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Dear Colleague

SCOTTISH FIRE AND RESCUE CIRCULAR 3/2009

1. Tax Rules – Effect on High Earners: Lifetime Allowance and Enhanced Protection

1.1 Details of the effects of the new tax regime introduced on 6th April 2006 (A-Day) were provided in the Scottish Fire Service Circular 3/2006. Queries have recently been raised about the protection of pensions from the Lifetime Allowance Charge and particularly about Enhanced Protection.

1.2 Lifetime Allowance

The lifetime allowance (LTA) is a figure against which the total value of a member's pension savings are tested when they come into payment. The penalty for exceeding the LTA is an additional tax charge (the Lifetime Allowance Charge). Note that it is the total value of pension savings, not just those accrued as a member of the Firefighter schemes, which must be tested against the LTA.

HMRC set the lifetime allowance at the following levels:

2006/07	£1,500,000
2007/08	£1,600,000
2008/09	£1,650,000
2009/10	£1,750,000
2010/11 onwards	£1,800,000

1.3 Methods of Protection from the LTA Charge

There are two forms of protection that can be sought, Primary and Enhanced. To be eligible for Primary Protection, the value of a member's pension benefits (the method of valuation is described in SFSC 3/2006) at 5th April 2006 had to be greater than the LTA for 2006/07 i.e., £1.5m. However, any person was (and is) eligible for Enhanced Protection. Enhanced Protection may be beneficial for those whose benefits were below £1.5m at 5th April 2006 but have subsequently exceeded, or are expected to exceed, the LTA.

THE DEADLINE FOR SUBMITTING NOTIFICATION OF A CLAIM FOR LTA PROTECTION TO HMRC IS 5TH APRIL 2009.

- 1.4 Enhanced Protection (EP), once granted, is lost if "relevant benefit accrual" occurs. In other words, if the pension benefits subsequently valued at a benefits crystallisation event (BCE) e.g., at the point where final pension benefits are calculated, have increased above the prescribed appropriate limit (<http://www.hmrc.gov.uk/manuals/rpsmanual/RPSM03104525.htm> refers).

The appropriate limit is calculated as the greater of the value of pension rights on A-Day adjusted in the following three ways:

- Increase of 5% compounded per annum since A-Day
- Increase in line with the Retail Prices Index since A-Day
- Recalculation using final pensionable pay at the BCE i.e. the increase in the pension value resulting from an increase in salary but not from further service accrual since A-Day.

If the greater of these three adjustments is exceeded at the BCE, EP is lost and any pension benefits above the LTA will be subject to the LTA Charge.

- 1.5 EP is only lost at the point when benefits actually come into payment. It may, therefore, be possible for the protection to be maximised by the process of splitting the BCE. In this way, scheme members could receive their pension benefits in more than one stage. The first stage would be the payment of benefits up to the member's EP limit and a second stage (and further stages if required) where the member would receive the remaining benefits which would trigger the loss of the EP and be subject to the LTA charge. The benefits between the standard LTA and the EP limit would not be subject to the LTA charge because at that stage of the payment nothing more would be crystallised. It is only at the point after which the benefits exceeding the relevant benefit accrual threshold are crystallised that the member must inform HMRC that the loss of EP has been triggered.
- 1.6 We are aware that guidance has been issued to administrators of the LGPS and the Police scheme on splitting of the BCE. Our initial view is that the rules of the firefighter schemes do not preclude this practice. DCLG have commissioned the scheme Actuary to consider adapting existing guidance for the FPS and NFPS.
- 1.7 As mentioned above, the deadline for claiming protection is 5th April 2009. FRAs should remind members of the deadline, particularly as there may be

members who have not previously considered applying for EP who may now wish to do so if their accrued benefits have, or are likely to, exceed the LTA. The HMRC forms and guidance for completion can be found through the following link:

<http://www.hmrc.gov.uk/pensionschemes/protection.htm>

- 1.8 However, FRAs are reminded that the decision to apply for either Primary or Enhanced Protection is for the member alone to make based on their personal circumstances. Neither the FRAs nor SPPA are able to advise members in this matter. Members may wish to seek independent financial advice.

2. Firefighters' Pension Schemes: Earnings Cap 2009/10

- 2.1 Both the Firefighters' Pension Scheme 1992 (FPS) and the New Firefighters' Pension Scheme 2006 (NFPS) include an earnings cap. This is a limit on the level of pay that can be treated as pensionable. The cap applies to anyone who first became liable to pay pension contributions after 31st May 1989.

- 2.2 For the FPS, Rule G1(2) refers and for the NFPS, Part 11 Chapter 1 rule 1(4) refers.

- 2.3 Pay above the cap does not count as pensionable pay. Contributions are not paid on the excess and pay above the cap is not taken into account when calculating benefits based on pensionable pay or average pensionable pay.

- 2.4 The cap for tax year 2009/10 is £123,600.00.

If you have any queries on this circular please contact:

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Yours sincerely

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