

**FIREFIGHTERS' PENSION SCHEMES
2016/11**

WHO SHOULD READ:	Chief Fire Officer of the Scottish Fire and Rescue Service Pensions Administrators Scheme Members
ACTION:	Awareness for both the employer and scheme members on how re-employment following retirement can affect the pension of 1992 FPS members
SUBJECT:	Information relating to Re-employment of FPS 1992 pensioners from 6 April 2010

The purpose of this circular is to:

- **provide clarity on the Implications of re-employment of FPS 1992 pensioners where retirement was taken below age 55**

Under the Finance Act 2004, the minimum age a person can take pension benefits increased from 50 to 55 from 6 April 2010. Members of the Firefighters' Pension Scheme 1992 have a right to retire from age 50 (provided they have 25 or more years of pensionable service) and this right is retained by a Protected Pension Age (PPA). Any pension payments paid before age 55 **without** a PPA are treated as unauthorised payments by HMRC and result in tax charges being applied both to the member and scheme for each pension payment made up until the member reaches age 55.

It is therefore critical that both the employer and the employee understand the HMRC rules on re-employment for those 1992 scheme members who have retired under age 55 with a PPA.

The following is a brief summary of how PPA's are maintained where a 1992 firefighter retires and is then re-employed. Further information is provided in the attached Q&A at Annex A.

A 1992 scheme member who retires with a PPA and subsequently takes up re-employment as a firefighter with an employer who employed them within the 6 month period before retirement may lose their PPA unless one of the following HMRC conditions is met:

1. They have been subject to a recall by the Armed Forces;
2. There has been a break in employment of at least six months;
3. There has been a break in employment of at least one month and the scheme rules provide that the pension may be abated; or
4. There has been a break in employment of at least one month and the re-employment is



“materially different”.

The 1992 scheme provides for abatement so condition 3 will apply to retired 1992 members being re-employed as firefighters. The member will retain their PPA on re-employment as a firefighter as long as there has been a break in employment of a least one month.

Condition 4 will normally be met where the individual takes up any other role within the Scottish Fire and Rescue Service, as the employment is likely to be “materially different” for example duties that do not include the role of firefighter.

Where one of the above conditions are not met the PPA will be lost and as a result any pension benefits, which could include a commuted lump sum depending on when the lump sum was paid and re-employment started, will be treated as unauthorised payments. HMRC charges would then be applied to both the member and scheme for each pension payment made up until the member reaches age 55. For the member this is set at 40% of the unauthorised payment and can be increased by 15% where the value of the unauthorised payments exceeds 25% of the member’s pension pot. A scheme sanction charge of between 15%-40% is applied to the scheme for each unauthorised payment it makes. It is therefore imperative that any re-employment of a retired 1992 member under the age of 55 is tested against these conditions.

The above also applies in the case where an individual is employed concurrently as both a regular firefighter and a retained firefighter and retires as a regular firefighter but remains employed as a retained firefighter. In this circumstance, both employments will need to cease for the protected pension age provisions to apply and then one of the re-employment conditions would need to be satisfied on re-employment as a regular/retained firefighter. See question 9 of the Protected Pension Age Q & A at Annex A for further information.

To be clear, if employment is taken up with any other employer e.g. an employer that did not employ the firefighter within the 6 months before retirement the above conditions do not have to be met.



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Action Required

To ensure that a PPA is retained the re-employment of a retired 1992 member under the age of 55 as a firefighter must be tested against these conditions.

If you have any queries on the above information then please contact SPPA. It is important that any queries should be resolved **before** re-employment as a firefighter begins.

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ANNEX A

Firefighters' Pension Scheme 1992

Protected Pension Age Q and As

1. What are authorised and unauthorised payments for tax purposes?

Since 6 April 2010, any payment of pension or pension lump sum benefit that is paid to a member of a registered pension scheme (such as the Firefighters Pension Scheme) on or after the member reaching the age of 55 is an authorised payment. Any such benefit paid before the member reaches the age of 55 will be an unauthorised payment unless it is paid to a person who meets the ill-health or serious ill-health tax rules or who has a valid protected pension age. Unauthorised payments are subject to special tax charges that may be as high as 70% (see questions 23 to 28 below).

2. When does a person qualify for a protected pension age?

Some individuals had unqualified rights on 5 April 2006 to take a pension before the normal minimum pension age (age 55 since 6 April 2010) and, where certain conditions are met, these individuals may take benefits at an age earlier than the normal minimum pension age without incurring a tax charge. This is known as the member's protected pension age and is the earliest age at which the member has an unqualified right to take benefits.

3. What is an unqualified right to take benefits?

An individual has an unqualified right to take benefits if they do not need the consent of anybody before they can take their benefits. If the scheme documentation states that the consent of the trustees, the employer or any other person is required before a member can take their benefits, that member does not have an unqualified right to take benefits. (It does not matter that the trustees have always operated their discretion to allow the payment of early benefits, the right is still not an unqualified right).

4. Do firefighters have an unqualified right to take benefits before age 55?

Under the Firefighters Pension Scheme rules, scheme members employed in a role other than that of Chief Fire Officer (however that role is titled for other

purposes) who have completed at least either 25 years service before age 55 have an unqualified right to take their benefits from age 50 or the age at which 25 years' service is completed if later. So all firefighters other than those holding the rank of Chief Fire Officers on 5 April 2006 will have a protected pension age. A Chief Fire Officer only has a protected pension age in the circumstances set out in the answer to question 5 below.

5. Are there any circumstances in which a Chief Fire Officer has a protected pension age?

Yes, in certain limited circumstances.

Chief Fire Officers do not normally have a protected pension age because they need to obtain the employer's consent to take benefits before age 55 so their right to retire is qualified. However, HMRC accepts that a Chief Fire Officer will have a protected pension age if they had a term in their contract of employment giving them an unqualified right to retire before age 55 and that contract was entered into before 10 December 2003 and still in force on 5 April 2006. In such cases, the employer has effectively given prior consent to retirement.

An individual who was not appointed as a Chief Fire Officer until on or after 6 April 2006 will retain the protected pension age they had in the rank they held as at 5 April 2006.

6. What is the protected pension age for a particular firefighter?

This will be the age on which the firefighter acquired the unqualified right to take their benefits under the rules of the Firefighters Pension Scheme. So for example

- A firefighter who completes 25 years service on or before reaching age 50 will have a protected pension age of 50.
- A firefighter who completes 25 years service at age 51 years and 125 days and has an unqualified right to take benefits at that age will have a protected pension age of 51 years and 125 days.

7. When is a protected pension age lost due to employment after taking benefits?

Where the entitlement to a protected pension age arises from membership of an occupational pension scheme before 6 April 2006, **which provided the member an unqualified right to draw retirement benefits before age 55**

under a scheme rules in place on 10 December 2003 and on that date the member also had such an unqualified right (or would have done had they been a member on that date), the protected pension age is lost if the individual is employed by certain persons. The type of restriction depends on whether the individual's protected pension age on 5 April 2006 is an age less than 50 (there are no firefighters in this position) or is an age between 50 and 54 years 364 days.

8. When is a protected pension age lost due to employment after taking benefits where a protected pension age is 50 or more?

Protection is lost where the main purpose (or one of the main purposes) for early entitlement to benefits using a protected pension age is to avoid paying tax or national insurance contributions or where the employment does not cease when benefits are taken or it does cease but - the individual is subsequently employed by a sponsoring employer in the scheme under which benefit entitlement arose, and - that employer has employed them at any time in the 6 month period immediately before benefit entitlement arose - and none of the re-employment conditions are met.

9. What about a firefighter who was simultaneously employed as both a regular firefighter and a retained firefighter before taking their regular firefighter pension benefits?

Both employments will need to cease for the protected pension age provisions to apply and then one of the re-employment conditions would need to be satisfied on re-employment as a regular firefighter and/or a retained firefighter where this is with a sponsoring employer who employed the individual at any time in the 6 month period prior to benefits being taken. **Otherwise all pension and lump sum retirement benefits paid after the re-employment started will be unauthorised payments.** It is important to note that it is the cessation of employment and re-employment with the same sponsoring employer who employed a person within the 6 month period prior to taking benefits that matters, not whether the employment is being pensioned under a registered pension scheme. A Fire and Rescue Authority (and equivalents) will always be a sponsoring employer.

10. Where a retired firefighter is re-employed by a different Fire Authority from the one that employed them in the 6 month period before retirement, is it acceptable to return after a break of less than 1 month?

Yes. The employment as a firefighter ceased, as required, at the time benefits are taken. Where the re-employment after taking benefits is with a Fire Authority which did not employ the individual at any time in the 6 month period prior to their becoming entitled to their Firefighters Pension Scheme benefits then there is no need to satisfy the re-employment condition. The individual's protected pension age is therefore retained even if the re-employment starts the day after employment ceased.

11. What are the re-employment conditions?

There are 3 re-employment conditions that could apply to firefighters:

- a break in employment of at least 6 months
- a break in employment of at least 1 month and benefits may be abated
- a break in employment of at least 1 month and the re-employment is materially different.

Retired firefighters who are re-employed by the same employer as either a regular firefighter or a retained firefighter will normally meet one of the last 2 conditions so a 1 month break before re-employment will be required for them to keep their protected pension age.

12. What is abatement?

Abatement is when a pension is reduced or stopped altogether because the pension scheme rules do not allow a member who has taken their benefits and either returned to or continued in their employment to receive more by way of their aggregate pension and pay than they received in pay immediately before taking their pensions.

For example, X was paid £30,000 p.a. immediately before taking their benefits. They receive a pension of £15,000 and return to employment on a salary of £20,000 so £35,000 in aggregate. X's pension will be abated by £5000 p.a. (with subsequent adjustments to reflect any changes in pension and/or pay) until they leave service when their full pension is restored.

The pension only has to be liable to abatement it need not be actually abated. So if in the above example X's pay was £15,000 so their aggregate pay and pension is £30,000, their pension will be liable to abatement but not actually reduced. X will satisfy the abatement re-employment condition.

13. Is a firefighter's pension paid under the Firefighters Pension Scheme liable to abatement?

Only if the individual is re-employed as a regular firefighter. If they are employed as a retained firefighter their pension will not be liable to abatement.

14. How can it be confirmed that a pension is liable to abatement?

Abatement is not a requirement/obligation imposed by HMRC. It is just that in certain circumstances its consequences are catered for in the pension tax rules.

15. If a pension may be abated but is not abated does the 1 month rule still apply?

To meet the “abatement” re-employment condition (a) the scheme must be a public service pension scheme (which the Firefighters Pension Scheme is) and (b) the member’s scheme pension under the scheme must be “liable to reduction by abatement” during the period of re-employment (at least until member is age 55). The pension does not actually have to be abated, provided it could have been abated.

16. If the SFRS has discretion to abate a pension but does not do so, does the 1 month rule still apply?

HMRC accepts that where a pension can be abated at the SFRS discretion, then that pension is “liable to abatement”. So if the discretion is exercised so that the pension is not abated, the abatement condition will be met meaning a break of at least 1 month will be sufficient to retain the protected pension age.

17. If future pension payments are abated until age 55 will there be any unauthorised payment charges in relation to that pension if a protected pension age is lost on re-employment?

Not if the pension is fully abated and so long as the abatement continues (up to age 55) as in such circumstances there are no payments of pension being made as unauthorised payments. It is only any pension payments actually made that are chargeable. Pension payments paid on or after reaching age 55 will be authorised.

18 When is the lump sum paid on retirement an unauthorised payment?

Note: This answer does not cover the unauthorised payment that occurs when a firefighter’s pension is commuted using a commutation factor of more than 20:1.

Where a firefighter takes benefits before age 55 without having a protected pension age (position where there are concurrent employments as both a regular and a retained firefighter and employment as a retained firefighter does not cease when benefits are taken) then the individual never has a protected pension age as they do not meet the retirement condition. Where all employments ceased on taking benefits the individual may meet the retirement condition at that time but the protected pension age will be subsequently lost if there is re-employment without the required one month break between the original employment and the re-employment. Any benefit payment made between the date of re-employment in such cases and the date the individual reaches age 55 (normal minimum pension age) is an unauthorised payment. Unauthorised payments are taxed at the rate of 55% (the combined unauthorised payments charge and unauthorised payments surcharge rates) and the sub-scheme administrator will be liable for a scheme

sanction charge.

This means that where an individual has not given up all their employments with sponsoring employers at the time they took their benefits any lump sum paid on retirement will always be an unauthorised payment. But where an individual loses their protected pension age on re-employment and is paid their lump sum before the date on which they were re-employed then so much of the lump sum that can be paid as a tax-free pension commencement lump sum is an authorised payment. A lump sum is paid when it reaches the member's bank account.

19. What is a materially different employment and is employment as a retained firefighter materially different from employment as a regular firefighter?

The tax rules refer to an employment that is materially different in nature. It is for the Firefighters Pension Scheme scheme administrator (not HMRC), on being notified of the re-employment of a retired firefighter who took their benefits as authorised payments before age 55, relying on a protected pension age to do so, to decide whether in the circumstances the retired firefighter has lost their protected pension age. They will need to decide (perhaps after discussing with the employer(s) concerned) whether or not the new employment is "materially different in nature" from the employment in which the retired firefighter was employed before they took their benefits. HMRC has considered this issue in relation to re-employment as a retained firefighter. It is HMRC's view, that employment as a regular firefighter and employment as a retained firefighter are materially different in nature so re-employment as a retained firefighter at least one month after retirement as a regular firefighter will not lead to loss of a protected pension age.

20. Is the SFRS (or equivalent) a sponsoring employer?

Yes. The SFRS is an employer for the purposes of the pension tax rules. A "sponsoring employer" of a pension scheme is an employer, or any of the employers, whose employees are provided with benefits under the scheme.

21. What happens if a retired firefighter who took their benefits before age 55 using a protected pension age is re-employed and does not meet the re-employment condition?

The individual concerned loses their protected pension age from the date of the re-employment. Any payment of pension or lump sum provided by commutation of pension paid before that date will remain an authorised payment. Any payment of pension or lump sum provided by commutation of pension paid on or after that date will be an unauthorised payment if it is made before age 55. Payments made on or after reaching age 55 will be authorised payments

22. If a lump sum or a pension payment is paid under the Firefighters Pension Scheme before re-employment does it remain an authorised payment?

Yes as the protected pension age is only lost from the date of employment.

23. When is a lump sum or pension payment under the Firefighters Pension scheme “paid”?

Where the payment is to be made direct to a bank account, HMRC’s view is that a payment is not made until the money is in the individual’s bank account.

24. What are the unauthorised payment tax charges?

There are 3 potential tax charges:

- the unauthorised payments charge which is charged at the rate of 40%
- the unauthorised payments surcharge which is charged at the rate of 15%
- the scheme sanction charge which is normally charged at the rate of 15%.

25. Who has to pay the unauthorised payment tax charges in respect of unauthorised payments made following the loss of a protected pension age?

The retired firefighter is liable to pay the 40% unauthorised payments charge and the 15% unauthorised payments surcharge. This is done on a Self Assessment Tax Return. The scheme administrator is liable to pay the scheme sanction charge.

26. When will the 15% unauthorised payments surcharge apply?

The surcharge will apply if all the unauthorised member payments made by the Firefighters Pension Scheme to a retired firefighter (who loses their protected pension age because of re-employment) before the end of a period not exceeding 12 months beginning with the date the first unauthorised payment was made exceed a certain amount (25% of the value of the member’s total benefits). And further periods may follow on from that. But once an unauthorised payment takes the total payments in a period beyond the 25% threshold the period ends and a new period starts.

Where a retired firefighter takes the maximum or near maximum retirement lump sum and this is an unauthorised payment because it is paid on or after the date of re-employment, then the surcharge will apply to the lump sum and to any pension payments made prior to payment of the lump sum or, if none, the first subsequent payment (unless the maximum lump sum is taken as that lump sum will itself exceed the 25% threshold). So the unauthorised tax charges for the lump sum and pension payments concerned will be 55%. Subsequent pension payments which are unauthorised payments will not be subject to the 15% surcharge, just the 40% charge.

27. How will the scheme sanction charge apply?

This charge will only apply to so much of the pension and lump sum as are attributable to service from 6 April 2006. So say a firefighter retires from 6 October 2010 after 30 years service, benefits for first 20 years service will accrue at 1/60 and the last 10 years at 2/60th. So benefits will be based on 31/60 service accrued by 5 April 2006 and 9/60 from 6/4/2006. The scheme sanction charge will therefore apply to 9/40th of the amount of any unauthorised payments. This equates (15 x 9/40) to a charge at the rate of 3.375% rather than 15%.

28. The scheme sanction charge is only due in respect of post 5/4/2006 accrued benefits. Is the charge calculated purely on accrual rates with no reference to salary or benefits

Yes – see the answer to the previous question.

29. Can the scheme administrator deduct and pay the member's unauthorised payment tax charges and the scheme sanction charge

Yes – if the scheme administrator wishes to do this and the member consents. HMRC'S Newsletter 40 sets out how this can be done and the procedure that should be followed. Newsletter 40 can be accessed [here](#).

30. Where can I get more detailed guidance from HMRC?

HMRC has published comprehensive guidance on the pension tax rules for registered pension schemes in the Pensions Tax Manual. This is published on HMRC's website. To access it, go to <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm132000>.



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