
CIRCULAR

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No. 140A – JULY 2003

PART-TIMER PENSION CLAIMS

Purpose of this Circular

1. This Circular follows on from Circulars 138 and 140 (see www.lg-employers.gov.uk/pensions/circulars.html) and provides further information in relation to the part-timer pension claims.

Part-timer pension claims in Scotland

2. Please note that the timescales set out in paragraphs 6 and 8 of Circular 138 and paragraphs 1 and 13 of Circular 140 **do not** apply to Scottish authorities and other employers participating in the Local Government Pension Scheme in Scotland. The Glasgow Employment Tribunal has not yet issued directions in relation to the timescales and processes that will apply to the Scottish ET claims. All references in Circular 140 to particular dates applying in Scotland should be ignored.

Clarification of paragraph 5 of Circular 140 in relation to England and Wales

3. In order to ensure that paragraph 5 of Circular 140 covers all cases pertinent to that paragraph it has been updated as shown below. The amendments are shown in bold type.

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4. "5. The first point to make is that technically, the "Preston" judgement concerns employees who were debarred from membership of the occupational pension scheme. Those employees who on 1 April 1987 were contracted to work for:

- a) **30 or more hours per week (on average) for 45 or more weeks per year, or**
- b) 30 or more hours per week (on average) for less than 45 weeks per year (i.e. term-timers), or
- c) 15 or more (in aggregate) but less than 30 hours per week for 35 or more weeks per year¹ (i.e. part-timers)

have previously been given the opportunity to join and backdate membership of the LGPS (to as far back as 1 April 1974) **in respect of periods of employment of the type mentioned in (b) or (c) above**. As such they have not been excluded from membership of the Scheme **in relation to such service**². It is recognised, however, that a proportion of the Employment Tribunal claims concern such employees who claim, for instance, that they were not informed by their employer of the right to join the scheme and to backdate membership (or not informed at the earliest opportunity). Whilst employers may wish to ask for such cases to be struck out by the Employment Tribunal on the basis that they are not really "Preston" cases, employers should consider the validity of the employee's claim. If the employer accepts that, on the balance of probability, the employee has a valid point, the employer may wish to permit retrospective entry to the Scheme under the same terms applicable to those employees who did join / backdate at the appropriate time.

It should be noted, however, that the fact that some of the employees who originally opted to backdate membership of the LGPS paid a 12% contribution rate to cover part of the backdating period has not been challenged at the Employment Tribunal. As such, whilst it may be arguable that such a contribution rate does not sit comfortably with the "Preston" judgement, the employers' position is that this matter should not to be re-opened unless and until a successful test case on the point is brought before the Employment Tribunal."

5. To put the above and the rest of Circular 140 into context, employers in England and Wales may find the LGPS Brief History of Membership Conditions at www.lg-employers.gov.uk/documents/pensions/membership/conditions.doc to be of assistance.

¹ This means that if a person's contract were to last at least a year he / she would be required under the contract to work for 35 or more of the weeks in the year.

² **But see paragraph 8B of Circular 140 regarding service of less than 15 hours per week, or service of less than 30 hours per week for less than 35 weeks per year.**

Application of Circular 140 to non-scheduled bodies in England and Wales

6. The various dates referred to in paragraphs 4 to 10 of Circular 140 are only of direct relevance to "scheduled bodies".
7. Other bodies participating in the LGPS, for example "resolution bodies" (i.e. those bodies that have to pass a statutory resolution specifying which employees or class of employees are to be offered membership of the LGPS) and "admitted bodies" (i.e. those bodies that participate in the LGPS under an admission agreement and who nominate employees or a class of employees for membership of the LGPS under the admission agreement) will need to carefully consider the relevance to them of the Preston judgement and the ET decisions in relation to the test cases (see www.employmenttribunals.gov.uk) before making their response to the Employment Tribunal.

Wrongly named respondents in England and Wales

8. The LGPC Secretariat has been made aware that there are cases where the respondent named on the ET claim has been incorrectly cited.
9. For example, there will be cases where an authority / local education authority (LEA) has been named as the respondent whereas the liability for excluding an employee from the LGPS passed to an employee's new employer following a statutory transfer of employment e.g. from an LEA to a further education college or from one local authority to another following local government reorganisation. In these particular cases the LGPC has checked with the Tribunal and the employer (in England and Wales) is recommended to mark them on the Excel spreadsheet which is to be sent to the Tribunal by 1 August 2003 as cases that are not yet ripe for settlement quoting the reason as "wrongly named respondent in a statutory novation". It would be helpful if the name of the employer to whom liability has transferred could also be identified on the spreadsheet.
10. In other cases where an employer has been wrongly named as a respondent (where there has been **no TUPE transfer or statutory transfer of employment** to another employer), it is recommended that the employer (in England and Wales) requests the case to be struck out quoting the reason as "wrongly named respondent".
11. Cases involving a **transfer of undertakings under TUPE** where the claim against the transferor authority was lodged more than 6 months after the date of transfer are, of course, still stayed – see paragraph 10B of Circular 140.

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July 2003

A Brief History of Membership Conditions (as applied to Local Authorities in England and Wales)

Pre 1974 Local Government Re-Organisation on 1 April 1974 brought about the merger of various funds. The rules for membership, as operated by these funds could have been applied in different ways.

Prior to 1 July 1973 *Membership was compulsory for the following employees aged 18 or over who were not casual employees:-*

Whole-time Officers (Unless appointed on a temporary contract for 2 years or less with no previous contributory Local Government employment although the employer could resolve that such an employee could be a contributory employee).

Part-time Officers who were also whole-time officers with the same or another local authority, or who were specified by their employer as contributors, or who had previously, within the preceding 12 months, been a contributory employee with the same employer.

Manual Workers (Servants) who had previously, within the preceding 12 months, been a contributory employee with the same employer, or who were specified by their employer as contributors (servants of a specified class). The resolutions often specified that a manual worker had to be whole-time and joined after a waiting period (which, to tie in with whole-time officers, was often set at 2 years).

The following were not allowed to join the Scheme:-

- Employees under 18.
- Whole-time officers appointed on a temporary contract for a definite period of 2 years or less who had not previously been a contributor to the Local Government Scheme or been subject to the Poor Law Officers' Superannuation Act 1896 or the Local Government and Other Officers' Superannuation Act 1922.
- Part time employees except as described above.
- Servants not covered by a statutory resolution.
- Employees who had attained age 55 and who could not complete 10 years service by the Local Government compulsory retirement age (normally age 65 but age 60 in case of female nurses and some other local health employees).

30 March 1973

* Compulsory membership for employees who were previously debarred because they could not complete 10 years service was introduced.

Notes:

* These categories of employees were able to opt not to join if they made their option by 30 September 1973. These options were irrevocable and remained in force as long as the employee continued in the employment of the same employer

1 July 1973

The definition of "whole time" was amended and was defined as where the "contractual minimum hours of employment regularly or usually amount to 30 or more in each week". This was interpreted by some authorities as meaning the employee had to usually or regularly work 30 hours in each week of the year (under 1 contract) for 52 weeks per year. This interpretation excluded term-time employees. Other authorities interpreted whole time to mean the employee had to usually or regularly work 30 hours (under 1 contract) in each week the employee was required to work, thus covering term-time employees. Subsequent DETR appeal determinations appeared to back up the latter view. However, see note 2 in the table entry for 1 April 1987 below.

Membership was compulsory for the following (subject to the employee having to pass a medical examination if the employer so required):

Whole-time Officers (Unless temporary for 2 years or less with no previous Local Government contributory employment).

Whole-time Manual Workers who had previously, within the preceding 12 months, been a contributory employee with the same employer.

****Other whole-time Manual Workers** after completion of 12 months continuous whole-time employment (unless temporary as above).

Part-time employees

As per pre 1 July 1973 - but extended in include part-time servants.

Notes:

** Existing whole time manual workers who were not in the Scheme immediately prior to 1 July 1973 could opt between 1 April 1973 and 30 June 1973 not to become a member on 1 July 1973. The option lasted for so long as the employee continued to be a whole time manual worker in the employment of that employer (but see note (iii) at 1 April 1987).

1 April 1974

The 1974 Regulations continued compulsory membership as introduced by the 1973 Interim Regulations above, with some slight amendments. The definition of "whole-time" remained as at 1 July 1973. Casual employees and employees appointed for a period of not more than 3 months could not join the LGPS. The following categories of employee were compulsorily pensionable:-

Whole-time Officers appointed for more than 3 months.

Whole-time Manual Workers appointed for more than 3 months, with previous Local Government service for which they had not received a refund and who had not had a break in service of more than 12 months.

Other Whole-time Manual Workers after 12 months continuous whole-time employment.

Part-time employees pensionable on 31 March 1974 who remained in continuous employment with the same employer. (Note: No other category of part-time employee was pensionable but see note 3 in the table entry for 1 April 1987).

Variable-time employees who were also whole-time employees of a local authority, e.g. Returning Officers.

Variable-time employees who were designated as pensionable by their employer, e.g. Parish Council Clerks.

6 April 1978

Coroners (other than the Queen's coroner and attorney or the coroner of the Queen's Household) admitted from 6 April 1978 unless they were employed prior to 6 April 1978 and had not opted under Article 3(b) of the Social Security (Modification of Coroners (Amendment) Act 1926) Order 1978 that the provisions of the Coroners (Amendment) Act 1926 relating to pensions should not apply to them.

1 January 1980

Whole-time Manual Workers with previous **non-local government** pension rights which were preserved or available for transfer could opt to join the LGPS at any time within the 12 month waiting period and, if they wished, back-date their entry to the first day of whole-time local government employment.

6 January 1986

The 12 month waiting period for **Whole-time Manual Workers** with previous **local government** pension rights which had not been (wholly) refunded was removed.

1 April 1987

Optional membership was introduced for some part-time employees. On this date the general rules for membership became:-

- (i) Employees employed for 30 or more hours per week (on average) for 45 or more but less than 52 weeks per year became automatically pensionable provided, in the case of Manual Workers they had completed 12 months at 15 hours or more per week (as varied by previous pension rights rules above).
- (ii) Employees working 30 or more hours per week for less than 45 weeks per year** and employees working 15*** or more (in aggregate) but less than 30 hours per week for 35 or more weeks per year were able to opt to join the LGPS provided, in the case of Manual Workers, they had completed 12 months at 15 hours or more per week or they satisfied the **non-local government** previous pension rights rule above.

Notes:

- 1. If the contractual hours of an employee in the Scheme were reduced from 30 or more to less than 30 per week or from 15 or more to less than 15 per week, the employee remained in the Scheme unless he / she opted out.
 - 2. ** Employees working 30 or more hours per week for less than 45 weeks per year whose employing authority, prior to 1 April 1987
 - a) had permitted them to join the Scheme remained in the LGPS but could now elect to opt out
 - b) had not permitted them to join the Scheme could now elect to join
 - 3. *** Employers who, prior to 1 April 1987, had on or after 1 April 1974 permitted employees working 15 or more (in aggregate) but less than 30 hours per week to join the LGPS were given retrospective sanction for doing so.
 - 4. NB. Some authorities gave category (ii) and (iii) employees the option to join the LGPS from April 1985 (in the light of DoE Circular 10/85 dated 10 April 1985).
- (iii) Whole-time Manual Workers who had opted in 1973 not to join the LGPS were now able to opt to join.
 - (iv) Justices Clerks (outside the inner London area) and Registration Officers were now compulsorily pensionable regardless of their contractual hours.
 - (v) Variable-time employees who were also in the LGPS as a part-time employee with a Part 1 Schedule body compulsorily became members of the LGPS in the variable time appointment.
 - (vi) Employees appointed for a period of not more than 3 months and casual employees could not join the LGPS.

- 1 October 1987** 1 April 1987 category (ii) and (iii) employees who joined the LGPS before 2 October 1987 could backdate their date of entry to 1 April 1986 or the beginning of the pay period when they first became eligible to join the LGPS if this was after 1 April 1986.
- 31 March 1988** The employees in the 1 April 1987 categories (i) to (iii) who joined the LGPS before 1 April 1988 (plus whole-time employees who had previous part-time employment) could count any previous part-time employment of 15 hours or more per week between 1 April 1974 and 31 March 1986 as qualifying service (breaks of less than 12 months did not disbar previous service from counting). The first 12 months at 15 hours or more did not count as qualifying service for Manual Workers.
- Justices Clerks and Registration Officers who joined the LGPS (1 April 1987 category (iv) above) could opt before 1 April 1988 to count any previous service as a Justices Clerk or Registration Officer on or after 1 April 1974 as reckonable service provided they paid the arrears of contributions due.
- 6 April 1988** Membership of the LGPS was no longer compulsory for new starters and existing members could opt out. New staff who wished to join the Scheme had to opt to do so apart from new whole time employees who had formerly been pensionable on 5 April 1988 for whom membership of the LGPS was still automatic on starting (with the right to opt out).
- Employers could refuse entry to employees who could have opted to join the LGPS before age 50 with that employer but did not opt to do so until age 50 or over.
- Elections to opt out of the Scheme which were made before 6 July 1988 could be treated as being made from 6 April 1988. Optants out could elect to rejoin, but if they opted out again could not rejoin unless they moved to another Scheme employer and opted in within 3 months of starting the new job.
- The definition of whole time employee was again amended (indirectly) i.e. the reference to having to work 45 or more weeks per year was removed.
- 1 October 1989** Age of entry was reduced from 18 to 16. Manual workers 12 month waiting period was abolished. Although the abolition of the 12 month waiting period and the reduction in the age of entry occurred (retrospectively) on 1 April 1990, regulation 42 of SI 1992/172 permitted employees to opt within 3 months of 28 February 1992 to backdate the change to 1 October 1989.

1 April 1990

Automatic membership was re-instated (with the right to opt out) for employees working 30 or more hours per week and for Justices Clerks and Registration Officers. Membership for all other employees working 15 or more hours per week for 35 or more weeks per year was still by option. Employees opting out within 3 months of joining were treated as never having been a pensionable employee.

17 September 1990

Employers had to notify all employees with part time qualifying service (see entry at 31 March 1988) by 16 September 1991 of the right to buy-back any or all of their qualifying service so that it would count as reckonable service in calculating the amount of their retirement benefits. Those employees who wished to buy-back had to elect to do so within 6 months of being notified by their employer of the right to buy-back. The employee contribution rate for pre 1.4.78. service being bought back was 6% and for post 31.3.78. service being bought back it was 12% of the pay at the "relevant date" (see SI 1990/1709). The employer could agree to meet up to half of the employee contributions on behalf of the employee. **[This entry includes the errata notified in Circular 140B].**

17 August 1993

The minimum 15 hours per week rule was abolished. The Scheme was now open to all employees (other than casual employees, those contracted to work for 3 months or less, and those part timers whose contractual weeks were less than 35 per year).

16 February 1994

Employees contracted to work less than 15 hours per week who opted to join the LGPS before 17 February 1994 could backdate their date of entry to the date they first commenced part-time employment (i.e. less than 30 hours per week) or 1 January 1993, whichever was the later date.

2 May 1995

All existing employees, including those whose appointment was for a period of 3 months or less and those part timers whose contractual weeks were less than 35 per year, other than casual employees, who were not already in the scheme and had not previously opted out of membership of the scheme were automatically brought into the scheme with the right to opt out. Casual employees could opt to join the Scheme.

All new employees, other than casual employees, were automatically brought into the Scheme with the right to opt out. Casual employees could opt to join the Scheme.

The right to debar access to the Scheme on medical grounds was removed.

An optant out who rejoined the Scheme and then again opted out could only subsequently rejoin if the employer consented or the person joined a new Scheme employer and opted in within 3 months of joining the new employer.

9 April 1997

The right to debar membership to optants out or to employees who could have joined the Scheme before age 50 but opted to do so on or after age 50 was removed but ONLY in respect of those employees who had opted out or decided not to join as the result of being mis-sold a personal pension scheme.

1 April 1998

The right to debar entry to employees who could have joined the Scheme before age 50 but wished to do so on or after age 50 was completely removed.

Special note re whole-time to part-time

Prior to 1 April 1974 employees remained in the Scheme if they became part-time (less than full-time).

Persons who were pensionable on 31 March 1974 and continued without a break with the same employer were protected in that if their hours reduced below 30, they remained in the Scheme.

However, from 1 April 1974 to 31 March 1987 the rule followed by employers in respect of other staff whose contractual hours reduced below 30 per week could have varied several times. This was because of conflicting advice and appeal decisions from DoE.

Acknowledgements: The LGPC Secretariat acknowledges the input of Margaret Winter, Deputy Pensions Manager, Cambridgeshire CC in the preparation of this table.

Terry Edwards, Assistant Director (Pensions), July 2002

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