

## LGPS guide to:

### Protected pension age

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## 1. Introduction

### **Who is the guide aimed at?**

The guide is aimed at LGPS administering authorities and employers in Scotland.

### **What does the guide cover?**

The guide covers the protected pension age and how it applies to members who are entitled to payment before 55 under the LGPS rules.

Section 2 covers the background to the protected pension age and who is entitled to payment before 55 under the LGPS rules.

Section 3 covers who qualifies for a protected pension age on retirement and whether the member could later stop qualifying.

Section 4 covers the unauthorised payment tax charges that may apply and on what payments.

Section 5 covers what you should tell the member, including standard wording administering authorities may wish to include in their communications to the member.

Section 6 covers other things to consider, including how compensatory added years are affected.

Section 7 explains the meanings of certain terms used, section 8 provides links to more information and section 9 sets out the legal provisions on which we have relied (instead of using footnotes).

## 2. Background

### What is the protected pension age?

The normal minimum pension age (NMPA) is 55.

If a pension scheme makes payments (such as pension instalments or lump sums) before the member's 55th birthday, those payments are unauthorised (unless they are exempt) under the Finance Act 2004 ('the Act'), triggering unauthorised payment tax charges.

Exemptions include where the member meets [the ill health condition](#) or qualifies for a protected pension age.

The Act increased the NMPA from 50 to 55 on 6 April 2010. It also introduced the protected pension age, allowing members who, on 5 April 2006, had an unqualified right to receive their benefits before 55 to continue to be able to do so after 5 April 2010. An unqualified right is a right that does not depend on the employer's or pension scheme administrator's consent.

If a member qualifies for a protected pension age, the member will only be entitled to payment before 55 if the pension scheme's rules allow for it. For example, where the member:

- is entitled to payment before 55 under the pension scheme rules and qualifies for a protected pension age under the Finance Act 2004, the member receives payment of their benefits with no unauthorised payment tax charges applying (assuming the member does not later stop qualifying for a protected pension age)
- is entitled to payment before 55 under the pension scheme rules but does not qualify for a protected pension age under the Act, the member receives payment of their benefits with unauthorised payment tax charges applying
- is not entitled to payment before 55 under the pension scheme rules, irrespective of whether the member qualifies for a protected pension age under the Act, the member does not receive payment of their benefits.

## Who, since 6 April 2010, is entitled to payment before 55 under the LGPS rules?

**Table 1: scenarios where members are entitled to payment before 55 under the LGPS rules and whether unauthorised payment tax charges apply**

Scenario	Do unauthorised payment tax charges apply?
A deferred member who becomes entitled to early payment because of ill-health	No unauthorised tax charges apply (as the <a href="#">ill-health condition</a> will be met)
An active member who becomes entitled to immediate payment because of ill health	No unauthorised tax charges apply (as the <a href="#">ill-health condition</a> will be met)
A member who was active on 5 April 2006 and who left between 6 April 2010 and 31 March 2015 on redundancy / efficiency grounds age 50 or over	Unauthorised payment tax charges will not apply on a payment made before 55 if the member, at the time the payment is made, qualifies for a protected pension age (see <a href="#">section three</a> )
A member who was active on 5 April 2006 and has not had a <a href="#">break in membership</a> since then who leaves after 31 March 2015 on redundancy / efficiency grounds age 50 or over.  Note that a member who has had a break is not entitled to payment of their pension before age 55, so the issue as to whether unauthorised payment tax charges apply does not arise.	Unauthorised payment tax charges will not apply on a payment made before 55 if the member, at the time the payment is made, qualifies for a protected pension age (see <a href="#">section three</a> )

<b>Scenario</b>	<b>Do unauthorised payment tax charges apply?</b>
<p>A deferred member who left before 1 April 1998 where the former employer consents on compassionate grounds to early payment on or after 50</p>	<p>Unauthorised payment tax charges apply where the employer consents to payment between 50 and 55</p> <p>As the employer is required to consent, the member cannot qualify for a protected pension age</p>
<p>A deferred member who left between 1 April 1998 and 31 March 2009 where the former employer consents to early payment between 50 and 60</p>	<p>Unauthorised payment tax charges apply where the employer consents to payment between 50 and 55</p> <p>As the employer is required to consent, the member cannot qualify for a protected pension age</p>
<p>Deferred members who left before 1 April 2009 who have a protected right to receive benefits from age 50 without needing the former employer's consent (such as former NHS scheme members and civil servants transferred to the Scottish Environment Protection Agency)</p> <p>See the 'Technical guide – discretions policies' for more information, which you can find on <a href="#">the Administrator guides and documents</a> page of <a href="http://www.scotlqpsregs.org">www.scotlqpsregs.org</a></p>	<p>Unauthorised payment tax charges will not apply on a payment made before 55 if the member, at the time the payment is made, qualifies for a protected pension age (see <a href="#">section three</a>)</p>

### 3. Qualifying for a protected pension age

#### Who qualifies for a protected pension age on retirement?

In the previous section, we included scenarios where a member who is entitled to payment between 50 and 55 under the LGPS rules must qualify for a protected pension age under the Act to avoid unauthorised payment tax charges applying.

The member will qualify for a protected pension age under the Act on retirement where the following three conditions are met -

- (1) the member becomes entitled to all their benefits payable under the LGPS Scotland on the same date (disregarding survivor pensions and any benefits the member had already become entitled to before 6 April 2006),
- (2) on becoming so entitled, the member is not in a different employment with a specified employer, and
- (3) becoming entitled to the benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

Therefore, where the member holds a separate record in the LGPS Scotland that will not come into payment on the same date as the current record, the member will fail to meet condition one (unless the member is able to, and does, aggregate the records).

Also, where the member will use their additional voluntary contributions (AVCs) to buy an annuity with an insurance provider, condition one is modified to “the member becomes entitled to all their benefits payable under the LGPS Scotland within a period of six months beginning with the earliest date on which the member becomes entitled to any of the benefits”. The modification allows for the fact that members will be very unlikely to become entitled to the annuity on the same date on which they become entitled to the other benefits.

Where a member fails to meet condition two because they are in a different employment with a specified employer, the member will not qualify at a later date (such as on leaving the different employment).

Where a member qualifies for a protected pension age, the member does not need to register this with, or apply to, Her Majesty's Revenue & Customs (HMRC). The member automatically qualifies if the conditions are met.

## Can members stop qualifying for a protected pension age?

Yes, if the member qualifies for a protected pension age on retirement, the member can later stop qualifying.

A member stops qualifying for a protected pension age where the member is re-employed before age 55 by a specified employer.

However, the member will continue to qualify where –

- the re-employment started after the end of the six-month period which began with the date on which the member became entitled to the benefits,
- the re-employment started after the end of the one-month period which began with the date on which the member became entitled to the benefits and either the pension abatement condition or the materially different employment condition is met, or
- the re-employment started after becoming entitled to the benefits and the coronavirus condition is met.

Where a member stops qualifying for a protected pension age because of employment with a specified employer, the member cannot re-qualify at a later date (such as on leaving the employment).

## 4. What payments are subject to unauthorised payment tax charges?

Unauthorised payment tax charges are payable on the payments set out in the following table:

**Table 2 – setting out the payments on which unauthorised payment tax charges apply**

Scenario	Unauthorised payment tax charges apply on the following payments
Under the LGPS rules, an employer consents to early payment of deferred benefits between 50 and 55 for a member who left before 1 April 2009	All payments made before the member's 55th birthday
Under the LGPS rules, an active member becomes entitled to payment between 50 and 55 on redundancy / efficiency and the member does not qualify for a protected pension age on retirement	All payments made before the member's 55th birthday
Under the LGPS rules, an active member becomes entitled to payment between 50 and 55 on redundancy / efficiency and the member, though qualifying for a protected pension age on retirement, stops qualifying before their 55th birthday	All payments made between starting the re-employment and the member's 55th birthday (including the lump sum if paid during this period)
Under the LGPS rules, a deferred member who has a protected right to receive benefits from age 50 without requiring the former employer's consent elects to receive benefits between 50 and 55 and does not qualify for a protected pension age on retirement	All payments made before the member's 55th birthday

<b>Scenario</b>	<b>Unauthorised payment tax charges apply on the following payments</b>
<p>Under the LGPS rules, a deferred member who has a protected right to receive benefits from age 50 without requiring the former employer's consent elects to receive benefits between 50 and 55 and, though qualifying on retirement for a protected pension age, stops qualifying before their 55th birthday</p>	<p>All payments made between starting the re-employment and the member's 55th birthday (including the lump sum if paid during this period)</p>

Unauthorised payment tax charges mean:

- an unauthorised payments charge,
- a scheme sanction charge, and potentially
- an unauthorised payment surcharge.

See [PTM130000](#) for more information.

## 5. What should you tell the member?

Where the member needs to qualify for a protected pension age to avoid unauthorised payment tax charges, administering authorities and employers must tell the member about the protected pension age and retain evidence of this.

If a member is not told, there is a risk that they will make ill-informed decisions incurring significant tax charges (for example, returning to, or remaining in, an employment that results in them not qualifying for a protected pension age). The member would then likely bring a complaint against the administering authority and / or the employer.

### Before retirement

After establishing that the member is entitled to payment before 55 under the LGPS rules (see '[Who, since 6 April 2010, is entitled to payment before 55 under the LGPS rules?](#)'), the administering authority and employer will need to consider whether unauthorised payment tax charges will apply. Where relevant, this will include considering whether the member will qualify for a protected pension age on retirement (see '[Who qualifies for the protected pension age on retirement?](#)'). If so, they will also need to consider whether, based on what is now known, the member will stop qualifying for a protected pension age after retirement (see '[Can members stop qualifying for a protected pension age?](#)')).

It is important that all parties understand whether unauthorised payment tax charges will apply (including, where relevant, whether the member will qualify for a protected pension age) before the member leaves. This will allow members to make informed choices, such as whether to leave and / or take certain actions so to qualify for a protected pension age; and enable administering authorities to be able to provide accurate benefit quotations (considering any unauthorised payment tax charges).

### On retirement

Where unauthorised payment tax charges will not apply because the member qualifies for a protected pension age, it is important that the member understands the circumstances whereby they may stop qualifying and the consequences of doing so.

Administering authorities may choose to include the following information in letters to such members:

Note that 'the entitlement date' is the date on which the member became entitled to the benefits.

Under tax law, pension payments made before age 55 incur significant tax charges for the member.

There are however situations where payments can be made before age 55 without incurring these charges. Such as where the member qualifies for a protected pension age.

A member qualifies for a protected pension age where the member had an unqualified right on 5 April 2006 to receive their pension benefits before age 55 and meets certain conditions.

Based on the information you have given, we have decided that you qualify for a protected pension age. This means that the payments we make to you before your 55th birthday will not incur the charges.

However, you may stop qualifying for a protected pension age. Generally, you will stop qualifying if you return to work before **[enter day after last date of the six-month period beginning with the entitlement date / or 55th birthday if earlier]** with an employer for whom you worked at any time during the six-month period ending with **[enter the entitlement date]** and they participated in the LGPS Scotland in that six-month period. You will also stop qualifying if you start work before **[enter day after last date of the six-month period beginning with the entitlement date / or 55th birthday if earlier]** with an employer that is connected to the employer mentioned in the last sentence or with an employer that participates in the LGPS Scotland to whom you are connected. Work includes holding an office.

If the work starts after **[enter last date of one-month period beginning with the entitlement date]**, under certain circumstances, you may continue to qualify for a protected pension age. This may happen where the new work is materially different in nature to your previous work or where your LGPS pension will potentially be reduced because of the new work.

If you stop qualifying for a protected pension age, all pension payments (including the lump sum if applicable) we make to you in the period from starting the new work to your 55th birthday will incur significant tax charges.

This is a complex area. So, if you intend to start any new work before **[enter day after last date of the six-month period beginning with the entitlement date / or 55th birthday if earlier]**, you may wish to contact us about whether the new work will stop you qualifying for a protected pension age.

You can find more information about the protected pension age rules at [www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm062230](https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm062230) (including what is meant by being 'connected' to an employer).

## Before re-employment

If the employer intends to re-employ the member within six months of the member becoming entitled to their benefits on redundancy / efficiency, the employer should ensure that the member is aware of the impact this may have on their pension benefits (see '[Can members stop qualifying for a protected pension age?](#)'). For example, whether the new employment will stop the member qualifying for a protected pension age.

## 6. What other things do you need to consider?

### Is the member's lifetime allowance reduced?

The Finance Act 2004 provides that a member's lifetime allowance is reduced where, in some cases, the member relies on a protected pension age before age 50.

This does not apply to LGPS members in Scotland, as members cannot receive their benefits relying on a protected pension age before age 50.

### What do you need to report to HMRC?

The administering authority must report payment of certain benefits that are paid before 55 on the event report under reportable event three where, in the year the benefits were provided, or in any of the previous six years, the member was –

- a director of the sponsoring employer, or an associated company of that employer, or a person connected with a director,
- either alone or with others, the sponsoring employer, or
- a person connected with the sponsoring employer.

Please see [PTM161300](#) for more information.

### How are CAYs affected?

Administering authorities should not pay the compensatory added years (CAYs) pension via the LGPS fund. Therefore, the Finance Act 2004 does not apply to this pension. This means that CAYs pensions paid before 55 will not incur unauthorised payment tax charges where the member does not qualify for a protected pension age for the LGPS benefits. It also means that whether CAYs pensions are tested on re-employment is not relevant when considering whether the pension abatement condition is met. For example, where the CAYs pension is tested but the other LGPS benefits are not, the pension abatement condition would not be met.

## 7. Dictionary

### Break in membership

To be entitled to payment between 50 and 55 on redundancy / efficiency after 31 March 2015 under the LGPS rules, the member must not, at any point between 6 April 2006 and leaving, have had a break in membership of the LGPS (Scotland).

In our view, we would interpret this to mean that a member who was an active member on 5 April 2006 must have remained an active member until leaving on redundancy / efficiency.

This means that where a member left the Scheme and re-joined after a break, the member will have had a break in membership.

Where a member has a period of leave and does not pay the contributions for the period to count (for example, unpaid leave, strike, unpaid additional maternity or adoption leave, unpaid shared parental leave), the leave period, in our view, for this purpose, will not be a break in membership. This is because, though not building up further benefits during the leave, the member is still an active member (as they won't have become a deferred, pensioner or deferred refund member).

To be clear, where a member took a career break where the contract of employment did not subsist during the break, this would count as being a break in membership for this purpose.

### Connected

'Connected' is defined in section 1122 of the Corporation Tax Act 2010 - see [PTM027000](#).

### Coronavirus condition

The coronavirus condition is met where -

- the re-employment with the specified employer began in the period beginning with 1 March 2020 and ending with 1 November 2020, and
- the only or main reason that the member was taken into employment was to help the employer respond to the public health, social, economic or other effects of coronavirus.

[PTM062230](#) says:

“Under this re-employment condition:

- (1) although there does need to be a break in employment, it does not need to be a break of at least a month, and
- (2) the member can return to work to carry out the same duties they did before they retired.

Whether or not the re-employment is to help the employer respond to coronavirus depends on the facts and circumstances of each case. To satisfy this condition, the individual doesn't need to be directly involved in coronavirus-related duties. For example, a nurse may not be dealing with patients suffering from coronavirus, but be re-employed to cover for other staff members:

- (1) currently off sick with coronavirus, or
- (2) to enable them to work with patients suffering from coronavirus.

Another example could be an individual who worked for a supermarket, returning (perhaps to drive delivery vans or as a stock picker) to help that store respond to a higher demand for home deliveries due to coronavirus.”

## **Employment, employee, employer and employed**

The terms ‘employment’, ‘employee’, ‘employer’ and ‘employed’ also include –

- any employment under a contract of service,
- any employment under a contract of apprenticeship,
- any employment in the service of the Crown, and
- offices.

## **Entitled**

A member becomes entitled to –

- an annual pension when the member first acquires an actual (rather than prospective) right to receive the pension (ie the benefit crystallisation date). This may be later than the day after leaving employment (see [PTM088200](#) for more information). For example, where the pension becomes payable on 1 April 2021, but the administering authority only receives the necessary paperwork to pay the pension on 1 May 2021, the member will be said to have become entitled on 1 May 2021, meaning that the relevant one-month and six-month periods (see

section ‘[Can members stop qualifying for a protected pension age?](#)’) begin with 1 May 2021

- a pension commencement lump sum immediately before the member becomes entitled to the pension in connection with which it is paid
- an annuity payable by an insurance company when the company receives the AVC fund.

### **III-health condition**

The ill-health condition is met where on becoming [entitled](#) to the benefits the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member’s occupation because of physical or mental impairment and the member has in fact ceased to carry on the member’s occupation.

### **Materially different employment condition**

The materially different employment condition is met where the [re-employment](#) by [the specified employer](#) is materially different in nature to the previous [employment](#).

[PTM062230](#) says:

“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 those in the old employment.”

Where the member is [re-employed](#) in more than one [employment](#) with [a specified employer\(s\)](#), each of the [re-employments](#) must be materially different in nature to the previous [employment](#).

Where the member left more than one [employment](#) on becoming [entitled](#) to the benefits, the [re-employment](#) must be materially different in nature to each of the previous [employments](#).

### **Pension abatement condition**

The pension abatement condition is met where the scheme pension is liable to be reduced by abatement while [re-employed](#) by [the specified employer](#) in accordance with the rules of the LGPS Scotland.

[PTM062230](#) says:

“The pension does not have to actually be reduced, just liable to abatement.

For example, Judy takes benefits from public service scheme X. After 1 month, Judy returns to work for Employer X but with reduced hours. Judy’s pension and new pay level are tested by the scheme to see if her pension should be abated. Judy’s pension does not need to be reduced, but because it was tested for abatement and could have been reduced, Judy keeps her protected pension age for the benefits in payment.”

HMRC has confirmed to us that where the administering authority chooses not to test for abatement, the pension abatement condition would not be met.

## Specified employer

This means –

- an employer –
  - which employed the member at any time during the six-month period ending with the date on which the member became entitled to the benefits, and
  - which participated in the LGPS Scotland (in respect of any member) at any time during the six-month period ending with the date on which the member became entitled to the benefits, or
- any employer which is connected with the employer described in the previous bullet, or
- any employer which participates in the LGPS Scotland which is connected with the member.

## 8. More information

You can access more information about the protected pension age from HMRC’s Pension Tax Manual, in particular [PTM062200](#).

## 9. Regulatory references used in this guide

This section lists the regulatory references used throughout the guide (instead of footnotes). It is divided into the same sections as the guide for ease of use.

### Regulatory references (RR) used in ‘background’ section

#### What is the protected pension age?

- sections 164, 165 and 279 of the Finance Act 2004
- paragraph 1 of schedule 28 to the Finance Act 2004
- paragraph 22(4) of schedule 36 to the Finance Act 2004

#### Who, since 6 April 2010, is entitled to payment before 55 under the LGPS rules?

- regulations E2(6)(a) and (b) of the Local Government Superannuation (Scotland) Regulations 1987
- regulations 30(1) and (6) of the Local Government Pension Scheme (Scotland) Regulations 1998
- regulations 19(3), 20 and 31 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008
- regulations 14, 21 and 22 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008
- regulation 24(5) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014
- regulations 29(8) and 36 of the Local Government Pension Scheme (Scotland) Regulations 2018

### Regulatory references (RR) used in ‘Qualifying for the protected pension age’ section

#### Who qualifies for a protected pension age on retirement?

- paragraphs 22(7)(a), (7B) of schedule 36 to the Finance Act 2004

- articles 42 and 43 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006

### **Can members stop qualifying for a protected pension age?**

- paragraphs 22(7E), (7F) of schedule 36 to the Finance Act 2004

### **Regulatory references (RR) used in the ‘What payments are subject to unauthorised payment tax charges?’ section**

- sections 164, 165, 208, 209, 210, 239, 240 and 241 of the Finance Act 2004

### **Regulatory references (RR) used in the ‘What other things do you need to consider?’ section**

#### **Is the member’s lifetime allowance reduced?**

- paragraph 19 of schedule 36 to the Finance Act 2004

#### **What do you need to report to HMRC?**

- regulation 3 of the Registered Pension Schemes (Provision of Information) Regulations 2006

#### **How are CAYs affected?**

- regulation 15 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

### **Regulatory references (RR) used in the ‘Dictionary section’ section**

#### **Break in membership**

- Regulation 19(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008
- Regulations 24(1) and (5) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014
- Regulation 11(4) of the LGPS (Scotland) Regulations 2018

#### **Coronavirus condition**

- paragraph 22(7F)(c) of schedule 36 to the Finance Act 2004

## **Employment, employee, employer and employed**

- section 279 of the Finance Act 2004

### **Entitled**

- sections 166(2)(a), (2)(aa) and 279 of the Finance Act 2004

### **ill-health condition**

- paragraph 1 of schedule 28 to the Finance Act 2004

### **Materially different employment condition**

- paragraph 22(7H) of schedule 36 to the Finance Act 2004

### **Pension abatement condition**

- paragraph 22(7G) of schedule 36 to the Finance Act 2004

### **Specified employer**

- paragraph 22(7C) of schedule 36 to the Finance Act 2004

## 10. Disclaimer

The information contained in this guide has been prepared by the LGPC Secretariat, a part of the LGA. It represents our views and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any piece of legislation. No responsibility whatsoever will be assumed by either party for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this guide.

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