

The Local Government Pensions Committee  
Secretary: Terry Edwards

## **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. 213 – JULY 2008**

## **STRIKE ACTION – ENGLAND AND WALES**

### **Purpose of this Circular**

1. As authorities will be aware, UNISON have called two days of industrial action in England and Wales on the 16th and 17th of July as a result of the offer that has been made on pay for 2008. The offer is for an increase of 2.45% on all pay points plus £100 on the bottom three pay points. The GMB union has accepted the offer but Unite has rejected it and it is anticipated that Unite will take strike action on the same two days.
2. This Circular has been issued to remind local authorities in England and Wales of the provisions in the Local Government Pension Scheme (Administration) Regulations 2008 relating to strike action.

### **Strike action – pension implications under the LGPS**

3. Absence from duty due to strike action for one or more complete days<sup>1</sup> is treated in the same way as any other unpaid, unauthorised absence i.e. the service does not count in any way for pension purposes.
4. There is, however, a provision in the Local Government Pension Scheme (Administration) Regulations 2008<sup>2</sup> which enables a pensionable employee to elect to pay pension contributions at the rate of 16% of pay in respect of a

<sup>1</sup> See paragraph 13 of this Circular if the strike absence lasts for less than 1 day.

<sup>2</sup> See regulation 20 of the Local Government Pension Scheme (Administration) Regulations 2008

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.

5. If an employee wishes to make a payment so that the service counts for pension purposes, he/she must elect<sup>3</sup> to do so within 30 days of the date he/she returns to work (or ceases employment without returning to work)<sup>4</sup> following the end of the trade dispute<sup>5</sup>, although the Employing Authority may extend this time limit.
6. 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. If the 16% payment is made by the employee, the period of absence will count as a period of membership in the LGPS. No employer contributions are due from the Employing Authority in respect of that period.
7. 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 (provided, if the employee leaves, the payment is not made after the date of leaving).
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", or who have a contract to pay Additional Regular Contributions (ARCs) 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.<sup>6</sup> Also, any Additional Voluntary Contributions (AVCs) or Shared-Cost AVCs that are being paid to provide additional life cover ought to continue in order to ensure that life cover does not lapse.

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<sup>3</sup> If a person dies before making an election within the relevant time limit, the person's personal representatives may make the election.

<sup>4</sup> If a person's contract of employment is terminated because of a trade dispute and, not later than the day after the trade dispute ends, becomes re-employed by the same employer and rejoins the LGPS, he/ she can elect, within 30 days of returning to work following the strike period (or such longer period as the Employing Authority may allow) to pay the 16% strike contribution.

<sup>5</sup> Note: where a person goes on strike, returns to work, and then has a further day / days on strike which form part of the same trade dispute, the 30 days commences when he / she returns to work (or ceases employment without returning to work) following the last day of strike in that trade dispute period.

<sup>6</sup> 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, for example, each day a person is on strike will:

- extend by a day the date when a member attains 3 months membership, being the period of membership necessary to be entitled to a benefit under the Scheme
- reduce the person's period of membership upon which benefits from the Scheme are calculated
- in most cases, very marginally reduce or (in a few cases) marginally increase the final pay figure used in the calculation of benefits for a person who leaves within 12 months of the end of the strike period<sup>7</sup>, and

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<sup>7</sup> Regulation 9(4) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 provides that where a member is only entitled to count part of the final year as a period of membership (e.g. because he / she has been on strike for two days and has not paid the contributions for those two days to count) the final pay to be used in the calculation of benefits is the pensionable pay during that part multiplied by 365 and divided by the number of days in that part. Thus, the final years pay of a person who goes on strike on 16 and 17 July 2008, who pays contributions for the strike days, and who leaves on 30 September 2008 would be the whole time equivalent pensionable pay in respect of the period 1 October 2007 to 30 September 2008 e.g.

1.10.07. – 31.3.08. :  $6/12 \times \text{£}20,000 = \text{£}10,000$

1.4.08. – 30.9.08. :  $6/12 \times \text{£}22,000 = \text{£}11,000$

Total  $\text{£}21,000$

If the person did not pay contributions for the two strike days the pensionable pay would be the pay received for the period 1 October 2007 to 30 September 2008 (less 2 days pay) x 365 divided by 363 (i.e. ignoring the leap year day), which would produce a slightly lesser final pay figure e.g.

1.10.07. – 31.3.08. :  $6/12 \times \text{£}20,000 = \text{£}10,000.00$

1.4.08. – 30.9.08. :  $6/12 \times \text{£}22,000 = \text{£}11,000.00$

Less  $2/260 \times \text{£}22,000 = \text{£} 169.23$

Total  $\text{£}20,830.77 \times 365/363 = \text{£}20,945.54$

If the member retired on 30 June 2009, having had a significant promotion on 1 August 2008, and paid contributions for the two strike days, the final pay would have been:

1.7.08. – 31.7.08. :  $1/12 \times \text{£}22,000 = \text{£} 1, 833.33$

1.8.08. – 31.3.09. :  $8/12 \times \text{£}33,000 = \text{£}22,000.00$

1.4.09. - 30.6.09. :  $3/12 \times \text{£}35,000 = \text{£} 8,750.00$

Total  $\text{£}32,583.33$

But, if the member did not pay the contributions, the final pay figure would be higher i.e.

1.7.08. – 31.7.08. :  $1/12 \times \text{£}22,000 = \text{£} 1, 833.33$

1.8.08. – 31.3.09. :  $8/12 \times \text{£}33,000 = \text{£}22,000.00$

1.4.09. - 30.6.09. :  $3/12 \times \text{£}35,000 = \text{£} 8,750.00$

Less  $2/260 \times \text{£}22,000 = \text{£} 169.23$

Total  $\text{£}32,414.10 \times 365/363 = \text{£}32,592.69$

- in some cases, extend by a day the date the 85 year rule is attained<sup>8</sup>
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, 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  
Head of Pensions  
July 2008

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<sup>8</sup> For example, the 85 year rule for a person who would have attained 25 years membership at age 60 and 53 days will not, where there is a two day strike, be met until age 60 and 55 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 two 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 61<sup>st</sup> birthday when age in whole years (61) plus membership in whole years (24) equals 85 years.

## Specimen Letter

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

Dear

#### **The Local Government Pension Scheme (Administration) Regulations 2008**

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. This means that each day on strike will, for example:

- extend by one day the date when a member attains 3 months membership in the Scheme, being the period of membership necessary to be entitled to a benefit under the Scheme. This is, of course, of no relevance to you 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")
- reduce the period of membership upon which your benefits from the Scheme are calculated, and
- very marginally reduce or (in a few exceptional cases) marginally increase the final pay figure used in the calculation of your benefits if you leave within 12 months of the end of the strike period. Whether the final pay figure is marginally reduced or marginally increased will depend on the date of leaving and the level of promotions or pay rises, etc that occur after the strike days.

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.

Please note that, regardless of whether or not you decide to pay the 16% contribution to count the strike period as a period of membership in the pension scheme, any additional contributions you may be paying to purchased added years of membership, to uprate any pre 1 April 1972 membership to provide a greater lump sum on retirement, or to purchase extra additional pension by way of

Additional Regular Contributions (ARCs), will continue to be collected from your pay.

If you are paying Additional Voluntary Contributions (AVCs) to provide additional life cover we have assumed that you would not wish the life cover to lapse and so will have been deducted these contributions from your pay.

Yours sincerely,

District Treasurer [or appropriate title]

**LOCAL GOVERNMENT PENSION SCHEME  
(ADMINISTRATION) REGULATIONS 2008**

**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 (Administration) Regulations 2008**

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]



**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 (Administration) Regulations 2008**

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]

[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 (Administration) Regulations 2008**

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 .....

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]

## **Distribution sheet**

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Officer advisory group  
Local Government Pensions Committee  
Trade unions  
CLG  
COSLA  
SPPA  
Regional Directors  
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