

**Protected Pension Age – Implications for Re-employment of FPS Pensioners from 6<sup>th</sup> April 2010.**

Under the Finance Act 2004, the Minimum Pension Age (MPA) rises to age 55 from 6<sup>th</sup> April 2010. Members of the Firefighter's Pension Scheme 1992 have a right to retire from age 50 (provided they have 25 or more years of pensionable service). This right to retire at an age below 55 is protected<sup>1</sup> and on retirement members will receive a Protected Pension Age (PPA).

HM Revenue and Customs have taken the view that protection does not extend to Chief Fire Officers appointed on or before 5<sup>th</sup> April 2006.

The purpose of this guidance note is to bring to the attention of Fire and Rescue Authorities the tax rules that will apply from 6<sup>th</sup> April 2010 where an individual who has taken pension benefits from the FPS takes up employment again. We are aware that some FRAs re-employ firefighters after retirement and this guidance note will therefore be of particular interest to those considering the employment of firefighters who retired with a PPA on, or after, 6<sup>th</sup> April 2010.

From 6<sup>th</sup> April 2010, an individual who retires with a PPA and who subsequently takes up employment will lose that protection if they are employed by one of the following employers and one of the four 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.

Our interpretation of a "sponsoring employer" in connection with the FPS is the relevant employing authority, whether a fire and rescue authority or county council.

Therefore, from 6<sup>th</sup> April 2010 an individual who has retired with a PPA and is subsequently re-employed by a FRA before they have reached age 55 will incur additional tax charges on all pension benefits, including any commuted lump sum, paid to them before reaching age 55 unless one of the following four re-employment conditions is met:

1. recall by the Armed Forces
2. a break in employment of at least six months

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<sup>1</sup> Under the Registered Pension Schemes (Prescribed Schemes and Occupations) Regulations 2005 (SI 2005 No. 3451).

3. a break in employment of at least one month and benefits may be abated
4. a break in employment of at least one month and the re-employment is materially different

With regard to re-employment condition 3, we are advised by HMRC that the abatement condition is satisfied provided that the employer has the discretion to abate. Whether abatement is actually applied is not material. Under Rule K4 of the FPS, a FRA has the discretion to abate where a person entitled to a pension is employed as a regular firefighter.

With regard to re-employment condition 4, the legislation is silent on the definition of “materially different” and HMRC advise that the normal meaning should be applied.

More detailed guidance is included in the HMRC Registered Pension Schemes Manual at <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM03106064.htm>.

### *Communities and Local Government*

*26<sup>th</sup> January 2010*