

From: [REDACTED]
Sent: 23 January 2012 17:17
Cc: [REDACTED]
Subject: Pensions taxation and Police Officer re-employment

Dear All

As you are aware, a personal taxation issue has arisen recently for some former police officers who have been re-employed as police staff. The Home Office cannot make any determinations on this personal taxation issue, but we have been working with HMRC to facilitate their guidance (the "technical analysis" and "Q&A" attached) being sent to you.

HMRC have said that if you have any queries you should contact them. This includes queries on how the payments should be made.

Telephone enquiries about the Q and As or the technical note should be directed to the Pension Schemes Services helpline (0845 600 2622) who have been fully briefed on this issue. If they are unable to answer your query we understand that they will pass you to the relevant person.

Email enquiries (NB there is a limit of 2000 characters on this service.) should be sent via: https://online.hmrc.gov.uk/shortforms/form/PSH_General?dept-name=Pension_Services&sub-dept-name=&location=36&origin=http://www.hmrc.gov.uk

If the link doesn't work the following instructions lead to the same page:

Go to HMRC website, click on "Pension Schemes" in the "businesses and corporations" box (top right of page) then click on "Tell me about...Pension Schemes" (the first bullet point) then click on "How to contact us" at bottom of the page.

Written enquiries should be addressed to:

*Pension Schemes Services
FitzRoy House
Castle Meadow Road
Nottingham
NG2 1BD*

HMRC's guidance has been written for pension administrators. We understand that you may wish to forward on one or both of the attached guidance to other interested parties, but we ask that you do not forward our email.

On **tax returns**, HMRC have told us the following, which you may wish to pass on to individuals:

Unauthorised payments need to be returned on a Self Assessment tax return. Where an individual is uncertain as to whether or not they have received any payments that are unauthorised payments or who is to meet the tax charges, they should make a note in the "white space" that they have received a payment that may be unauthorised but are awaiting confirmation from HMRC Pension Schemes Services (Technical). The individual's tax office can then contact us if they wish to know more. They can submit an amended return within the following 12 months once position is clear.

HMRC's home page has links to advice on making and submitting returns.

Kind regards,

[REDACTED]

HMRC Technical Analysis of the Operation of the tax rules for a Protected Pension Age (“PPA”), with particular regards to the Police Pension Scheme (“the PPS”)

The legislation – paragraphs 21 and 22 of Schedule 36 to the Finance Act 2004 (as amended)

There are 2 basic requirements for an individual in a registered pension scheme that was, inter alia, an approved occupational pension scheme or a relevant statutory scheme (such as the PPS) if they are to have a PPA under paragraph 22.

These requirements are set out in paragraph 22(1) and are that:

(a) The scheme is a protected pension scheme. Paragraph 22(2) – (6) then provides that broadly this means that the member and the scheme must satisfy the entitlement condition (or there is block transfer from such a scheme). The entitlement condition requires that, on 10 December 2003, the scheme rules provided an unqualified right to benefits from an age less than 55 and that under the scheme rules the particular member qualified for such a right as at both 10 December 2003 and 5 April 2006.

(b) The retirement condition is met in relation to the scheme and the member.

The detail of retirement condition is set out in paragraph 22(7)-(7J). This is a complex condition and to meet it:

(i) The member must become entitled to all benefits under the scheme on the same date (excluding any benefits where the member’s actual entitlement to them arose before 6 April 2006). This is unlikely to occur in the PPS.

(ii) The member’s becoming entitled to the benefits must not have been part of an arrangement to avoid payment of tax or NICs. It is not anticipated that such arrangements will occur in relation to PPS members.

(iii) Where the member has a right to take benefits under the scheme from an age between 50 and before reaching age 55 then, after becoming entitled to their benefits, the member must not be employed by any person who was

- a sponsoring employer in relation to the pension scheme at any time the 6 month period ending with the day on which the member became entitled to their benefits and who employed the member at any time during that same period, or
- any person connected with such a person, or
- any person who is a sponsoring employer in relation to the scheme and with whom the member is connected.

The only exception is where after becoming entitled to their benefits a member of the armed forces is employed by such an employer as a result of compulsory recall.

“Connected” in this context means “connected” in the manner set out in section 1122 Corporation Taxes Act 2010.

It is accepted in the context of the PPS that the sponsoring employers of the scheme are not connected with each other and that a police officer is not connected with any PPS sponsoring employer.

(iv) If (iii) is not satisfied because the member returns to employment with one of the types of persons set out therein, (iii) is to still be regarded as satisfied (and so the member meets the retirement condition) if one of 3 re-employment conditions is met.

The 3 re-employment conditions are that:

- the member not employed within the terms of (iii) above until at least 6 months after they became entitled to their benefits under the scheme
- the member is employed within the terms of (iii) above within 6 months but after a break of at least 1 month but the pension scheme is a public service pension scheme and the member’s benefits under the scheme include a scheme pension which is liable, until at least attaining age 55, to abatement whilst the member is so employed
- the member is employed within 6 months but after a break of at least 1 month in an employment(s) which is(are) materially different in nature from the employment in which the member was employed immediately before becoming entitled to their benefits.

[In RPSM, for convenience the exception for compulsory recall by the armed forces is treated as though it were a re-employment condition, so the guidance at RPSM03106065 refers to and details 4 re-employment conditions.]

HMRC's interpretation of the operation of the legislation

Effectively, requirement (a) sets out the circumstances in which a member can establish an entitlement to a PPA.

Requirement (b) then operates to set out the circumstances in which that entitlement applies.

For those entitled to a PPA between age 50 and before reaching age 55, the retirement condition is effectively two pronged. First there is an initial requirement which is that the member must both take all their benefits under the scheme at the same time and cease their employment with every employer who employed them in the preceding 6 months. If they do not then they do not meet the condition so do not have a PPA.

But if this initial requirement is satisfied, there is then a further requirement that is satisfied for so long as the person does not return to employment after becoming actually entitled to their benefits within the period of at least 6 months generally or at least 1 month in cases where either abatement may apply to the pension or the re-employment is in a materially different employment.

Once the 1 or 6 month timeframe has passed, the member's PPA cannot be lost. If a member is re-employed in the intervening period the member has a PPA until such time as the date of re-employment, only losing their PPA from that date.

Although it is not entirely clear in the wording of the legislation itself, HMRC's view that a PPA is only lost from the date of re-employment - where the re-employment condition is not met because the re-employment occurred before the expiry of the required time gap between employment and re-employment - consistent with the intention behind the legislation. This is set out in the following extract from paragraph 56 of the Explanatory Note for Clause 162 and Schedule 23 to Finance Bill 2006 which inserted the re-employment conditions into paragraph 22.

"One of the conditions of the transitional protection applying to someone taking benefits from a registered pension scheme before normal minimum pension age is, as originally provided for, that they do not become re-employed by a sponsoring employer of the same scheme. This is provided for at sub-paragraph 22(7)(b). If the individual does become so re-employed, the consequence is that the transitional protection is lost and all payments of benefits between the date of re-employment and the individual reaching normal minimum pension age will be treated as unauthorised payments, and subject to the range of tax charges applying to unauthorised payments. Paragraph 39 amends the condition so as to allow re-employment in certain circumstances. It also provides a new condition in certain circumstances that the individual must not become re-employed by an employer that is associated with their original employer."

The idea that a form of protection is not lost unless and until a certain event happens and so prior benefit crystallisation events are not re-visited or overturned is not limited to the PPA legislation. It also applies in relation to both enhanced protection and fixed protection. And most other forms of protection (such as primary protection) cannot be lost all, or at least not within the protected scheme. So HMRC's approach is both consistent with the intention evidenced in the Explanatory Note and the operation of other forms of protection.

It is HMRC's view therefore that any payment made before the date of re-employment which was made as an authorised payment by virtue of the member's entitlement to a PPA at the time of payment remains an authorised payment, even though the member may subsequently lose their entitlement to a PPA by becoming re-employed in circumstances which do not meet any of the re-employment conditions.

It is only payments that are made on or after the date the member loses their PPA and before the date they reach normal minimum pension age (age 55) that are unauthorised payments.

For the avoidance of doubt, HMRC confirm that all benefits paid on or after reaching age 55 will be authorised payments.

With regard to whether a retirement lump sum is an authorised or unauthorised payment, one of the requirements for a lump sum to be a tax-free pension commencement lump sum for tax purposes is that the lump sum must be actually paid to the member on or after reaching normal minimum pension age (or PPA where appropriate) - paragraph 1(1)(d) of Schedule 29 to Finance Act 2004. It is not enough for the entitlement to the lump sum to have arisen before that date if it is paid later. So where a member has lost their PPA from the date

of date of re-employment (so that authorised payments will only occur if they are paid on or after the date on which the member reaches age 55), a retirement lump sum will only be a pension commencement lump sum if it is paid to the member before the date on which they were re-employed.

HMRC's view is that where a lump sum is paid by the scheme directly into the member's bank account the date the lump sum is paid is the day on which it is credited to the recipient's account not the day on which it is debited from the payer's account.

What does being employed after becoming entitled to benefits mean?

Provided an individual who meets the other requirements ceases employment at the time they become entitled to their benefits, they initially satisfy the retirement condition so can rely on their PPA to payments of benefits as authorised payments.

There is no definition of employment so we must look to employment law for the answer. Continuous employment is built up on a weekly basis, a week being a period of 7 days ending on a Saturday. Where there is a break in continuity, the weeks beforehand do not count towards continuous employment.

To protect employees' entitlement to certain employment rights where a period of service is required, employment law treats employment as continuous in some circumstances even though there is a break in service.

So even though there is a week in which an employee has no contract of employment that week can count towards continuous employment and not break the continuity of employment if work ceases temporarily.

Where a person is re-employed in a different job (akin to a materially different employment) then continuity is broken immediately the contract of employment for first employment terminates. But if a person returns to the same employment then they must do so after a break of at least one week (that week being one ending on a Saturday) if the new period of employment is not to be treated as a continuation of the previous employment. Without such a break the employment has not ceased and the individual does not have a PPA at all.

Where a pension is paid before normal minimum pension age, is it a scheme pension?

In HMRC's view the answer is yes.

A scheme pension is defined by paragraph 2(2) of Schedule 28 to Finance Act 2004 as a pension payable to the member by the scheme administrator or an insurance company chosen by the scheme administrator, payable at least annually until the member's death and where the rate of pension payable does not reduce (except in the circumstances set out in paragraph 2(4)). There is nothing in paragraph 2(2) which provides that a pension is not a scheme pension if entitlement to it arises before the member has reached normal minimum pension age (so their protected pension age where this applies).

Section 164 Finance Act 2004 sets out in broad terms the payments a registered pension scheme is authorised to make with the fine detail provided in subsequent sections and supporting schedules.

Section 164 authorises, inter alia, a pension permitted by the pension rules in section 165.

Pension Rule 1 in section 165(1) says that, apart from ill-health pensions, no payment of pension may be made before the day on which the member reaches normal minimum pension age (so protected pension age where applicable).

Payments of pension which are outside Pension rule 1 are therefore unauthorised, but they are nonetheless payments of a pension. And so are payments of a scheme pension if the pension is within the definition of a scheme pension.

"Permitted" as used in s.164 should be read as meaning permitted to be paid as an authorised payment. The section does not permit some and prohibit other types of payment. If it did then schemes could not pay unauthorised payments at all.

This interpretation fits with one of the fundamental principles of the simplified tax regime, namely that tax legislation should not direct what payments a scheme can/cannot make. Instead it provides for how those payments should be taxed and this depends on whether the payment is authorised (and where this is the case the type of payment) or unauthorised.

So taken in the round, a member's scheme pension can be paid from any age but any payment of that pension made before the member reaches normal/protected pension age is unauthorised.

Reducing or stopping a scheme pension when a PPA is lost with a view to unwinding and then re-starting the benefit process

This refers to any proposal (following re-employment that leads to loss of a PPA) that a scheme pension taken before age 55 using a PPA is stopped with the pension payments already paid plus any retirement lump sum paid as a pension commencement lump sum is recovered from the member with a view to re-instating the member as an active scheme member. The member rejoins the scheme then takes their benefits again ensuring that the re-employment condition is met second time around.

The pension tax rules provide that where a scheme pension is reduced or stopped it ceases to be a scheme pension from that point in time unless the reduction is in one of the 8 circumstances set out in paragraph 2(4) of Schedule 28 to Finance Act 2004.

If the rate of **scheme pension** payable to an individual is reduced in any circumstance other than those allowed by the legislation, then all future payments of that pension are **unauthorised member** payments, and should be taxed as such rather than as pension income. In other words the pension falls outside of the scheme pension definition once the reduction occurs. In HMRC's view the pension is incapable of recovering scheme pension status e.g. if/when the pension was re-started or the rate of reduced pension was increased to the original rate of pension.

In addition, there are also three circumstances, set out in paragraph 2A of Schedule 28, in which the scheme will be deemed to have made an **unauthorised payment to the member in an amount equal to** the amount of any tax-free lump sum paid by the scheme to the member in connection with their becoming entitled to a scheme pension entitlement. These circumstances include those where the payment of a scheme pension is stopped entirely in the member's lifetime, and so contravenes the requirement that the scheme pension must be paid for life. This ensures that an excess tax-free lump sum can't be taken with a subsequent cessation or large reduction in pension aimed at rendering unauthorised payment tax charges on future pension pensions nil or negligible.

So pension cannot be stopped and then re-started or a fresh pension awarded without incurring tax charges.

The PPA re-employment rules are couched in employment terms. Is a police officer an employee, is there an employer/employee relationship and is there is an employment?

Yes to all.

S.279(1) FA04 says that "employee" and "employer" have the same meaning as in the employment income Parts of ITEPA 2003 (see sections 4 and 5 of that Act) but include (respectively) a former employee and a former employer (and "employment" is to be read accordingly).

ITEPA 2003 is the Income Tax (Earnings and Pensions) Act 2003. Section 4 ITEPA says "employment" (in the employment income Parts) includes inter alia "any employment in the service of the Crown". Section 5 provides for the employment income Parts provisions applying to employments to apply equally to offices unless otherwise indicated. So in those Parts, "employed", "employee" and "employer" have corresponding meanings.

So a police officer is an employee for the purposes of the PPA tax rules, the person under whom they hold the office is the employer and there is an employment for pension tax purposes.

Are police forces sponsoring employers?

Yes if they are the employer (see previous question) of police officers. And a "sponsoring employer" of a registered pension scheme is defined by s.150(6) as 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 so as to provide benefits.
So a police force/police authority (as appropriate) will be a “sponsoring employer” in relation to the PPS.

[REDACTED]

Technical Adviser

19/01/2011

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 than 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 a 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 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, 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 40/60th 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 9/40th (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

Annex B

Relevant extract from:

NOTE OF THE 37th MEETING OF THE POLICE PENSIONS REVIEW WORKING PARTY HELD ON TUESDAY 6 DECEMBER 2011

21. *HMRC Rules* - The Staff Side Secretary said that he had become aware of an issue in respect of HMRC rules for police officers who retired and who were then re-employed without a one month break between the end of their service as police officers and starting work again. Members were being faced with tax bills of £40,000 - £50,000 because of these rules. The guidance which was issued in respect of the 30+ Plus Scheme made it clear that there needed to be a one month gap between retirement and being re-engaged again as a police officer or there would be tax implications. It had not been known that there were wider implications in respect of other types of re-employment. The Staff Side welcomed the Home Office view on this matter.

22. [REDACTED] said that he was aware that this issue had come to light. It had always been clear that when officers retired and were then re-employed as police officers there needed to be a gap of one month between retirement and re-engagement. The issue was whether this rule also applied to officers being re-engaged as police staff. He had held extensive discussions with practitioners about how to resolve this issue. The key question was how HMRC rules should be interpreted. Currently he did not have a definitive answer to this question. He suggested that for those officers who were about to retire and who were considering seeking re-employment as police staff members, to be completely safe they should leave a gap of at least one month between retirement and taking up such a post. In addition anyone who had any concerns should seek independent advice. The issue going forward was what would happen to people already in this position. The Staff Side Secretary said that the sooner the Home Office received clarification from HMRC on this issue the better. Consistency was needed across the whole country. He added that he hoped the Home Office would notify pension administrators that if an officer was about to retire s/he should be made aware of this issue. He would welcome an undertaking from the Home Office to highlight this issue to officers. [REDACTED] said that he was actively discussing the issue with pension administrators. He added that he was not sure however, that it would be appropriate for pension administrators to offer specific advice to officers on this matter. [REDACTED] asked whether it would be possible, at least, to flag this up as an issue on which retiring officers may wish to take advice. The Staff Side Secretary said that a general warning needed to be given. [REDACTED] said that this was a reasonable request and that he would feed it into his discussions with pension administrators. He would recommend that they provided this kind of information. He added that because it was not clear how HMRC rules should be applied care needed to be taken not to deprive people of employment opportunities by advising them to wait longer than was necessary. He said that the Home Office would also contact HMRC about this issue.

Relevant extract from:

NOTE OF THE 38th MEETING OF THE POLICE PENSIONS REVIEW WORKING PARTY HELD ON WEDNESDAY 14 MARCH 2012

2. *Protected pension age – retirement and re-employment* – [REDACTED] said that the Staff Side had asked for this matter to be included on the agenda. It was an issue which they had raised at the previous meeting and he had written to the Staff Side on the 6 February 2012. The Staff Side Secretary said that this was still a serious issue and its full extent would not be known until HMRC notified individuals of the exact amounts involved. It was important to note the current position. Staff Side was making further enquiries on this issue and would write to the Home Office in due course.