

## Firefighters Pension Scheme

### Technical Note: Taxable treatment of Ill-Health pension paid from the compensation scheme

#### Background

This note sets out the correct taxable treatment of ill-health pensions paid from the compensation scheme to retained firefighters only who were employed prior to 6 April 2006.

These firefighters, because they could not join the 1992 pension scheme, were given compensatory provisions under the compensation scheme rules.

**This note only applies to those retained firefighters who have been awarded an ill-health pension under Part 8, rule 2, paragraph 4 (subject to any reductions under paragraph 4a).**

#### Who does this affect

This applies to

- A retained firefighter who was employed prior to 6 April 2006 and [prior to 1 April 2014](#) was awarded an injury and ill health pension for his retained service under the compensation scheme, Part 8, rule 2, paragraph 4.
- A retained firefighter employed prior to 6 April 2006, who didn't subsequently become a '[special member](#)' under the terms of the modified arrangements and after [1 April 2014](#) has been retrospectively awarded an injury and ill health pension for his retained service under the compensation scheme, where it has been determined that the injury is a qualifying injury and was sustained before the 1st April 2014 under the protected right granted in [SI 2014/447](#) paragraph 2 of rule 3.

## HMRC rules

HMRC have previously confirmed that payments made under the compensation scheme, specifically the ill-health pensions under Part 8, Rule 2, Paragraph 4 **should not be treated as taxable**.

This is in line with the guidance given in [EIM74310](#)

*The position with regard to the fire service is virtually identical. Ordinary, short service and ill health pensions are taxable; 'injury' pensions are not. Pensions awarded to fire service personnel solely on the grounds of injury whilst on duty, even if called ill health pensions, are regarded as exempt under section 644 ITEPA. These individuals will either not be regular firefighters or will not have served two (previously five) years.*

LGA have recently received enquiries from administrators in which local officers at HMRC have indicated that these pensions are not tax exempt. For the avoidance of doubt LGA has re-clarified the position with HMRC who have confirmed that pensions paid in the specific circumstances listed should **not be subject to tax**, under section 644 ITEPA 2003 which exempts certain pensions.

*"From the information provided the firefighters are not under the main pension scheme and have been awarded the injury pension under the compensation scheme, the pension does not come under registered schemes which are chargeable under section 579a ITEPA 2003. As such the payments will come under section 644 ITEPA 2003 which exempts certain pensions paid due to disablement caused by injury at work. Please see the link for [EIM74012](#) which gives more detail and examples on how this would work which will help in deciding if those concerned fit the conditions for the exemption under S644 ITEPA 2003. This is in line with your own view as previously communicated."*

## What is the effective date of the HMRC guidance EIM74310

The guidance in [EIM74310](#) is dated 29 February 2016, however this reflects the date the Employment Income Manual migrated to GOV.UK from the HMRC website in March 2016. EIM74000 was originally published on the HMRC website on **1 January 2008**, and HMRC trace it back to **2005**.

## When did this come to light

This was first raised with LGA as a specific query in September 2015, although it was initially mentioned at a technical group meeting in 2014 (see item 7c of the meeting [minutes](#) ).

LGA issued an email to Fire Scheme Pension Practitioners and Pension Scheme Managers on 5 October 2015 (linked [here](#) on khub).

## Correcting any payroll errors that have occurred due to treating this pension as taxable in the last four tax years

LGA has recently contacted HMRC for guidance on how to correct the payroll errors if these pensions have been treated as taxable.

There is general guidance on the HMRC website for individuals to claim a [tax refund](#). If the authority wishes to make a claim they may be able to do so by making adjustments via their PAYE/RTI Returns. There is [guidance](#) on the HMRC website regarding payroll errors, and this includes a link to the HMRC's employer helpline 0300 200 3200

HMRC have provided the following guidance

1. If the pension involved consists solely of non-taxable income there is no need to submit Full Payment Submissions (FPS's).
2. If the pension has been returned as a non-taxable for all years, we require a FPS with a leaving date and nil year to date figures.
3. If the pension was returned as taxable in earlier years the following submissions are required –
  - FPS with a leaving date and nil year to date figures if not already submitted
  - Earlier Year Updates (EYU's) reducing the pay and any tax deducted to nil. This should be provided for every year the pension was incorrectly taxed, within four tax years of the current tax year or accounting period. (At the date of this advice this would be 2013-14)
  - EYU's should reflect the adjustments required to arrive at the correct pay and tax details **not** the amended figures.

**Repayments will arise to employers for any tax overpaid once the EYU's have been processed. It is the employer's responsibility to refund tax overpaid to the affected pensioners.**

Guidance on how employers can correct payroll errors can be found at <https://www.gov.uk/payroll-errors/correcting-your-fps-or-eps>

## Payroll errors that occurred more than four tax years ago from the current relevant tax period.

HMRC have advised that they can only correct payroll errors through the overpayment tax relief claim procedure within four years of the current relevant tax period. Any payroll errors that have occurred before that date will need to be compensated for by the authority.

## How far back should the Fire Authority refund any payroll errors.

This should be an individual decision for each Fire Authority to make based on the circumstances of their payments. It is understood some Fire Authorities received advice that prior to 2006 this was a taxable payment. However Fire Authorities may wish to consider the date the compensation scheme was separated from the main pension scheme under [SI 2006/3434](#) which came into force on 25<sup>th</sup> January 2007 and the finance guidance requiring a separation of the funding mechanism for ill-health pensions treated as a payment from the compensation scheme in determining how far back any payment should be rectified. Please contact [bluelight.pensions@local.gov.uk](mailto:bluelight.pensions@local.gov.uk) if you wish to discuss this further, or have received legal advice on this.

## Firefighters Pension Fund

Please be aware that any ill-health pension paid under the Part 8, Rule 2, paragraph 4 is treated as a payment from the compensation scheme and should be paid from the authority's operating account, not from their pensions fund as per paragraph 3.24 of the [finance guidance](#) issued in August 2006.

## Regulations

### Pre 1 April 2014

[Part 8 Special Cases, rule 2, paragraph 4](#) amended by [SI 2006/3434](#)

Prior to 1 April 2014, if a retained firefighter who was employed before 6 April 2006 (but therefore not eligible to join the 1992 scheme) was disabled due to a qualifying injury, they were to be treated as if they were a whole-time firefighter for the purpose of the injury award and under Part 8, rule 2, paragraph 4 an ill health pension under the 1992 regulations, as if they were a whole-time firefighter, was also payable to them. (Regulation 4A required any ill-health pension paid as a result of being a member of the 2006 scheme to be subtracted from this amount)

### Post 1 April 2014

Part 8, rule 2 was [amended](#) in 2014 so that the above no longer applied to a retained firefighter. This is because the modified scheme was brought in allowing a retained firefighter to retrospectively join the scheme. However, under the [transitional provisions](#), (rule 3, paragraph 2), where it has been determined that the injury is a qualifying injury **and** was sustained before 1 April 2014, then the right to an ill-health pension as a whole-time firefighter based on the 1992 rules as above would still apply.

*(2) The amendments made by article 2 and paragraphs 6 and 7 of the Schedule to this Order shall not have effect in relation to a person who has been in continuous employment as a retained firefighter since 5th April 2006 and has sustained an injury in the performance of his duties as a firefighter before the coming into force of this Order where it is subsequently determined that that injury is a qualifying injury (coming within the meaning of rule 7 of Part 1 of the Compensation Scheme) and that he is permanently disabled as a result of that injury.*

## Final Note

This note was prepared on 18<sup>th</sup> September 2017 for Fire Authorities consideration by the Local Government Association. It does not constitute legal advice and should not be treated as so.

## Version

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## Distribution

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