

Protected Pension Age (PPA) – Implications for re-employment of PPS pensioners from 6th April 2010

PLEASE NOTE THAT THIS BRIEFING NOTE RELATES ONLY TO POLICE PENSION SCHEME (PPS) PENSIONERS; THE NEW POLICE PENSION SCHEME (NPPS) HAS A MINIMUM PAYMENT AGE OF 55 AND IS NOT AFFECTED

Important points to consider raised in the briefing note

1. Your authority may become liable for a scheme sanction charge
2. You may need to review your authorities policies about re-employing retired police officers
3. You need to understand the different protected pension ages

Background

Since April 2006 individuals who take pension and/or lump sum benefits from a registered pension scheme before normal minimum retirement age have been liable to a tax charge, unless benefits are ill-health related.

The normal minimum pension age increased from age 50 to age 55 in April 2010. Some individuals had the right (on 5 April 2006) to take a pension before the normal minimum pension age. Where certain conditions are met, these individuals can still 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*' (PPA).

The PPA for PPS members is the earlier of:

- their age the day after they attain 30 years of service; or
- when they have reached 25 years of service beyond age 50.

(The position is slightly more complicated for Chief Officers, and we explain this in more detail in the attachments to this briefing note.)

The member, generally, can rely on this protection and continue to receive their benefits without any tax charges. However, there are certain circumstances where this protection can be lost if the member is re-employed following retirement before age 55.

Loss of protection due to employment after taking benefits

Re-employment with a protected pension age under 50

The technical area of HMRC registered pension scheme manual contains the following information:

*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.

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.

Protected pension age between 50 and 54

Again the technical area of HMRC registered pension scheme manual contains the following information:

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

- 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*

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.

Explanatory Notes:

Sponsoring employer

In relation to an occupational pension scheme means-

- the employer, or
- any of the employers, to or in respect of any or all of whose employees the pension scheme has, or is capable of having, effect as to provide benefits.)

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

Taxation – unauthorised payments

Where PPA is lost any benefits that continue to be paid become unauthorised payments. The member would be liable to a 40% unauthorised payment charge and the Authority would also be liable to a scheme sanction charge *on all payments made, including any commuted lump sum, until the member reaches age 55.*

Summary

Our understanding of the current position is set out in the attached table (Appendix 1). Please remember that this is our interpretation of the position only and does not represent an authoritative statement of law.

Based on this understanding, we believe that Authorities should take extreme care to ensure that the implications of re-employment following retirement are taken into consideration and made clear to the individual concerned.

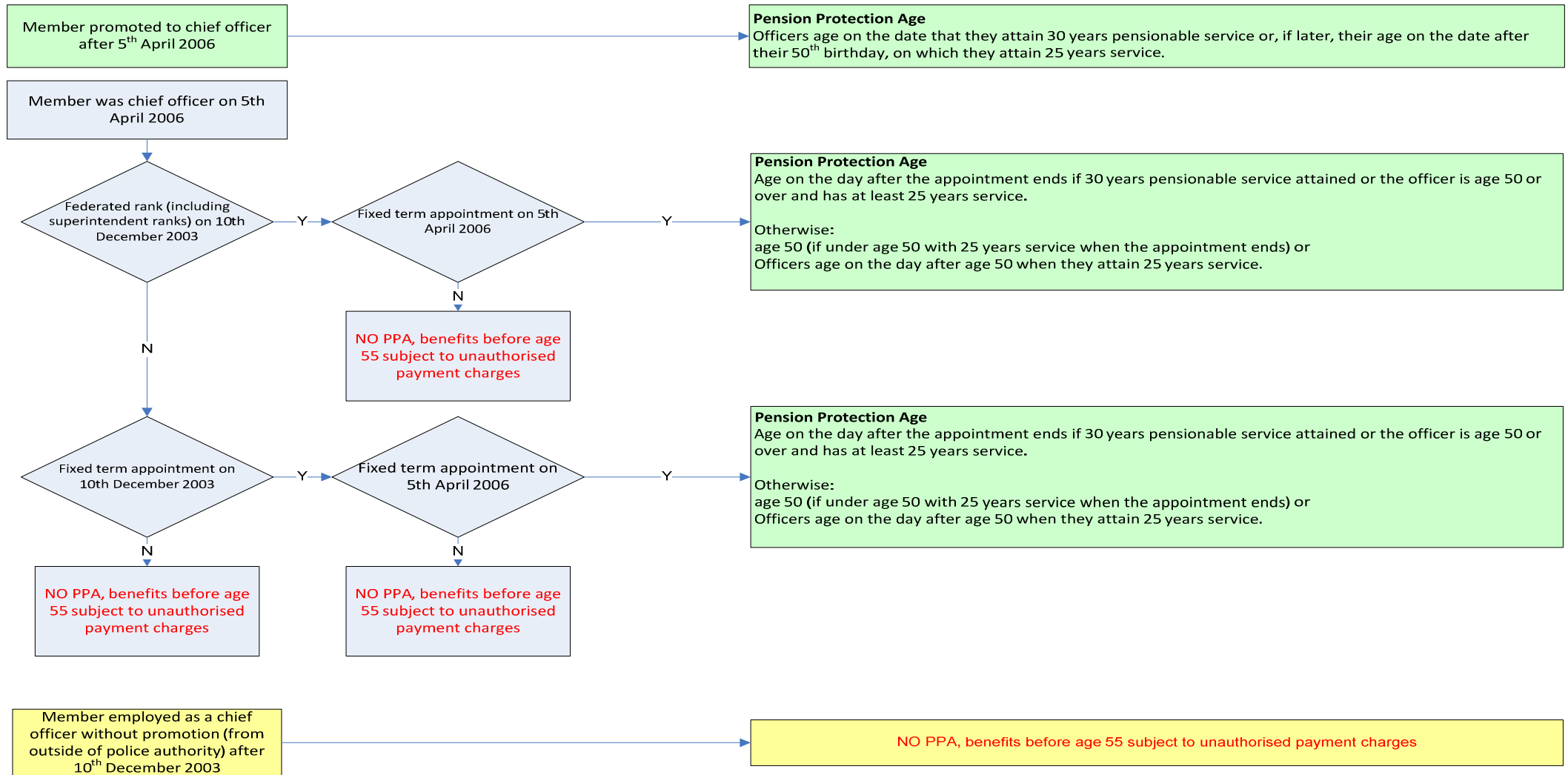
You may also wish to review your force's policies on re-employment to ensure the appropriate gap between employments is enforced.

Where the loss of a protected pension age triggers an unauthorised payment charge to the member, the Authority will also be liable to a scheme sanction charge as outlined in previous briefing notes.

PPS Leavers under age 55 and re-employment issues

THE FOLLOWING REPRESENTS OUR UNDERSTANDING OF THE CURRENT POSITION IN RELATION TO HMRC RULES SURROUNDING RE-EMPLOYMENT OF FORMER OFFICERS OF THE PPS WHO HAVE A PROTECTED PENSION AGE OF BELOW 55. IT IS NOT INTENDED TO BE EITHER A DEFINITIVE INTERPRETATION OR GUIDE TO THE RELEVANT TAXATION LEGISLATION. POLICE AUTHORITIES AND INDIVIDUALS SHOULD SEEK THEIR OWN TAXATION AND/OR LEGAL ADVICE WHERE THERE IS ANY DOUBT OR AMBIGUITY.

ACPO ranks have a 'Protected Pension Age' based on when and how they were appointed to their Chief Officer post. Below is a flowchart to determine whether there is a protected pension age below 55. When the PPA has been determined, the table overleaf demonstrates the effect of re-employment where there is a PPA of under age 55.



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Protected pension age <50

Re-employment has no impact on protected pension age. However, abatement will apply if re-employed as police officer.

Protected pension age 50-54

Where date of leaving is before 6th April 2010:

Re-employment has no impact on protected pension age. However, abatement will apply if re-employed as police officer.

Where date of leaving is on or after 6th April 2010:

New employment type		Employer		Break in employment					
				< 1 month		1 month to 6 months		6 months and over	
				Pension abated	PPA retained	Pension abated	PPA retained	Pension abated	PPA retained
Officer	Own Force	✓	✗	✓	✓	✓	✓		
	Other Force	✓	✓	✓	✓	✓	✓		
Civilian	Own Force	✗	✗	✗	✓*	✗	✓		
	Other Force	✗	✓	✗	✓	✗	✓		
	Any other body	✗	✓	✗	✓	✗	✓		

* IF the reemployment is "materially different in nature". HMRC have stated on their technical pages that:

"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."

Individuals are responsible for their personal tax liability and should seek independent taxation advice where they are unsure as to the effect of re-employment.