 65 will be actuarially increased to reflect the fact that they will be paid for a lesser period of time)
  - the earliest age that benefits may be paid on the grounds of redundancy or efficiency, or at which an employer can agree to the early release of pension benefits, remains as age 50 (but will have to increase to 55 by 2010)
  - the ability for a member to surrender a part of his pension in favour of spouse, civil partner or dependant (payable should they survive the member) should be removed
  - flexible retirement should be permitted at or after age 60, linked to a reduction in hours or grade agreed by the employer and the employer should be able to waive, in whole or in part, any actuarial

reduction that would have been applied to the early payment of those benefits. The draft regulations do not mention any change to the current rules requiring administering authorities to have an abatement policy in relation to "re-employed" pensioners

- children's pensions coming into payment after 5 April 2006 will, for those who carry on in full time education or training for a trade, profession or calling beyond age 17, have to cease by age 23 (even if they carry on in full time education, etc beyond that age)
- the amount of augmented membership that an employer may, in future, grant to a scheme member should have a single limit of 6 2/3<sup>rd</sup> years
- the maximum number of added years that a scheme member should, in the future, be able to purchase should be limited to 6 2/3<sup>rd</sup> years
- retirees should not be able to convert some or all of their scheme lump sum into additional pension
- retirees drawing benefits on or after 6 April 2006 will be able to commute some of their pension to receive a bigger lump sum. For each £1 of annual pension surrendered, the member will receive a lump sum of £12. Retirees will be able to take up to 25% of the capital value of their pension benefits in the form of a lump sum
- the 85 year rule is to be removed in respect of benefits accruing after 30 September 2006 but members should be able to nominate an individual retirement date falling on or after age 60 and before age 65 and make extra contributions to offset any reduction to benefits paid before age 65. Working beyond the nominated date would result in an actuarial increase in the rights accrued
- transitional protections should apply to older members who will be aged 60 or over by 31 March 2013 (although the exact form of the protections and who they apply to is still open for discussion)
- the existing limits on benefits are to be removed and the new HM Revenue and Customs rules will apply. In essence these provide for Annual and Lifetime Allowances of, in 2006/07, £215,000 and £1.5 million respectively (unless the member has a Personal Lifetime Allowance in excess of £1.5 million). If the value of benefits in a year increases by more than the Annual Allowance a tax charge arises on the excess; similarly, if the total value of a member's pension benefits, when paid, exceeds the Lifetime Allowance (or Personal Lifetime Allowance) there will be a tax charge on the excess. Consideration is still being given to how to deal equitably with the pension rights of those members who joined the LGPS on or after 1 June 1989 who are currently subject to the Earnings Cap of £105,600. Also, although it is proposed that the facility for employers to be able to reduce or waive the contributions of employees who have been in pensionable local government employment for at least 40 years should be removed, the draft regulations, as currently worded, do not remove the maximum pensionable service limit of 40 years (or, for those who joined the Scheme before 1 June 1989, 40 years at age 60 and 45 years at age 65).

17. The ODPM have asked for comments on the draft regulations to be sent to Nicola Rochester, Local Government and Firefighters' Pensions Schemes Division, ODPM, Zone 2/E6, Ashdown House, 123 Victoria Street, London, SW1E 6DE by no later than 28 February 2006.
18. The LGPC will be considering the draft regulations in detail and will be responding to the ODPM. A copy of the response will be sent to authorities in due course and may be of assistance to authorities in preparing their own response. In the meantime, if authorities wish to pass any comments to the LGPC Secretariat these will be gratefully received and will help to inform the LGPC response to the draft regulations.
19. As mentioned in the last bullet point of paragraph 16 above, new HM Revenue and Customs rules governing pension schemes are to be introduced from 6 April 2006. The LGPC has commissioned Hymans Robertson, Actuaries, to produce a practical guide for issue to, and use by, LGPS administering authorities and employing authorities in England, Wales and Scotland. The guide will offer practical guidance on matters to be considered by administering authorities, employing authorities and scheme members and will set out administering authority, employing authority and scheme member responsibilities under the Finance Act 2004, Finance Act 2005, the various Statutory Instruments that flow from those Acts, the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998. This will enable all parties to understand the implications of the tax simplification changes occurring in April 2006 and the changes to the LGPS which result from the tax changes.

#### **Part-timer pension claims – the “Beswick” case**

20. Thompsons, a firm of Solicitors acting on behalf of Unison and other unions, wrote to Mr. Macmillan, the Chairman of the Nottingham Employment Tribunal, on 7 November 2005 raising questions as to the interpretation of the LGPS Regulations and the extent of the concession made by Unison in relation to the “Beswick” test case.
21. The Employment Tribunal has written to the Treasury Solicitor and to the Secretary of the Local Government Pensions Committee inviting them to say, by not later than 7 and 14 December 2005 respectively, whether they agree or disagree with Thompsons' analysis of the law and its effect on the “Beswick” claimants. All nominated ET Chairmen have been asked to send copies of Thompsons' letter to employers with affected cases asking them, as respondents in the cases, to respond within 28 days of receipt of the letter saying whether they agree or disagree with Thompsons' analysis.
22. The LGPC has responded to the Employment Tribunal and a copy of the response is attached at Annex 2. This may be of assistance to those employers who are respondents in these cases when preparing their own response.

## **Actions for administering authorities**

23. Administering authorities 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.
24. Administering authorities should note that the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [SI 1996/1655] require changes to basic scheme information to be notified to active members, deferred and pension credit members (apart from those for whom no current address is held and in respect of whom correspondence sent to the last known address has been returned) and pensioner members within 3 months of the date of the change.
25. Administering authorities will need to make appropriate amendments to their standard literature, letters, guides, forms, etc to reflect the changes in legislation providing civil partners' pensions.

Terry Edwards  
Assistant Director (Pensions)  
December 2005



## Annex 1

### Local Government Pension Scheme Regulations 1997

### Local Government Pension Scheme (Scotland) Regulations 1998

The amendments to the above Regulations provide benefits for civil partners in the event of the death of an active member or the death of a deferred or pensioner member who ceased membership on or after 1 April 1998.

Only membership after 5 April 1988<sup>2</sup> will count in calculating any short term civil partner's pension (following a member's death on pension<sup>3</sup>) and long term civil partner's pension (following the death of a deferred beneficiary, or following on from a short term pension in the case of a death in service or death on pension<sup>4</sup>). Post 5 April 1988 membership includes added years purchased after 5 April 1988, membership credited on transfer-in from another scheme where the transfer value was received after that date, ill-health enhancement and any augmented membership awarded by the employer after that date<sup>5</sup>. This applies regardless of whether the civil partnership was entered into before or after the member ceases or ceased to be an active member of the scheme.

The provisions relating to the payment of childrens' pensions have also been amended by making the necessary consequential references to surviving civil partner's pensions (as shown in italics below).

Where a short term pension is payable to a surviving spouse *or civil partner*, a child's short term pension is reduced by the amount of the spouse's *or civil partner's* short term pension if the child is in the care of the surviving spouse *or civil partner*<sup>6</sup>.

Where childrens' long term pensions are payable, a one quarter rate pension is payable to an eligible child if a surviving spouse's *or civil partner's* pension is payable (or at half rate if there is more than one eligible

---

<sup>2</sup> The facility to count pre 6 April 1988 membership towards a civil partner's pension is to be considered during discussions on the future development of the LGPS.

<sup>3</sup> This only refers to "death on pension" because (a) there is no short term pension in the case of the death of a deferred beneficiary and (b) the short term pension payable on death in service is equal to the member's pay and is not based on membership. Also note that it would have been appropriate for regulation 40(5) of the LGPS Regulations 1997 to have been amended to also cross refer to regulation 42A.

<sup>4</sup> It would have been appropriate for regulation 41(6) of the LGPS Regulations 1997 to have been amended to also cross refer to regulation 42A.

<sup>5</sup> This means there is a difference of approach between the benefits payable to the widower of a female scheme member who married after leaving and the civil partner of a scheme member who entered into the civil partnership after leaving. In the former case, whilst the widower's pension is also based on post 5 April 1988 membership, this does **not** include added years purchased by the member after 5 April 1988, nor ill-health enhancement or any augmented membership awarded by the employer after that date.

<sup>6</sup> In the case of the death of a pensioner, this can mean that an amount of child's short term pension might still be payable (as the amount of the child's pension is calculated based on all the deceased's membership) whereas a civil partner's pension is only based on the post 5 April 1988 membership and a widow's or widower's pension in respect of a post retirement marriage is only based on post 5 April 1978 contracted-out membership and post 5 April 1988 membership respectively).

child). A one third rate pension is payable to an eligible child if no surviving spouse's or civil partner's pension is payable (or at two thirds rate if there is more than one eligible child).

Just as pension rights are shareable on divorce, pension rights on the dissolution of a civil partnership will also be shareable.

We have asked the ODPM whether the Government Actuary intends to issue revised factors for the purpose of calculating such items as pension sharing on divorce / dissolution, pension credits, transfers in and out, commutation of trivial pensions, and surrender. We understand the ODPM is currently following this up.

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

The amendments to the above regulations have the effect of providing survivor benefits to civil partners as detailed in the section above in the event of the death of a deferred or pensioner member who ceased local government employment between 6 April 1988 and 31 March 1998.

However, no amendments have been made to the provisions governing any children's pensions payable in respect of such deferred or pensioner members.

Whilst clearly the policy intent is to treat children's pensions for pre 1 April 1998 leavers in the same way as for post 31 March 1998 leavers (as detailed in the section above), the lack of a relevant amendment in respect of pre 1 April 1998 leavers would appear to generate the following unintentional effect:

- a) where a short term pension is payable to a surviving spouse, a child's short term pension is reduced by the amount of the spouse's short term pension if the child is in the care of the surviving spouse, but where a short term pension is payable to a surviving civil partner, a child's short term pension is **not** reduced by the amount of the civil partner's short term pension if the child is in the care of the surviving civil partner
- b) a child's quarter rate long term pension is payable to an eligible child if a surviving spouse's pension is payable (or at half rate if there is more than one eligible child). A one third rate pension is payable to an eligible child if no surviving spouse's pension is payable or if a civil partner's pension **is** payable (or at two thirds rate if there is more than one eligible child).

However, as stated above, this is clearly not the policy intent and we understand that a subsequent amendment may be made to the regulations to achieve the intended result.

**Local Government (Discretionary Payments) Regulations 1996**  
**The Local Government (Discretionary Payments and Injury Benefits)**  
**(Scotland) Regulations 1998**

The injury allowance and gratuity provisions of the above regulations have been amended to allow for benefits to be paid in respect of civil partners.

Where, as a result of anything an employee was required to do in carrying out his / her work, an employee sustains an injury or contracts a disease and dies as a result of the injury or disease, a surviving spouse (or spouses) or, as a result of the amendments, a surviving civil partner is entitled to an annual allowance or lump sum from the employer (providing the surviving spouse or civil partner was not cohabiting with another person outside marriage or civil partnership at the date of death). The amount of the allowance or lump sum is to be of such amount as the employer may from time to time determine and shall continue for such time as the employer may determine. An allowance must cease if the recipient remarries, registers a new civil partnership or cohabits with another person outside of marriage or civil partnership, but if that marriage, civil partnership or cohabitation ceases the employer may restore the allowance for such period as the employer may determine.

The provisions governing the payment of gratuities in respect of certain periods of non-pensionable service have also been amended to allow the payment of a gratuity to the civil partner of an employee who dies in service, and to provide a gratuity to the civil partner of a person already in receipt of an annuity who left after 5 April 1988<sup>7</sup> and dies before the amount of the annuity payments have exceeded the capital value of the gratuity initially awarded.

**Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000**  
**The Local Government (Discretionary Payments and Injury Benefits)**  
**(Scotland) Regulations 1998**

The amendments to the above regulations provide survivor benefits for a civil partner in the event of the death of a former employee who ceased employment / membership after 5 April 1988 and who has been awarded a credited period (compensatory added years). Short and long term civil partner's annual compensation will be calculated in the same way as for widow's and widower's short and long term annual compensation.

---

<sup>7</sup> The requirement that the person in receipt of the annuity should have ceased employment after 5 April 1988 does not appear to have been included in the amendments made to the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998.

Mrs. C. Harvey  
PS to Regional Chairman  
Employment Tribunals  
Regional Office  
3<sup>rd</sup> Floor, Byron House  
2a Maid Marian Way  
Nottingham  
NG1 6HS

My ref: TE/EE/  
Your ref:  
Date: 13 December 2005  
E-mail: [terry.edwards@lg-employers.gov.uk](mailto:terry.edwards@lg-employers.gov.uk)

Dear Mrs Harvey

### **PART-TIME WORKER PENSION CASES: BESWICK**

Thank you for your letter of 16 November 2005 requesting that I reply to the points made in the letter to the Employment Tribunal from Messrs Thompsons, Solicitors dated 7 November 2005. I am happy to do so but, as you will appreciate, the Local Government Pensions Committee is not a respondent in the claims. My response, for the most part, follows that of the Treasury Solicitor but I have confined my reply to technical matters.

Thompsons are correct in their understanding of the effect of the Regulations to which they refer in their letter (except that the references in points 1 and 3 on page 3 of their letter to "less than 35 weeks per year" should be to "less than 45 weeks per year"). I attach a note dealing with the conditions for buying back rights which I hope you will find helpful.

While there is little point in going back over the history of the correspondence regarding Beswick claimants, I have to say that the concession made in Unison's letter of 24 June 2005 appeared to relate to all the Beswick cases as defined. At the CMD on 29 July 2004 the definition was agreed as:

*"One in which either the arrangements on which an Applicant bought back past years or the Applicant's failure to buy back past years is either the whole or part of the cause of action or the whole or part of the defence."*

I do not recall it being suggested that a person who chose not to join the scheme before 1 April 1988 and for that reason could not buy back earlier service should now be able to claim a detriment.

The Employment Tribunals website made the position even clearer:

### *Beswick cases*

*These are public sector cases involving claimants who, the respondents say, had the opportunity to buy back the years which are now the subject of their tribunal claims when they first joined the pension scheme or subsequently **or would have had that right if they had joined the scheme when they became eligible to do so.** The respondents claim that these cases should fail because the terms on which the claimants could have bought back the lost years were more favourable than the agreed terms of settlement in the public sector cases and they have therefore not suffered a detriment.*

As I understand the main point of Thompsons' letter, they are now saying that the concession should be limited to those who joined the scheme before 1 April 1988 and were notified of their right to buy back. They also claim that "there are subsidiary issues as to what is to happen where Claimants who would have been entitled to buy-back periods of previous service were not actually given the opportunity to do so, and the impact of supervening events – particularly Claimants who had in the interim taken out a personal pension". They are not raising any issues in connection with those claimants who joined the LGPS before 1 April 1988 and who were able in 1990 to take advantage of the buy back (regardless of whether or not they took up the opportunity to do so). Those people were offered redress in 1990 on terms which the Government Actuary's Department (GAD) report has shown were in most cases no less favourable than the current public sector settlement model so they have suffered no detriment.

The issue raised by Thompsons' letter is whether any of the categories of claimants to whom Thompsons now say that the concession should not apply have an arguable case of breach of the Equal Pay Act and article 141.

Our position in relation to the substantive point in Thompsons' letter is that claimants who did not join the scheme before 1 April 1988 do not have an arguable case and that it is correct to require them to show cause why their claims should not be struck out.

Claimants who did not join the LGPS before 2 October 1987 (6 months after the scheme was amended to make them eligible) were unable to backdate their membership to 1 April 1986, and claimants who did not join before 1 April 1988 (12 months after the amendments) were unable to buy back earlier service. Thus, their inability to count earlier service for pension purposes is attributable to their own failure to join, and Unison were correct to concede in June 2005 that they have not suffered a detriment. These claimants would have been told that they had to join before 1 April 1988 in order that their service prior to 1 April 1986 would count as "qualifying service" to which buy-back terms then still under discussion would apply. They would then have been able to buy-back the pre 1 April 1986 "qualifying" service on terms that the unions accept were no less favourable than the current public sector settlement terms. As they failed to join at that opportunity their claim should fail under paragraph 7.3 of ET Bulletin number 9.

It would be perverse if those who did not heed the advice that employees had to join the scheme before 1 April 1988 if they wished to be in a position to avail themselves of the buy-back terms, which were being discussed at the time, are able to obtain a declaration whereas those who joined before 1 April 1988 fail.

I turn now to the first of the subsidiary issues raised in Thompsons' letter.

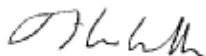
In the case of claimants who say they were not told of their right to buy back past service, as was required by the 1990 Regulations, the question is whether this (if established) gives them a cause of action under the Equal Pay Act or under the *Sally* principle. Our position is that the cause of action is under *Sally* and not the Equal Pay Act. As Judge McMullen says in the EAT judgement at paragraph 77 –

*"77. In my view, when the inequality is removed, the failure to notify the Applicant about it is not a continuing inequality in breach of the equality clause, but may well be in breach of the Sally implied term. In other words, the employer ceases to be in breach of the equality clause, but becomes liable for breach of the Sally implied term."*

The second of the subsidiary issues raised in Thompsons' letter relates to "Claimants who had in the interim taken out a personal pension". It is not clear to me from the letter what period "the interim" refers to. Whilst it is always open to a claimant to show good cause for not joining the Scheme, the only reference in decisions made to date that I can find which relates to claimants who had taken out a personal pension is contained in paragraph 7.2 of ET Bulletin number 9. Paragraph 7.2 does not, however, apply to the cases raised in Thompsons' letter as the part-timers in question had not been excluded from the Scheme after membership for full-time employees ceased to be compulsory on 6 April 1988 and I would contend that the principle set out in paragraph 7.2 should not be extended to the cases raised in Thompsons' letter. If a person chose not to join the Scheme prior to 1 April 1988 (even though advised that they would need to do so in order to count their pre 1 April 1986 service as "qualifying service" to which buy-back terms then still under discussion would apply) on the grounds that they held a personal pension, that was their choice. The Thompsons' letter appears to wish to provide claimants with the ability to re-open their original decision, even though they had not been excluded from membership of the Scheme nor, if they had decided to join at the appropriate time, excluded from buying back earlier service.

I hope you find my views to be of assistance.

Yours sincerely



Mike Walker  
Secretary to the LGPC

## **THE RIGHT TO BUY BACK**

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; 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 join the LGPS if this was after 1 April 1986; i.e. the later of the date when they first commenced service that met the criteria in (a) or (b) above, or the date they attained age 18, or in the case of a manual worker, the date 12 months after the date they met the criteria in (a) or (b) above.

Employees who joined the Scheme before 1 April 1988, 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 service before the age of 18, service prior to a break in service of 12 months or more, and in the case of a manual worker, the first 12 months service at 15 hours or more per week (see regulation D12 which was introduced into the Local Government Superannuation Regulations 1986 by Statutory Instrument number 293 of 1987).

"Qualifying service" qualified people for benefits i.e. it determined whether a person was entitled to a benefit under the Scheme and whether an actuarial reduction should be applied to the pension and lump sum from the scheme, if paid before age 65. The service did not, however, count in working out the amount of the pension and lump sum.

From 17 September 1990, those who had joined the Scheme before 1 April 1988, either as a full or part time employee, had the opportunity to buy-back any "qualifying service" 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 pension and lump sum.

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, 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, the day before the employee joined the Scheme if earlier). Employers could agree to meet up to half of the employees' contributions.

## **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](http://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](mailto:terry.edwards@lg-employers.gov.uk)  
tel 020 7296 6744  
fax 020 7296 6739