

# **Police Pension Scheme**

## **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 Police 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. So if this is when they reach age 49 and 4 months the member's protected pension age is age 49 and 4 months, if it is when they reach age 51 years and 3 months the member's protected pension age is age 51 and 3 months and so on.

### **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 police officers have an unqualified right to take benefits before age 55?**

Under the Police Pension Scheme rules, scheme members in a police rank (other those in an ACPO rank) who complete at least either 25 or 30 years of service before age 55 have an unqualified right to take benefits before reaching age 55. So police officer in a non ACPO rank on 5 April 2006 will have a protected pension age.

## **5. What is the protected pension age for a particular police officer?**

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

- A police officer who completes 30 years service at age 48 years and 230 days and has an unqualified right to take their benefits at that time will have that age as their protected pension age if they have an unqualified right,
- A police officer who completes 25 years service at age 48 years and 230 days and has an unqualified right to take benefits from age 50 (with 25 years service) will have a protected pension age of 50.
- A police officer who completes 25 years service at age 51 years and 125 days and has an unqualified right to take benefits from age 50 (with 25 years service) will have a protected pension age of 51 years and 125 days.

## **6. 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 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 (see questions 7 and 8 below), or an age between 50 and 54 years 364 days (see questions 9 to 19 below).

## **7. When is a protected pension age lost due to employment after taking benefits where the protected pension age is less than 50?**

Protection is lost where either 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 the individual is employed by a sponsoring employer in the scheme under which benefit entitlement arose if the individual is connected to that sponsoring employer. "Connected" has a specific meaning for tax purposes and for tax purposes a police officer is not "connected" to any sponsoring employer in the Police Pension Scheme. If there is no "connection" there is no need for the employment to cease when benefits are taken.

## **8. Are members who take their Police Pension Scheme benefits at age 50 or over but before reaching age 55 unaffected, provided they completed 30 years pensionable service under the Police Pension Scheme before reaching age 50?**

Yes. Police officers who complete 30 years service before age 50 and so have an unqualified right to take their benefits before that age have a protected pension age of the age at which they complete their 30 years service, regardless of the age at which they actually take their benefits. It is the protected pension age itself that matters not the age at which benefits are taken.

**9. When is a protected pension age lost due to employment after taking benefits where the 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.

**10. Where a retired police officer is employed as civilian staff by a different police force from the one that employed them as a police officer, is it acceptable to return after a break of less than 1 month?**

Yes. The employment as a police officer ceased, as required, at the time benefits are taken. Where the civilian staff employment after taking benefits is with a police force which did not employ the individual at any time in the 6 month period prior to their becoming entitled to their Police 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 civilian staff employment starts the day after employment as a police officer ceased.

**11. What are the re-employment conditions?**

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

- 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 police officers who are re-employed 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 police pension paid under the Police Pension Scheme liable to abatement?**

Only if the individual is re-employed as a police officer. If they are employed as civilian staff their pension will not be liable to abated.

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

The Police Pension Scheme rules should set out the circumstances in which a member's pension may be abated. The relevant sub-scheme administrator should be able to advise on this. Note: abatement is a matter of public policy and that policy is owned and administered by HM Treasury. 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 PPS 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 future pension payments are abated until age 55 will there be any unauthorised payment charges?**

Not if the pension is fully abated. It is only the payment actually made that is chargeable. Pension payments paid on or after reaching age 55 will be authorised.

**17. What is a materially different employment?**

The tax rules refer to an employment that is materially different in nature. It is for the relevant Police Pension Scheme sub-scheme administrator (not HMRC), on being notified that a retired police officer 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 police officer 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 police officer was employed before they took their benefits. However, in HMRC's view, employment as a serving police officer and employment as a member of civilian staff will normally be materially different in nature.

**18. Police officers are not employees but office holders. When they return in a staff position they are employed – is this still re-employment?**

Yes. Under the income tax rules, office holders are deemed to be employees. The person under whom the office-holder holds the office is deemed to be the employer. And references to “employment” are read accordingly. These rules also apply to the pension tax rules.

**19. Is a police force a sponsoring employer?**

Yes. As explained at question 16 above, a police force or a police authority (as appropriate) will be 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.

**20. What happens if a retired police 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

**21. If a lump sum or a pension payment is paid under the Police 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.

**22. When is a lump sum or pension payment under the Police 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.

**23. 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%.

**24. 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 police officer 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 appropriate Police Pension Scheme sub-scheme administrator is liable to

pay the scheme sanction charge. But the scheme rules may allow this to be recovered from the member.

**25. When will the 15% unauthorised payments surcharge apply?**

The surcharge will apply if all the unauthorised member payments made by the Police Pension Schemes to a retired police officer (who loses their protected pension age because of re-employment) before the end of a 12 month period beginning with the date the first unauthorised payment was made exceed a certain amount. And further periods may follow on from that.

Where a retired police officer 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 all pension payments made in the 12 month period mentioned earlier. So the member's 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.

**26. 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 police officer retires from 6 October 2010 after 30 years service. For the first 20 years of service, pension benefits (before any commutation for a lump sum) will have accrued at the rate of 1/60 of pensionable salary for each year of service and at the rate of 2/60 of pensionable salary the last 10 years, giving the maximum 40/60<sup>th</sup> pension. 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 9/40<sup>th</sup> (31 + 9) 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%.

**27. 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.

**28. Can a sub-scheme administrator deduct and pay the member's unauthorised payment tax charges and the scheme sanction charge**

Yes – if the member consents and following the procedure set out in HMRC'S Newsletter 40 which can be accessed at <http://webarchive.nationalarchives.gov.uk/20110109132006/http://hmrc.gov.uk/pensionschemes/ps-newsletter40.htm>

**29. 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 Registered Pension Schemes Manual (RPSM). RPSM is

published on HMRC's website. To access it, go to <http://www.hmrc.gov.uk/manuals/rpsmmanual/index.htm>. The Technical Pages contain guidance on the protected pension age rules in Chapter 3 at RPSM03106000 onwards and on the unauthorised payment tax charges in Chapter 4 at RPSM04104000 onwards