

The Local Government Pensions Committee  
Secretary: Jeff Houston

## 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. 253 – NOVEMBER 2011

## ABSENCE DUE TO A TRADE DISPUTE

### Purpose of this Circular

1. As authorities will be aware, there is to be a day of industrial action in England, Wales and Scotland on 30<sup>th</sup> November 2011 over proposed changes to public service pension schemes.
2. This Circular<sup>1</sup> has been issued to remind employers of the provisions in the Local Government Pension Scheme (Administration) Regulations 2008 and the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 relating to absence from work without permission during and because of a trade dispute.

### Absence due to a trade dispute – pension implications under the LGPS

3. Absence from work without permission for one or more complete days<sup>2</sup> during and because of a trade dispute is treated in the same way as any other unpaid, unauthorised absence i.e. the period of absence does not count in any way for pension purposes.
4. There are, however, provisions in the Local Government Pension Scheme (Administration) Regulations 2008<sup>3</sup> and the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008<sup>4</sup> which enable a pensionable employee to elect to pay pension contributions at the rate of

Local Government House, Smith Square, London SW1P 3HZ T 020 7664 3000 F 020 7664 3030 E [info@local.gov.uk](mailto:info@local.gov.uk) [www.local.gov.uk](http://www.local.gov.uk)

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<sup>1</sup> This Circular is an update to the trade dispute Circular issued in 2008 i.e. Circular 213.

<sup>2</sup> See paragraph 13 of this Circular if the strike absence lasts for less than 1 day.

<sup>3</sup> See regulation 20 of the Local Government Pension Scheme (Administration) Regulations 2008

<sup>4</sup> See regulation 17 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008

16% of pay in respect of a period of absence from duty because of a “trade dispute” provided the employee was a member of the Scheme before the first day of absence from duty<sup>5</sup>. It will be for employers to determine whether or not the absence of any particular employee is because of a trade dispute as defined 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 period of absence counts for pension purposes, he/she must elect<sup>6</sup> to do so within 30 days of the date he/she returns to work (or ceases employment without returning to work)<sup>7</sup> following the end of the trade dispute<sup>8</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 made before the date of leaving).
8. It is important to note that employees who have a contract:
  - to pay additional contributions to uprate their pre-1st April 1972 membership for lump sum purposes, or
  - to buy “added years”, or
  - to pay Additional Regular Contributions (ARCs), or

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<sup>5</sup> Where a person has two or more separate periods of absence because of a trade dispute but was not a member of the Scheme before the first absence, that person cannot pay contributions for any of the periods of absence.

<sup>6</sup> If a person dies before making an election within the relevant time limit, the person’s personal representatives may make the election.

<sup>7</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, the person 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>8</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.

- to pay Additional Survivor Benefit Contributions<sup>9</sup> so that their pre 6 April 1988 membership can count towards a survivor's pension payable to a nominated co-habiting partner

must pay the additional contributions due under the contract on the pay they would have received had they not been absent without permission during and because of the trade dispute, regardless of whether or not they opt to pay the 16% trade dispute contribution.<sup>10</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.

### **Actions to be taken by Employing Authorities**

9. Employing Authorities should inform those members of the LGPS who are absent from duty without permission for one or more complete days during and because of a trade dispute of their right to pay 16% pension contributions in relation to the pay 'lost' during the trade dispute period. The implications of not opting to pay the contributions should also be pointed out i.e. the period of absence will not count for pension purposes. This means that, for example, each day a person is absent without permission during and because of the trade dispute will:

- extend by a day the date when a member in England or Wales attains 3 months membership, being the period of membership necessary to be entitled to a benefit under the Scheme in England or Wales
- extend by a day the date when a member in Scotland attains 2 years membership, being the period of membership necessary to be entitled to a benefit under the Scheme in Scotland
- reduce the person's period of membership upon which benefits from the Scheme are calculated
- may have a marginal impact on the final pay figure used in the calculation of benefits for a person who leaves within 12 months of the end of the trade dispute period or, in some cases, within 3 years of the end of the trade dispute period, and
- in some cases, extend by a day the date the 85 year rule is

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<sup>9</sup> Regulation 17(5)(b) of the LGPS (Administration) (Scotland) Regulations 2008 specifically provides that ASBCs shall continue to be paid during absence due to a trade dispute. Whilst there is no equivalent provision in regulation 20(5) of the LGPS (Administration) Regulations 2008 it seems logical that such contributions should equally be payable in England and Wales given that ASBCs are payable under a contract.

<sup>10</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.

attained<sup>11</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 absent without permission during and because of the trade dispute 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 period of absence without permission during and because of the trade dispute will not count for pension purposes and also notify the Administering Authority so that they may record the period of absence 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 in the to this Circular as a template.
13. Where the period of 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.

#### **Actions for administering authorities**

14. Administering authorities may wish copy this Circular to employers in their Fund or bring the Circular to the attention of employers by directing them to the [Circular on the LGE website](#).

Terry Edwards, Senior Pensions Adviser, November 2011

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<sup>11</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 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 61<sup>st</sup> birthday when age in whole years (61) plus membership in whole years (24) equals 85 years.

## Annex

### Specimen Letter

#### **NOTIFICATION FROM THE EMPLOYER TO AN EMPLOYEE WHO HAS BEEN ABSENT DUE TO A TRADE DISPUTE – ENGLAND AND WALES**

Dear

#### **Local Government Pension Scheme**

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 for pension purposes.

You should note that if you do not opt to make the payment the period of absence will not count for pension purposes. This has some implications. For example, each day of absence:

- will 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
- will 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")
- will reduce the period of membership upon which your benefits from the Scheme are calculated, and
- may have a marginal impact on the final pay figure used in the calculation of your pension benefits if you leave within 12 months of the end of the trade dispute period or, in some cases, within 3 years of the end of the trade dispute period. Whether the final pay figure might be more or less than if you had paid contributions to enable the day to count will depend on the date of leaving and the level of promotions or pay rises, etc that occur after the trade dispute has ended and, in some cases, how these compare to the level of pay prior to the trade dispute.

I enclose an option form for your completion and return. If you wish to receive further information 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 absence 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 deducted these contributions from your pay.

Yours sincerely,

District Treasurer [or appropriate title]

## Specimen Letter

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

Dear

#### Local Government Pension Scheme

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 for pension purposes.

You should note that if you do not opt to make the payment the period of absence will not count for pension purposes. This has some implications. For example, each day of absence:

- will extend by one day the date when a member attains 2 years 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
- will 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")
- will reduce the period of membership upon which your benefits from the Scheme are calculated, and
- may have a marginal impact on the final pay figure used in the calculation of your pension benefits if you leave within 12 months of the end of the trade dispute period or, in some cases, within 3 years of the end of the trade dispute period. Whether the final pay figure might be more or less than if you had paid contributions to enable the day to count will depend on the date of leaving and the level of promotions or pay rises, etc that occur after the trade dispute has ended and, in some cases, how these compare to the level of pay prior to the trade dispute.

I enclose an option form for your completion and return. If you wish to receive further information 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 absence 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, to purchase extra additional pension by way of Additional Regular Contributions (ARCs), or to allow pre 6 April 1988 membership to count towards a survivor's pension payable to a nominated co-habiting partner 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 deducted these contributions from your pay.

Yours sincerely,

District Treasurer [or appropriate title]

**LOCAL GOVERNMENT PENSION SCHEME – ENGLAND, WALES AND SCOTLAND**

**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 for pension purposes.
  
- 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 for pension purposes.

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 A PERIOD OF ABSENCE DUE TO A TRADE DISPUTE – ENGLAND, WALES AND SCOTLAND**

Dear

**Local Government Pension Scheme**

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 A PERIOD OF ABSENCE DUE TO A TRADE DISPUTE – ENGLAND, WALES AND SCOTLAND**

Dear

**Local Government Pension Scheme**

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 absence on your pension record. The period of absence will not count for pension purposes.

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.]

**NOTIFICATION FROM AN EMPLOYER TO THE PENSIONS SECTION IN  
RESPECT OF AN EMPLOYEE WHO HAS NOT ELECTED TO MAKE A  
PAYMENT IN RESPECT OF A PERIOD OF ABSENCE DUE TO A TRADE  
DISPUTE – ENGLAND, WALES AND SCOTLAND**

Dear

**Local Government Pension Scheme**

In accordance with the above regulations, I write to notify you of a break in membership of the Scheme for 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  
DCLG  
COSLA  
SPPA  
Regional Directors  
Private clients  
Website

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LGPC  
Local Government House  
Smith Square  
London  
SW1P 3HZ

or email: [terry.edwards@local.gov.uk](mailto:terry.edwards@local.gov.uk)  
Tel: 01954 232834