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## 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

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**No. 158A - MAY 2004**

### **PART TIMER PENSION RIGHTS**

#### **Purpose of this Circular**

1. This Circular :
  - a) corrects two typographical errors in Circular 158, and
  - b) provides clarification in relation to certain claims that can partially succeed and are partially in a stayed category.

#### **Corrections to Circular 158**

2. There are two typographical errors in Circular 158.
3. Firstly, the date in the heading to Group 1 in paragraph 15 of that Circular should have been 1 April 1988 (and not 1 April 1998). The full heading should therefore have read as follows:  
Group 1 (those who could have joined the LGPS before 1 April 1988 but who chose not to and so missed out on the original backdating and buy-back terms).

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INVESTOR IN PEOPLE

4. Secondly, the questionnaire attached to Circular 158 contained an incorrect cross-reference to an earlier Circular. The correct, updated, questionnaire is attached to this Circular.

### **Worked Example for Information**

5. Paragraphs 11 to 16 of Circular 158 listed the categories of employee who, because they joined, or could have joined, the LGPS prior to 1 April 1988 have already been afforded the opportunity of purchasing certain previous part time service under the agreed 1990 buy-back terms (or would have been afforded the opportunity to do so if they had taken up the option to join the LGPS prior to 1 April 1988). As explained in Circular 158 any claim, or that part of a claim, that relates to service that was, or could have been, covered by the 1990 buy-back terms should be stayed pending the outcome of the further test cases.
6. Paragraph 7 of Circular 158 explained that paragraph 7.1 of the Employment Tribunal Information Bulletin had extended the categories that can succeed by making it clear that a claim can succeed in respect of any applicant who:
  - o has a period of service during which the contractual hours were less than 15 per week, or less than 30 hours per week for less than 35 weeks per year, which fell on or after 8 April 1976 and before 6 April 1988, **and**
  - o has continued to be employed by the same employer, under a stable employment relationship, since 8 April 1976 or the date of appointment if later, and is still employed by that employer<sup>1</sup> (or lodged their ET claim within 6 months of leaving that employer) or has statutorily been transferred to another employer and is still employed by that employer (or lodged their ET claim within 6 months of leaving that employer) – but see paragraph 5 of Circular 158 regarding stayed TUPE transfers, **and**
  - o the employer accepts the Secretary of State’s concession regarding a comparator.

#### Notes:

Such employees will be able to backdate membership of the LGPS for any period of continuous employment with the employer between the later of

- o 8 April 1976, **or**
- o in the case of an officer, the date employment started, **or**
- o in the case of a manual worker, 12 months after the date employment commenced, **or**
- o the date the employee attained age 18

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<sup>1</sup> Where an employee varies their contractual hours within the same job or voluntarily changes jobs with the same employer but without a break it will be necessary to determine whether the stable employment relationship has continued. If there is disagreement between the appellant and the respondent on this point, it will need to be remitted back to the Employment Tribunal for a decision.

and 5 April 1988 (both dates inclusive) **during which** the contractual hours were less than 30 per week and the contractual weeks were less than 35 per year, or the contractual hours were less than 15 per week.

7. There will be claimants whose claim covers a period falling into both paragraphs 5 and 6 above. For example:

Service 1.5.77. to 30.4.79. : 14 hours per week  
Service 1.5.79. to 31.7.80. : 17 hours per week  
Service 1.8.80. to 31.3.83. : 13 hours per week  
Service 1.4.83. to date : 25 hours per week

Claimant was aged 18 prior to 1.5.77.  
Claimant joined the LGPS on 1.4.87. and backdated pension contributions to 1 April 1986.

In the above scenario the person would, if an **officer**, have been able to count the period from 1.5.79. to 31.3.86. as "qualifying service"<sup>2</sup> and would have been given the option under the 1990 buy-back terms to purchase that period of service. The person's claim in respect of the period from 1.5.79. to 31.3.86. should be put in the stayed category. However, the claim in respect of the period from 1.5.77. to **30.4.79.** can succeed (because she has not previously been afforded the opportunity to purchase that period of service).

If, however, the person had been a **manual worker** she would only have been able to count the period from 1.5.80. to 31.3.86. as "qualifying service" (as manual workers had to complete a 12 month waiting period at 15 hours or more). Thus, the claim in respect of the period from 1.5.80. to 31.3.86. should be put in the stayed category but the period from 1.5.77. to **30.4.80.** can succeed (because she has not previously been afforded the opportunity to purchase that period of service).

8. We hope the above clarification proves helpful.

### **Actions for administering authorities**

9. Administering authorities in England and Wales should take **URGENT** action to copy this Circular to employers in their Fund (other than to Local Authorities to whom this Circular has been sent direct) or bring the Circular to the attention of employers by directing them to the Circular on the LGPC website at [www.lg-employers.gov.uk/pensions/circulars.html](http://www.lg-employers.gov.uk/pensions/circulars.html) The Circular does not apply to employers in Scotland; nor does it apply to part time pension claims relating to teachers / lecturers.

Terry Edwards, Assistant Director (Pensions), May 2004

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<sup>2</sup> Note that "qualifying service" counts from 1.5.79. even though the hours subsequently dropped to below 15 per week.

Type of authority:	Please tick
London Borough	
English County Council	
English District Council	
English Unitary Authority	
English Metropolitan Authority	
Welsh County Council	
Welsh County Borough Council	
	<b>Please enter numbers</b>
<b>How many part timer ET claims have been lodged, in total, against the authority?</b>	
<b>Of these, how many, in aggregate, relate to applicants who would fall within the cases identified in paragraph 15 of LGPC Circular 158?</b>	
<b>How many claims have been struck out in full?</b>	
<b>How many claims have been struck out in part / accepted in part?</b>	
<b>How many claims have been accepted in full?</b>	
<b>How many claims are still stayed on the TUPE point?</b>	
<b>How many claims are stayed for some other reason?</b>	
<b>How many claims, if any, do you intend to continue to defend on the comparator point?</b>	
<b>How many claims have you asked to be struck out in whole or in part which are currently the subject of a challenge from the applicant?</b>	

Name of authority .....

Completed by (name in full) .....

Designation ..... Date .....

**Please return the completed questionnaire by no later than 30 June 2004 to LGPC, Employers' Organisation for Local Government, Layden House, 76-86 Turnmill Street, London, EC1M 5LG.**

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