



The Fire Brigades Union

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TO: **ALL MEMBERS**

Dear Brother/Sister,

RE-EMPLOYMENT AFTER RETIRING

It has come to our attention that a number of members have received tax demands following their retirement and re-employment. **Resuming or continuing employment in the fire and rescue service after drawing FPS benefits can have very serious tax consequences. If you have done so, or are thinking of doing so, please read this circular carefully.**

Who is affected?

The issues described below only arise if you retire and take your pension (and commutation lump sum if you elect to commute) below the age of 55. It therefore does not affect members of the NFPS.

It does not affect members who retire with an ill-health pension and recover their health and resume employment in the fire and rescue service.

It does not affect members who retired before 6 April 2010.

What is the issue?

Members of the FPS are entitled to retire and draw their pension from the age of 50 provided that they have 25 years' pensionable service or more. For most pension scheme members, the minimum age at which a pension can be taken was increased from age 50 to 55 on 6 April 2010. Some pension schemes were exempted from this general rule, and the FPS is such an exempted scheme, meaning that members have a protected right to take their benefits before age 55.

This protection can be lost however. If it is lost, any benefits paid before the age of 55 will be retrospectively subject to a tax charge called the unauthorised payment charge. This will be applied to any commutation lump sum as well as any regular pension payments. The charge is 40%, and in some circumstances a surcharge of an additional 15% can be levied as well.

How is a protected pension age lost?

The basic rule is that you lose your protected pension age if, after retiring, you take up employment or carry on employment with:

- an employer which employed you within the six months before retirement, or
- another employer which is connected with that employer.

There are some exceptions to this general rule. **For present purposes the relevant exception is that you will keep your protected pension age provided that you have a break in your employment of at least one month and the second employer is a Fire and Rescue Authority.**

You should note that the test is the identity of the employer, not the nature of your contract. So, unless you take a break in employment of at least one month:

- If you retire as a whole-time firefighter, and take up a retained contract after you retire, you will lose your protected pension age.
- If you have a whole-time contract and a retained contract and retire from your whole-time duties and carry on as a retained firefighter, you will lose your protected pension age.
- If you retire as a firefighter and take up employment with the Fire and Rescue Authority in some other capacity (a Green Book job) you will lose your protected pension age.

It is not clear what a "connected employer" is for the purposes of this test, but you should assume that:

- One Fire and Rescue Authority is connected with another Fire and Rescue Authority. So taking up or keeping a retained contract with one Fire and Rescue Authority after retiring from another one will mean you lose your protected pension age unless you take a break in employment of at least a month.
- If your Fire and Rescue Authority and the Local Authority are not the same organisation, they are still connected. So retiring from the Fire and Rescue Authority and taking up employment with the Local Authority that controls the Fire and Rescue Authority will mean that you lose your protected pension age.

Unless the Local Authority is a Fire and Rescue Authority, the break in service in this case must be **six months**, unless the work you do in the new job is substantially different from your former role.

Doesn't the Fire and Rescue Authority have to warn me about this?

It is becoming apparent that a number of Fire and Rescue Authorities have not been warning staff that if they take up further employment after retiring, or remain in employment in some capacity, they risk losing their protected pension age. The majority of cases seem to have occurred when a firefighter has retired from their whole-time role but continued as a retained firefighter. It seems that Fire and Rescue Authorities have not considered the full situation and have not informed individuals that this could have tax implications.

The DCLG drew this issue to the attention of all Fire and Rescue Authorities in 2010. The FBU has also previously ensured that this has been brought to the attention of local pension administrators to guarantee that they were aware of the change in the situation. This information has been re-issued on several occasions since 2010 and on each occasion local officials have raised it with local pension administrators.

Despite this it is extremely disappointing that some Fire and Rescue Authorities have not fully considered this, and we are aware of several cases where firefighters have retired with a

protected pension age and then lost it, and have found themselves liable to a substantial tax charge.

What if I have already retired and resumed or kept on my employment with the Fire and Rescue Authority?

HMRC is now actively seeking information from Fire and Rescue Authorities to establish how many individuals might have lost their protected pension age, and seem to be pursuing every case. The upshot of this is that the affected member receives a demand for an unauthorised payment tax charge, which is a substantial sum.

The FBU is currently looking at several cases where members have received unauthorised payment demands and legal advice is being sought. If you think you may be affected you should contact your Fire and Rescue Authority as soon as possible, and speak to your local FBU rep.

Yours in Unity,

A handwritten signature in black ink, appearing to read 'S Starbuck', with a stylized flourish at the end.

SEAN STARBUCK
National Officer

SS/EMH