

**LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND)
CIRCULAR SPN/LG No. 6/2016**

- 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:** Payment of arrears of pay made in respect of an equal pay claim should be treated as pensionable.

About Circular No.6/2016:

The purpose of this circular is to confirm that changes to Regulation 20 of the Local Government Pension Scheme (Scotland) Regulations in 2014 were to clarify the policy intent that a payment of 'arrears of pay', made in respect of an equal pay claim, should be treated as pensionable.

Equal Pay Awards

Recently Scottish Ministers were asked to review an appeal on behalf of members of the Local Government Pension Scheme who claimed correctly that the arrears of pay awarded to them by an Employment Tribunal should have been pensionable.

In this case the employer had paid tax and national insurance contributions to HMRC but stated that this was a 'settlement amount' and therefore they did not intend to pay the requisite employer contributions to the pension fund authority on behalf of these members.

In the LGPS (Scotland) Regulations 2014, Regulation 20(1) lists all salary, wages, fees and any benefit specified in the employee's contract of employment as being pensionable.

Regulation 20(2) lists what is excluded from the meaning of 'pensionable pay' but that list specifically does not include 'any sum representing the arrears of pay'. This makes a clear distinction between;

- a) a payment made in settlement of an equal pay claim where the payment represents arrears of pay and
- b) other awards "of compensation for the purpose of achieving equal pay in relation to other employees".

This Regulation therefore requires a sum representing 'arrears of pay' to be classed as 'pensionable pay'.

Equalisation legislation to compensate persons who have wrongly been underpaid would not deliver full compensation if the employees' pensions did not reflect what the circumstances should have been had they received the correct pay in the first instance.

We were also asked for advice as to whether members should be given a choice as to whether they wish these payments of arrears to be pensionable or not.

The LGPS (Scotland) Regulation 9(1) requires that "each active member shall make contributions to the Scheme at the contribution rate from that member's pensionable pay in each employment in which the member is an active member." The amount of an employee's pensionable pay is calculated in accordance with Regulation 20.

Given that these payments are backdated, Scottish Ministers would expect Employers and Fund Authorities to agree an appropriately flexible approach for the repayment of the member's own contributions.

Kimberly Linge
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12 October 2016

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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