

## Police Pension Schemes – Re-employment

### Introduction

Re-employment following retirement from the Police Pension Scheme can have certain consequences and impact on the payment of pension. These are primarily:

1. Withdrawal of Pension – “Abatement”
2. Protected Pension Age (PPS 1987 members only)

Please note, whilst this paper offers general guidance, it is only SPPA’s understanding of the current legal position for re-employed officers. **It is not a definitive interpretation, and it is the responsibility of the individual concerned to seek their own legal or financial advice.**

### Withdrawal of pension – “Abatement”

In certain circumstances, Public sector pensions can be abated - reduced or withdrawn - when a retired public servant is re-employed. A test for Abatement ensures that the pension payable can be limited where the earnings payable in the new employment exceeds a certain level. This is designed to prevent excessive cost of both the individual’s pay and pension falling to the public purse. It ensures that those who received early – sometimes enhanced – pensions have that taken into account, can protect against malpractice and generally serves to protect public funds.

There is no provision for phased or partial retirement under the police scheme rules, so a member cannot access scheme benefits without retiring.

There are two forms of abatement: “**in-service abatement**” and “**inter-service abatement**”.

#### a) - In-service abatement

This occurs where re-employment is in a post covered by the same scheme that is paying the individual’s pension. The 1987 and 2006 scheme regulations provide for the Scottish Police Authority (SPA) to abate the pension where the member returns to duty as a regular police officer. It is relatively rare for a police officer to return to duty after retirement, but where they do, abatement will apply for as long as the officer continues to serve.

- **1987 Scheme Regulation K4 Withdrawal of pension during service as a regular policeman**  
(1) ...a police authority by whom a pension is payable under Part B of these Regulations may, in their discretion, withdraw the whole or any part of the pension for any period during which the pensioner is serving as a regular policeman in any police force, save that such withdrawal shall not apply to any pension credit under Part M; and, where they have done so, they shall be

discharged from all actual or contingent liability in respect of the pension, or the part thereof, withdrawn for the period in question.

(2) This Regulation does not apply to a pension under Regulation B9(7)(b) (allocation).

- **2006 Scheme**

Regulation 52 of the 2006 Scheme adopts similar wording to the 1987 regulations, also exempting any allocation election or pension credit.

- **2015 Scheme**

There is no similar abatement provision under the 2015 regulations, however in respect of transition members it would still apply to their proportion of pre 2015 final salary benefits (A transition member is an officer with continuous service in the 2015 scheme and either of the final salary schemes).

Note, withdrawal of the officer's pension *does not apply* where the former police officer takes up any other type of employment, including as civilian staff within Police Scotland or SPA.

### **Administration of abatement**

It is the responsibility of the authority that is paying the pension to the individual to assess abatement. Since the move to a single service, this will be Police Scotland/SPA, (and therefore SPPA) but where for instance an officer who retired from a constabulary elsewhere in the UK takes up duty with Police Scotland, the individual's former UK police authority is responsible for abatement. It is in the authority's discretion whether or not to apply abatement to an individual's pension, but where abatement is applicable and the pension is not reduced, the pension authority must pay an equivalent amount to the scheme.

### **Calculation of In-service Abatement**

Generally, it is recommended that the pension + post-retirement salary should not exceed pay at retirement. Where it does, the excess is abated, from the commencement of duty until the service as a police officer ends.

### **B) - Inter-service abatement**

Abatement does not usually apply where a retired officer takes up other employment. However, in some cases "Inter Service Abatement" may apply. This is an HM Treasury policy that applies across the public service, where a new appointment is limited to people with particular public service experience, or where there has been no formal competition for the appointment.

There is no statutory basis for inter-service basis. In practice, the individual would have to agree under the terms and conditions of employment for there to be provision for the pension payable to be abated. Where this does not occur, arrangements can be made for the salary to be abated instead.

### Calculation of Inter-service abatement

- i) **Regular salary:** The calculation is the same as it is for in-service abatement
- ii) **Fee paid basis:** Where the individual is re-employed on a fee paid basis, abatement still applies and can increase or decrease if fees are re-negotiated. A different method of calculation is required. The value of the pension in payment is deducted from the salary at retirement to produce an “earnings margin”. The earnings margin is the amount that may be earned in any 12 month period. For any fees earned in excess of the earnings margin, the pension is reduced by the corresponding amount of excess.

**Salary at retirement – Pension = Earnings Margin**

### Impact of further employment on Protected Pension Age (1987 scheme members only)

Since 6 April 2006, the Normal Minimum Pension Age for UK Registered Pension Schemes has been 55, other than in cases of ill-health retirement (Finance Act 2004, Schedule 36 introduced the minimum pension age, effective from 6/4/2006). This means that it is not possible to access a pension before reaching this age. However, there is an exception for individuals who were members of certain schemes on 5 April 2006 and had an “unqualified right” to retire before age 55.

In the 1987 Police Scheme, this would apply to officers in active membership with either 30 years’ service in both the 1987 and 2015 scheme and those age 50 with at least 25 years’ service. The age at which they reach this entitlement is their **Protected Pension Age**. Rights can be accessed from this age without the officer incurring a tax charge for an unauthorised payment of pension. Note, the benefits do not necessarily have to be taken at that point – it is the protected pension age itself that is key, not the age at which benefits crystallise.

However, to be entitled to retain their Protected Pension Age, individuals must keep to certain conditions, provided for by Paragraph 22(7)(b) to Schedule 36 of the Finance Act provides for the loss of protected pension age.

The minimum pension age for 2006 and 2015 scheme member is 55, so this issue is not relevant for those members. **Annex A** provides a table showing protected pension age for officers who are members of the 1987 scheme.

Full information on Protected Pension Age is contained in HMRC Pension Taxation Manual: <http://www.hmrc.gov.uk/manuals/ptmanual/ptm062200.htm>

Generally, a Protected Pension Age can be lost where the main purpose (or one of the main purposes) of taking benefits early using a protected pension age is to avoid paying tax or national insurance contributions. A Protected Pension Age can also be lost in the following circumstances:

## **Protected Pension Age below 50**

For an individual with a Protected Pension Age below 50, the protected pension age is also lost where they take their benefits and they are employed by the sponsoring employer in the scheme, and they are “connected” with that sponsoring employer. “Connected” is defined under Section 993 of the Income Tax Act 2007, and under this definition it is accepted that a police officer is not connected with the Police Service.

It is therefore unlikely that officers who retire before reaching age 50 will lose their protected pension age.

The situation is slightly different for chief officers who were appointed prior to 5 April 2006. **Annex A** provides guidance.

## **Protected Pension Ages – 50 to 54**

A police officer may lose protected pension age where the officer is re-employed

- by any employer (i.e. Police Scotland/SPA) who employed the individual in the 6 months prior to retirement who was also a sponsoring employer of the pension scheme
- Any sponsoring employer in the pension scheme under which the pension entitlement arose,

unless they meet one of 4 “**Re-employment conditions**” outlined below.

These **Re-employment conditions** are:

### **1. Recall by the armed forces**

This is not applicable in respect of police officers.

### **2. Have a break in employment of at least 6 months**

If an officer does not return to employment until a period of six months has elapsed since they took their benefits, they do not lose their protected pension age regardless of the subsequent employment.

### **3. A break in employment of at least one month and the scheme rules provide that benefits may be abated**

The 1987 Scheme provides for abatement, so where an officer retires and returns to serve as an officer, there must be a break in employment of one month to retain protected pension age. The pension only has to be liable to be abated (as the scheme rules provide), but it need not actually be abated.

### **4. A break in employment of at least one month and the re-employment is materially different**

The tax rules refer to an employment that is “materially different” in nature. It is for the Police Pension Scheme administrator, i.e. SPPA (not HMRC), to determine if the circumstances of the re-employment mean the retired police officer has lost their protected pension age. This is likely to involve discussion 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, previously agreed HMRC guidance has stated that in its view, *employment as a serving police officer and employment as a member of civilian staff will normally be materially different in nature*. In reality, it would not be uncommon for such a decision to be established in advance of the start of reemployment.

Police officers are not employees, but are “office holders” and members of the police service. Again, previous advice from HMRC suggests that for these purposes they are to be regarded as employees.

Although the SPA and Police Scotland are legally separate bodies, they are regarded as the same “employer” – SPA is responsible for appointing the Chief Constable, and for paying constables’ salaries. SPA is also the legal employer of all police support staff.

Retired police officers who are re-employed by Police Scotland/Scottish Police Authority, either as police officer or as civilian staff will therefore be required to meet condition 3 or 4, so a one month break before re-employment will normally be required for them to keep their protected pension age.

If the employer is not Police Scotland/SPA, the re-employment conditions do not apply

Restrictions cease upon the individual reaching age 55.

### **What happens is Protected Pension Age is lost?**

If Protected Pension Age is lost, the pension payments become unauthorised and this will continue until they reach 55. The unauthorised payment charge is 40%, and the authority is also liable to a scheme sanction charge on all payments made.

### **Other resources:**

The taxation page on the SPPA website: <https://pensions.gov.scot/pensions-taxation>

Full information on Protected Pension Age is contained in HMRC Pension Taxation Manual: <http://www.hmrc.gov.uk/manuals/ptmanual/ptm062200.htm>

The Finance Act is available on the UK Legislation website, in particular Schedule 36: <http://www.legislation.gov.uk/ukpga/2004/12/contents>

## Annex A

### Protected Pension Age for federated and former “ACPO” ranks

Police officer (Constable – Chief Superintendent)	Protected pension age is the officer’s age upon (a) reaching 30 years’ service , or (b) their age on the date after their 50th birthday that they reach 25 years’ service, if that is later.
Member promoted to Chief Officer (ACC and above) after 5/4/06	Protected pension age is the officer’s age upon (a) reaching 30 years’ service , or (b) their age on the date after their 50th birthday that they reach 25 years’ service, if that is later.
Chief officer on Fixed Term Appointment on 5/4/06 and was in federated ranks on 10/12/03	Protected Pension Age is the date the appointment ends if 30 years’ service accrued, or is over age 50 with 25 years’ service.
Chief officer on 5/4/06, no Fixed Term Appointment	No Protected Pension Age, benefits before age 55 are subject to unauthorised payment charge
Member employed as Chief Officer having been appointed from outside police authority after 10/12/03	No Protected pension age, benefits before age 55 are subject to unauthorised payment charge

### Re-employment

- i) Protected Pension age under 50
  - **Protected Pension Age** – re-employment has no effect on protected pension age.
  - **Abatement** - will apply at the discretion of SPA if re-employed as a police officer, for any period the officer continues to serve. Abatement does not apply if re-employed in any other role (subject to “inter-service abatement”)
- ii) Protected Pension Age 50-54

Re-employment				Break in employment			
		Less than 1 month		1 to 6 months		Over 6 months	
Role	Employer	Abatement	PPA Retained	Abatement	PPA retained	Abatement	PPA retained
Police officer	Police Scotland	Yes	No	Yes	Yes	Yes	Yes
	Other UK force	Yes	Yes	Yes	Yes	Yes	Yes
Civilian	Police Scotland/ SPA	No	No	No	Yes*	No	Yes
	Other force	No	Yes	No	Yes	No	Yes
	Other employer	No	Yes	No	Yes	No	Yes

\* In general, the duties and responsibilities in the new employment must be of “**materially different nature**”. It is generally accepted that any civilian position will be of a “materially different nature” to police duties, however where there is any doubt, **the individual should seek advice in advance of taking up the employment.**