Section 279 of the FA 2004 defines "normal minimum pension age" as, before 6th April 2010, 50, and on and after that date, 55.

The Government proposes to increase the minimum pension age to 57 from 6 April 2028, but with complex transitional provisions.

The tax reason for the minimum pension age is the general rule is that the payment by a registered pension scheme of a pension to a person who has not reached that age is an "unauthorised member payment" liable, in addition to income tax, to an "unauthorised payment charge" of 40% under the Finance Act 2004 (FA 2004), s208, and possibly an "unauthorised payments surcharge" of 15% under s209.

The FA 2004, Part 4, provides a tax regime specific to pension schemes as a means of preventing the abuse of the privileged tax-sheltered status of retirement savings in schemes registered under it. Taxation under the FA 2004, most of which came into force on 6 April 2004 (A-Day) is in addition to other taxes, including income and inheritance tax. and is based on the concept of authorised and unauthorised payments made or deemed to be made by pension schemes to or for the benefit of members or employers.

"Unauthorised" in the FA 2004 does not have the normal dictionary meaning of the word, but that payments which is unauthorised are, with very few exceptions, liable to additional tax, an unauthorised payment charge and often a surcharge, while authorised payments are not liable to additional taxes under the Act. Before A-Day pension schemes and the wording of their trust deeds and rules had to be approved by the Revenue, whereas it can be said now that HMRC does not care what pension scheme documentation says or, to a large extent, what pension schemes do, but, as the price for giving tax relief for payments into pension schemes and investment returns in the scheme, it imposes additional taxes on payments out of schemes, if they are not authorised payments.

The FA 2005, s164,lists authorised member payments, which include, in sub-s (1)(a),

> pensions permitted under the pension rules or the pension death benefit rules to be paid to or in respect of a member.

Section 165 contains the five pension rules, of which this is pension rule 1.

> No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.

The pension commencement lump sum (popularly known as the 25% tax-free lump sum), must be paid within the period beginning six months before, and ending one year after, the day on which the member becomes entitled to his or her relevant pension.

Not all payments made before normal minimum pension age are unauthorised

<u>ill-health early pension</u>

The first and main exemption to the general rule, is that a pension may be paid to a member before his or her normal minimum age if the ill-health condition is met. This condition is defined in FA 2004, sch 28 para 1, which provides that it is met if

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(a) 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

(b) the member has in fact ceased to carry on the member's occupation.

It does not follow from the fact, that the FA 2004 permits an ill-health early pension to be made and will be an authorised member payment, that a member, who satisfies the condition, will receive or even be entitled to an ill-health early pension. The member is entitled to only the benefits which are provided for in the scheme's terms, typically the trust deed and rules of an occupational scheme or the contract constituting a personal pension scheme. Where a pension scheme provides for a benefits which would be an authorised member payment, the scheme may imposed condition which are more stringent than required by the FA 2004. For instance the early ill-health pension condition in the Local Government Pension Scheme is in the Local Government Pension Scheme Regulations 2013, SI 2013/2356 reg 35, which is too long to copy in full, but includes, amongst other conditions, that the member

- has qualifying service of two years,
- is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and
- is not immediately capable of undertaking any gainful employment.

<u>maximum pension age</u>

There is no statutory maximum pension age, but it is common for pension schemes to impose one directly or indirectly, for example by fixing a normal pension age and permitting members to take late retirement with the employer's consent. If a member has not taken ("crystallised") all his rights before reaching age 75, they are treated as crystalised on reaching that age, which is benefit crystallisation event 5 under FA 2004, s216, for the purpose of testing the member's lifetime allowance, which, if exceeded, will be taxed as a lifetime allowance charge.

<u>protected pension age</u>

Before A-Day, in exceptional cases, approved pension schemes were permitted to pay pensions before the minimum pension age to employees in certain occupations. The Revenue's former Practice Notes IR 12 (occupational pension schemes) required the circumstances of each individual case to be considered on its own merits, while IR 76 (personal pension schemes) published a list of relevant occupations and permitted pension ages (eg skiers (downhill) 30, trapeze artists 40). These exceptions were not continued by the FA 2004, but the transitional provisions of sch 36 preserves existing rights in specified circumstances.

<u>dependant's rights</u>

The minimum pension age does not apply to the various pension and lump sum benefits, to which dependants might become entitled on the death of a member: FA 2004, s167 (pension death benefit rules) and s168 (lump sum death benefit rules).

<u>pension scheme rules etc</u>

Whether all the benefits which can be authorised member payments are provided by any pension scheme depends in each case on the scheme's terms: see above.

<u>age discrimination</u>

See my mid-Summer 2020 update about age discrimination and pensions.

<u>state pensionable age</u>

The processes of equalising male and female pension ages and increasing them are too complex to be summarised in a sentence to two. See the rules in Pensions Act 1995, s126 and sch 4. See also www.gov.uk/state-pension-age?.

END