

Under the *Finance Act 2004*, the normal minimum pension age is generally set at 55 (it was 50 from 6 April 2006 to 5 April 2010).

Before 6 April 2006, however, there were some individuals who had an unqualified right to retire earlier than 55 and, subject to satisfying certain conditions, those members can still retire from that earlier age. These individuals are often described as having a protected pension age.

In this Aries Insight we look at some of the conditions that must be met for a member to retire at a protected pension age and the issues that may arise if the individual is subsequently re-employed.

What is an Unqualified Right to Retire?

One of the conditions for a protected pension age to apply is that the member must have had, on 5 April 2006, an unqualified right to retire before 55. This means that the member must not have needed the employer's or the trustees' consent to retire at that age.

In addition, for occupational pension schemes, for a protected pension age to exist, the scheme rules or contract terms as they stood on 10 December 2003 must have provided for that right to apply.

In some cases, the scheme rules may have provided that members only have an unqualified

right to retire before 50 or 55 if certain circumstances apply, for example that members can only take their benefits from an early age if they are made redundant. In this situation, anyone who is made redundant will potentially have a protected pension age but any other members will not.

For personal pension plans and retirement annuity contracts, individuals can only have a protected pension age of less than 50 if, on 5 April 2006, the individual had an unqualified right to retire before 50 and on that date the individual was, or had been, employed in a prescribed occupation (typically, this covers various sporting or hazardous occupations).

A Common Misconception

It is often thought that, provided a member had an unqualified right to retire at an early age on 5 April 2006, they have a protected pension age. This is, however, not quite correct because there are a range of conditions that must be met for a protected pension age to apply, and some of those conditions cannot be met until the member actually retires (or indeed, in some cases not until 6 months after the member takes the benefits).

It may, therefore, be more accurate to think of members who have not yet retired as having a "potentially protected pension age".

Taking Benefits at a Protected Pension Age

Where a member has a potentially protected pension age, one of the conditions that must be met for them to take their benefits from that age is that they become entitled to all of their benefits under the scheme on the same date.

The re-employment pitfall

Where a member takes their benefits before normal minimum pension age, they can lose their protected pension age status if they continue to be employed by the sponsoring employer or are subsequently re-employed by certain employers. The rules that apply here depend on whether the member retired before age 50 or between age 50 and 55.

Members who retired before age 50

These members will only lose their protected pension age if they are:

- Employed or re-employed by a sponsoring employer of the scheme under which they took their benefits, and
- They are "connected" with that sponsoring employer (broadly, an individual is "connected" with an employer if they own or control that employer).

So, an individual with a protected pension age of below 50 can take their benefits and remain employed by the same employer (or become employed by a different sponsoring employer) without losing their protected pension age, unless they are connected with that employer.

Members who retire between 50 and 55

These members will lose their protected pension age if they are employed / re-employed by:

- Any sponsoring employer of the scheme under which the member took their benefits and who employed the member at any time during the six months before the date on which the member became entitled to their benefits, or
- Any person who is connected with an employer described in the above bullet point (again, broadly, an individual is “connected” with an employer if they own or control that employer).
- Any sponsoring employer of the scheme under which the member took their benefits to which the member is “connected”.

These members will **not**, however, lose their protected pension age if they meet any of the following conditions:

- They are compulsorily recalled by the Armed Forces,
- There has been a break in employment since taking the benefits of at least six months,

- There has been a break in employment since taking the benefits of at least one month and the rules of the pension scheme allow the benefits in payment to be abated,
- There has been a break in employment since taking the benefits of at least one month and the post in which the member is re-employed is materially different from their previous role.

The consequences of losing a protected pension age as a result of re-employment

Where a member loses their protected pension age as a consequence of re-employment, all benefits paid up until the point that the member reaches age 55 will be unauthorised, with the associated tax charges falling on the member and the scheme.

What does this mean in practice?

Although this may appear to be more of an issue for the member and possibly the sponsoring employer rather than a matter for the pension scheme, administrators and pension providers should still be aware of the issue.

In a recent Determination ([PO 7096](#)) the Pensions Ombudsman found against an employer who, within one month of the member’s retirement, had re-employed the member without warning the member that this would result in the loss of the member’s protected pension age.

Employers may, in turn, expect their pension scheme to warn them about the re-employment pitfall.

Did you find this Aries Insight useful?

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Aries Insight - September 2017