

Police Federation  
Of England and Wales



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Established by Act of Parliament

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FROM THE GENERAL SECRETARY'S OFFICE

IR/sg

8 December 2011

**JBB CIRCULAR NO : 032/2011 (REVISED)**

**To: All Branch Boards**

Dear Colleagues

### **PROTECTED PENSION AGE - RETIREMENT AND RE-EMPLOYMENT**

We have recently become aware of a potential tax issue for members of the 1987 Police Pension Scheme ("the PPS") who retire and take a pension under the age of 55 and then take up employment as police staff or are re-engaged as police officers.

**What follows is a summary of the issue as we understand it and an indication of the steps we are taking. It is not intended to be a comprehensive or definitive statement of the law or the tax position. There may be other factors which are not addressed in this circular that affect the position. Any retiring member who is considering taking up employment as a member of police staff or being re-engaged as a police officer must satisfy him or herself that the implications of doing so are not so adverse as to amount to a deterrent. That may involve seeking assurances from the Force, Police Authority, HMRC or taking independent tax advice.**

Our understanding of the issue is, in summary, as follows:

1. From 6 April 2010, the Minimum Pension Age rose to age 55. The rights of members of the PPS to retire in certain circumstances before that age were protected and those members have a Protected Pension Age.

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2. However, that protection can be lost in certain circumstances, meaning that payments become unauthorised and taxable.
3. The particular concern is that on re-employment by certain employers, including for our members potentially a police force or police authority, one of four conditions must be satisfied in order for a member aged between 50 and 54 to remain protected.
4. Those conditions are broadly:
  - recall by the Armed Forces
  - a break in employment of at least six months
  - a break in employment of at least one month and benefits may be abated
  - a break in employment of at least one month and the re-employment is materially different
5. In relation to abatement HMRC guidance states:

“An individual taking benefits from a public service pension scheme who, after one month following becoming entitled to benefits, becomes employed by any of the employers mentioned in RPSM03106064 will not lose their protected pension age if their scheme pension is liable to be reduced by abatement. The pension does not have to be actually reduced, just liable to abatement. For example ‘A’ takes benefits from public service scheme X. After 1 month ‘A’ returns to work for employer X but for reduced hours. ‘A’s pension and new pay level are tested by the scheme to see if their pension should be abated. ‘A’s pension does not need to be reduced, but because it was tested for abatement and could have been reduced ‘A’ keeps their protected pension age for the benefits in payment.”
6. In relation to re-employment being “materially different”, HMRC’s guidance states:

“A simple change in hours will not be a materially different employment. To be a materially different employment the duties and/or the level of responsibility in the new employment must be different from the old employment.”
7. This understanding is drawn from the HMRC guidance at:

<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM03106064.htm>  
<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM03106065.htm>
8. In relation to members who are under 50, the conditions are different. The position is dealt with at:

<http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM03106063.htm>

We are writing to the Home Office and making, amongst others, the following points:

- expressing our concern that this issue does not appear to have been flagged to police forces and police authorities;
- seeking confirmation of the steps that the Home Office is taking with administrators to ensure that this does not cause any problems in the future; and
- asking the Home Office to issue guidance, preferably with HMRC approval, in relation to abatement and that employment as a member of police staff will, in itself, be regarded as “materially different” from service as a police officer.

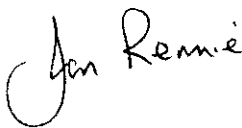
Branch Boards should avoid giving advice on tax or financial matters or from giving the impression that they are doing so. Members should be encouraged to seek assurances in the circumstances of their case from the Force or Police Authority or HMRC and to consider taking their own independent tax advice.

Branch Boards should also contact their pension administrator and HR department and seek assurances that:

- the tax implications are understood and appropriate steps taken to minimise the risk of any adverse impact on retired members; and
- those implications will be explained to any retired member before re-employment starts.

I will keep you informed of any further developments.

Yours sincerely



**IAN RENNIE**  
General Secretary

# RPSM03106064 - Technical Pages: Protecting pension rights from tax charges: Taking benefits before normal minimum pension age: Employment after taking benefits - 2010

## Loss of protection due to employment after taking benefits: protected pension ages 50 to 54

### [Para 22(7)(b) & 22(7B)-(7J) Sch 36]

The restrictions described below only apply where benefit entitlement arises after 5 April 2010. They do not apply where benefit entitlement arose before 6 April 2010. Once the individual reaches the **normal minimum pension age** of 55 the restrictions cease to apply.

Protection will be 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.

Protection will be lost if after becoming entitled to benefits the individual is employed by one of the following employers and one of the four re-employment conditions listed below is not met.

- An employer who employed the individual in the six months before benefit entitlement arose, and who was also a **sponsoring employer** in the scheme under which benefit entitlement arose in that six month period.
- Any person connected with the employer described in the previous bullet point. Note that under this condition the person employing the individual does not need to be a sponsoring employer.
- Any sponsoring employer in the pension scheme under which benefit entitlement arose that is connected with the individual.

Connection has the meaning given in s993 ITA 2007. The Capital Gains Manual - CG14580 to CG14623 - gives information on who connected person are for the purposes of s993 ITA 2007.

The four re-employment conditions are set out in more details in [RPSM03106065](#) but broadly are

3. recall by the Armed Forces
4. a break in employment of at least six months
5. a break in employment of at least one month and benefits may be abated
6. a break in employment of at least one month and the re-employment is materially different

If the individual is not employed by any of the employers listed above the individual does not have to meet any of the four re-employment conditions.

### Example

Andy becomes entitled to benefits from the an industry wide pension scheme on 7 April 2010 aged 54 in respect of his employment with employer 1 Ltd. On 8 April Andy becomes employed by employer ABC Ltd. As this company is not a sponsoring employer in the industry wide scheme and is not connected to employer 1 Andy will not lose his protected pension age.

Andy could also have gone to work for employer 2 Ltd. Employer 2 Ltd is also a sponsoring employer in the industry wide pension scheme. However because employer 2 Ltd is not connected either to Andy or employer 1 Ltd, and did not employ Andy in the 6 months before 7 April 2010 Andy would not lose his protected pension age by becoming employed by employer 2 Ltd.

## RPSM03106065 - Technical Pages: Protecting pension rights from tax charges: Taking benefits before normal minimum pension age:

### Loss of protection due to employment after taking benefits between age 50 to 54: employment conditions

#### [Para 22(7)(b) & 22(7D) – (7I) Sch 36]

Where after becoming entitled to benefits after 5 April 2010 between the ages of 50 and 54 (inclusive) the individual is employed by an employer shown in [RPSM03106064](#) the individual must meet one of the following re-employment conditions.

Once the individual reaches the **normal minimum pension age** of 55 these restrictions cease to apply.

#### Recall by the Armed Forces

An individual will not lose their protected pension age where that individual became entitled to benefits from the Armed Forces Pension Scheme after age 49 and is later subject to a compulsory re-call. A compulsory recall is defined as permanent service

- under Part 4 or Part 5 of the Reserve Forces Act 1996,
- under a recall or call-out order made under the Reserve Forces Act 1996
- having been called out or recalled under the Reserve Forces Act 1980, or
- because of any other call-out or recall obligation on an officer.

#### A break in employment of at least six months

If the individual is not employed by any of the employers mentioned in [RPSM03106064](#) within the six months after becoming entitled to benefits the individual will not lose their protected pension age.

#### A break in employment of at least one month and benefits may be abated

An individual taking benefits from a **public service pension scheme** who, after one month following becoming entitled to benefits, becomes employed by any of the employers mentioned in [RPSM03106064](#) will not lose their protected pension age if their **scheme pension** is liable to be reduced by abatement. The pension does not have to be actually reduced, just liable to abatement. For example Judy takes benefits from public service scheme X. After 1 month Judy returns to work for employer X but for reduced hours. Judy's pension and new pay level are tested by the scheme to see if her pension should be abated. Judy's pension does not need to be reduced, but because it was tested for abatement and could have been reduced Judy keeps her protected pension age for the benefits in payment.

#### A break in employment of at least one month and the employment is materially different

An individual who after one month following becoming entitled to benefits, becomes employed by any of the employers mentioned in the 3 bullet points on [RPSM03106064](#) will not lose their protected pension age if the new employment is materially different. A simple change in hours will not be a materially different employment. To be a materially different employment the duties and/or the level of responsibility in the new employment must be different from the old employment.

This condition no longer needs to be met six months following the individual becoming entitled to benefits.

# RPSM03106063 - Technical Pages: Protecting pension rights from tax charges: Taking benefits before normal minimum pension age: Employment after taking benefits below age 50

## Loss of protection due to employment after taking benefits: protected pension age below age 50

### **[Para 22(7)(b), (7A) & (7J) Sch 36]**

After becoming entitled to benefits after 5 April 2006 the individual cannot be employed by a **sponsoring employer** in the scheme under which benefit entitlement arose if the individual is connected to that sponsoring employer. Connection has the meaning given in s993 ITA 2007. The Capital Gains Manual - CG14580 to CG14623 - gives information on who connected persons are for the purposes of s993 ITA 2007.

So an individual becoming entitled to benefits before age 50 can stay in employment with their employer, or become employed by another sponsoring employer in the scheme, as long as the member does not meet the rare circumstance of being connected with their employer.

#### **Example 1**

A footballer may take benefits at their protected pension age and continue to play for, or be employed in a non-playing capacity with, any Football League club as long as they, for example, do not own or control the club.

#### **Example 2**

Subject to the rules of the Armed Forces Pension Scheme, an individual may become entitled to benefits from that scheme and be employed in the Armed Forces after becoming entitled to benefits, e.g. if the individual is re-called to the Armed Forces.

Protection will also be 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.