By email only: nmpaconsultation@hmtreasury.gov.uk

HM TREASURY AND HM REVENUE & CUSTOMS

20 April 2021

Dear Sir or Madam

SOCIETY OF PENSION PROFESSIONALS' RESPONSE TO HM TREASURY AND HM REVENUE & CUSTOMS CONSULTATION ON INCREASING THE NORMAL MINIMUM PENSION AGE

The Society of Pension Professionals (SPP) welcomes the opportunity to respond to the above consultation. We would be happy to discuss any aspect of this response further and if we can be of assistance, please do not hesitate in contacting us.

Executive Summary

Change of NMPA – in principle

Although the industry has known for some years that this change was coming, it is nevertheless likely to be unwelcome to savers, who may have put their money into a registered pension scheme on the basis that it would be locked away until age 55 but thinking that it would be likely to be accessible thereafter.

The perception (whether or not justified) of goal posts being moved risks putting people off pension saving. In addition, and notwithstanding paragraph 1.6 of the consultation document, this may be considered inconsistent with the "freedom and choice" philosophy of trusting people to make responsible use of their own savings.

It has been observed by some SPP members that NMPA is a blunt instrument (there could be other possible ways to disincentivise people from retiring too soon if that is thought desirable), without resorting to a policy which makes any payment before age 57 an unauthorised payment.

What are the mechanics around when the right has to be held?

A fundamental question is whether one of the criteria for the new protected pension age (PPA) regime (the "PPA55 regime") is that the person was a member of the scheme on 11 February 2021 or on 5 April 2028. If the intention is 11 February 2021, then some of the points we make below fall away.

If the individual had to be a member on 5 April 2028 (so long as the rules contained the right on 11 February 2021) then the comments below, about how new members might be able to join, would come into play. This would be akin to the current regime, which refers to rights to take benefits before age 55 held on 5 April 2006, so long as the rules of the relevant pension scheme contained the right on 10 December 2003.

If, however, it is 11 February 2021 then this would mean that any members who transfer out after that point have irrevocably lost their protection (even if it would in theory be possible for them to transfer back into the original scheme before 6 April 2028). Members benefitting from protection would presumably be able to bring transfer-in funds from other arrangements (assuming arrangements allow such transfers-in). SPP members have also raised a concern that this would mean that new joiners after 11 February 2021 would, as a matter of the scheme rules, have a right to take benefits at 55 which could not then in fact be paid as an authorised payment. Similar issues in relation to A-day changes were addressed by way of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 and the Occupational Pension Schemes (Modification of Schemes) Regulations 2006) to ensure unauthorised payments do not have to be made by schemes. Many schemes will have domestic rules which mean that unauthorised payments do not automatically have to be made but this might not apply to all schemes if such a rule was previously unnecessary or is limited to A-day changes. We would ask the Government to give consideration to this in relation to the change of NMPA.

Summary of key points

- Moving to one regime for all registered schemes will impact disproportionately on personal pension providers.
- There is room to also relax the current regime in certain areas.
- We imagine schemes are unlikely to wish to voluntarily move to an NMPA of 57 ahead of the legislative timetable and there are various issues if they do want to make that change.
- The Government should consider whether it is desirable to create a further “Rules lottery” when it comes to NMPA.
- It is currently very difficult to provide members with any meaningful or helpful information about the changes, pending the final details being issued.
- Loss of protection on an individual transfer causes issues in practice and does not assist the Government’s goal of facilitating “freedom and choice”.
- Transitional arrangements around the move to NMPA 57 need to be fully considered to ensure certain members are not unfairly disadvantaged.

Detailed Response

Q1: Are there any specific considerations that should be taken into account regarding the government’s proposed framework for the increase to the NMPA?

One regime for all registered schemes

The current regime is different depending on the type of scheme – and we understand the proposal is that the new regime will apply to all registered pension schemes in the same way. To explain the issue, Paragraph 22 of Schedule 36 to the Finance Act 2004 applies to occupational or public service schemes only, whereas Paragraph 23 applies only where members of personal pensions and retirement annuity contracts (RACs) could take benefits before age 50 (and there is a list of prescribed occupations that this applies to). The protected pension age (“PPA”) regime for personal pension and RAC providers is therefore currently more limited than applies to other schemes. The implications of the new PPA regime for those who had unqualified rights before the change in 2028 (the “PPA55 regime”) applying to all types of registered schemes needs full consideration.

Providers of personal pension products flag that this will have a wider impact on them as compared with the current regime, and they will need to undertake significant work establishing whether there is an "unqualified right" to take benefits at age 55 in relevant schemes which will be new territory for them.

If it is determined that such an "unqualified right" to take benefits at age 55 exists in a particular scheme then there is a concern that members may be encouraged to join and/or to transfer benefits from other arrangements into that scheme before 2028 (see comments in the Executive Summary section). This could lead to market distortion, allowing some schemes in the provider space to compete in a way which others cannot replicate. See also comments under Q2 about the "Rules lottery". This is somewhat different to the position with occupational pension schemes (subject to the existing Paragraph 22 regime) where the scope for members transferring into such a scheme with PPA55 before 2028 (or indeed afterwards) would be more limited (particularly in a DB scheme context).

The existing regime

We welcome the Government's confirmation that the existing PPA regime for those already entitled to take benefits before age 55 will be maintained unchanged. We think there is scope to extend to the previous protection regime some of the additional flexibility afforded by the new approach for those having the PPA55 – namely removing the requirements that an individual must have ceased work and must crystallise all benefits under the scheme at the same time to draw benefits. We would also raise whether it is right that PPA (either under the existing or new regime) should be lost if a member undertakes an individual transfer (as opposed to a "block transfer"). We have commented further on these areas below).

Schemes changing NMPA to 57 before 6 April 2028

The consultation mentions that schemes should be free to increase NMPA to 57 ahead of the legislative timetable, i.e before 2028. We expect that there may be little reason for schemes to want to do this. Moreover, SPP members have raised that there may be an argument that such changes would be contrary to human rights law, especially where the increase would affect someone who is already at age 55 and who has an existing right to take benefits. Obviously Trustees also have their fiduciary duties to consider.

Another issue here is that raising NMPA ahead of the legislative timetable may prove difficult for schemes to which s.67 Pensions Act 1995 applies (and/or which have a restrictive amendment power) as this change may be seen to impact on accrued rights. Therefore, we would suggest the Government should consider including a resolution making power under section 68 Pensions Act 1995 to allow all schemes to do this, if the Government thinks there will be any appetite for it. The statutory override should allow carve-outs for those who are already over 55 at the date of the change.

<u>Q2: Are there any particular issues that the government should consider in the way NMPA is defined in pension scheme rules?</u>

The Government should be aware that it is not always entirely straightforward to ascertain whether a scheme contains an "unqualified right" as at the relevant date to take benefits before a particular age without the need for employer or trustee agreement – and if it does contain such a right, who exactly it applies to (e.g. as between actives and deferreds at a particular point). Schemes will often need to take legal advice and consider HMRC's guidance on this complex area (see PTM062210).

Some examples provided by SPP members are as follows:

- Some scheme rules state that members can "request" early retirement but do not make explicit whether the trustees can decide whether to accept or decline the request. We also see scheme rules which change over time, or which vary between different sections of a hybrid scheme.

- It is also quite possible that some rules which do have consent requirements do so only because they were drafted by a cautious lawyer who didn't want to confer any more rights than necessary without having some control over them, not because the trustees or employer specifically wanted the right to decline cost-neutral early retirement requests.

Given that this results in a “Rules lottery” (but this time including personal pensions and RACs and not just occupational/public service schemes), the Government might consider instead whether some kind of statutory override regime would be more appropriate for PPA55 (i.e similar to that which applies at the moment for personal pensions and RACs, which is not “Rules” based). This would also simplify matters for any future increases in NMPA, where changes to individual scheme rules now may have created further unqualified rights at age 57, meaning future changes could face the same issues.

Q3: The government proposes that the protected pension age will apply to all the member’s benefits under the scheme (if the conditions for a protected pension age are met), not just those benefits built up before 2028. Are there any other alternative options or issues the government should consider around the treatment of accrued and future pension savings?

In our view applying the protection to all benefits in a particular scheme (e.g. including transfers in) is appropriate, and we agree with the Government that doing otherwise would add complexity both from an administration and communications perspective and for the individuals affected. The current PPA regime works in the way proposed for the PPA55 regime and the SPP is not aware of any issues or difficulties with this particular aspect of the current regime.

Q4: Are there any issues associated with schemes informing members who meet the conditions of their rights to a protected pension age?

While the SPP understands the logic of pinning the right to what the governing provisions said as at February 2021, which is to ensure schemes or employers cannot amend those provisions to introduce new rights after the publication of the consultation, it is difficult for schemes to know what to say to members before the full legislative terms have been tied down. This is a particular concern for members who have transferred, or who might have wished to, since the date of the consultation until the response is issued and the regulations are finalised. Some members may lose a protection that would otherwise have applied without being aware of this and before the legislation is even in place, and it is unclear the extent to which schemes and providers should make members aware of this. We note the Government’s comment that schemes should notify members when it is practicable to do so. Although the consultation provides enough to warn members there is a risk, a definitive statement of whether or not a member has a PPA55 can only be carried out when we have final legislation.

We appreciate that there is a long lead-in time up to 2028 but the fixing of the regime to what scheme rules say already (i.e. as at February 2021) leads to this issue coming up now. It would be helpful to have confirmation of whether the right would be linked to the scheme the member was actually in on 11 February 2021(with that right protected for block transfers thereafter). However, even if it is linked to the scheme the member was in on 5 April 2028 it is unlikely to be possible for members to transfer back to the original arrangement before then in order to regain the protection they have inadvertently lost.

There are also questions over the extent to which it is appropriate for providers to find affected individuals and communicate with them. If providers notify members of PPA55 in a particular scheme (or indeed market schemes on the basis that that they contain PPA55) then there may be a rush of members joining those schemes up to the deadline in 2028. This ties in with the point made in Q1 above about market distortion.

Q5: Are there any circumstances why the increase in NMPA may impact on pension flexibility (which was introduced following the 2014 consultation on "Freedom and Choice in Pensions")?

Block transfer and individual transfer

By only allowing protection to remain on "block transfers", members looking to make an individual transfer could be put off from transferring due to losing the protection. For example, younger members who may see the NMPA increase even further in years to come. By being "trapped" in this way, this will restrict access to flexibilities/choices and could lead to poor member outcomes. This will also be a particular concern/difficulty when dealing with small pots – for example, the option of automatic transfers would undoubtedly be very difficult if members stand to lose a protected NMPA.

The fact that PPA (under the existing regime and under the proposed PPA55 regime) is lost on an individual transfer causes a number of problems in practice and is something we would invite the Government to reconsider in respect of both the existing and PPA55 regimes.

If the block transfer rule remains, the Government is encouraged to take this opportunity to amend or remove the requirement that the transfer must be made within 12 months of the member joining the receiving scheme. With the introduction of automatic enrolment, and the popularity of master trusts with multiple employers, this requirement is now overly restrictive. It means, for example, that if an employer starts using a master trust for future service contributions that there is only this fairly short window for the predecessor scheme to arrange a block transfer of pots to this same master trust (if it wishes to do so) without members losing their protections. We also think that losing the protection because of previous Master Trust memberships as a result of unrelated employments will be a real problem. We think it would be reasonable to remove the 12-month membership condition or amend it so that Master Trusts are treated as several schemes for the purpose of tax law protections.

Transitional arrangements relating to the NMPA change

What might be included in terms of transitional arrangements for members who reach age 55 shortly before 6 April 2028, i.e. those born between 6 April 1971 and 5 April 1973? Some schemes have introduced a 'limited UFPLS' option where members can spread an UFPLS over two tax years – but that is the limit to the flexibility. It would be helpful if a modest easement could be introduced to allow members who have taken an UFPLS in 2027/28 to take a second UFPLS from the same scheme in 2028/29. We would be interested to know whether the Government is considering any other transitional measures where individuals have taken an UFPLS or indeed any wider easements for use in these circumstances?

Someone born on 5 April 1973 first attains NMPA on 5 April 2028. But on 6 April 2028, they will be below NMPA again, for almost two years (assuming no protection). Some members could have just 24 hours to access their pension or face a further two-year wait – something that runs the risk of creating an administrative bottleneck. The industry would also appreciate clarity on whether or not the member has to be "entitled" on 5 April 2028 (as per the FA04 meaning) or whether they simply have to have the right on 5 April 2028. Some SPP members have commented that different guidance has been put forward on this in the past by HMRC and there is lack of clarity around this issue, so clarity would be much appreciated.

There could also be other circumstances where members who will be 55 plus but below 57 as at 6 April 2028 would be disadvantaged. For instance, a member could take a PCLS in the 6 months leading up to that date that then be caught on the wrong side of that date when it comes to putting the connected pension entitlement into payment. How would the member's benefits be treated for tax purposes in that scenario and what communications should such a member receive about this?

Please also see our comments about accessing benefits flexibly under Q6 below.

Q6: Are there any implications the government should consider by not requiring that all scheme benefits must be crystallised on the same day as a condition for a protected pension age?

This flexibility will be helpful for members of registered schemes which offer drawdown. At the moment, if a member has a PPA currently, in a DC occupational scheme the member would need to allocate all funds for drawdown in one go in order to retain PPA (and cease working in order to draw the benefits). This might not otherwise be the best option for them (e.g. they may have preferred to take a series of UFPLS). Also, many members with DB rights also have DC rights in the same scheme. The current regime of PPA requires both the DB and DC rights to be taken at the same time (or transferred out). As referenced in our response to question 1 we think this flexibility could be extended to the existing protection regime.

However, if members wish to take advantage of "Freedom and Choice" options in a DB Scheme they would usually have to transfer to a DC arrangement to do so. Similarly, many occupational trust-based DC schemes do not offer drawdown or a series of UFPLS from their own scheme, and members have to transfer to a contract-based product or mastertrust at retirement to take advantage of those flexibilities. Members in that category would, of course, lose their PPA55 if they undertook such an individual transfer which did not meet the "block transfer" requirements (as proposed). It may be that schemes and providers are able to artificially devise a "block transfer" to ensure PPA55 is retained on transfer (e.g. by timing transfers of retirees to a linked mastertrust arrangement to "buddy" with another person). But, if in principle PPA55 is being designed to work with accessing benefits flexibly, it would be vastly preferable for the legislation to adequately cater for this, no matter what the receiving vehicle is (or whether another member is transferring to the same one at the same time).

We also welcome the proposal not to require that a member has to leave employment before taking benefits in order to retain PPA55. This is an area which has caused issues in practice for schemes where members wish to take advantage of the current PPA regime while winding down their working hours, rather than ceasing to work completely at least for a period, as this is not allowed.

Yours Faithfully

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Legislation Committee, SPP

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INTRODUCTION TO THE SOCIETY OF PENSION PROFESSIONALS (SPP)

SPP is the representative body for the wide range of providers of advice and services to pension schemes, trustees and employers. The breadth of our membership profile is a unique strength for the SPP and includes actuaries, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and specialists providing a very wide range of services relating to pension arrangements.

We do not represent any particular type of pension provision nor any one interest-body or group. Our ethos is that better outcomes are achieved for all our stakeholders and pension scheme members when the regulatory framework is clear, practical to operate, and promotes value and trust.

Many thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds. The SPP's membership collectively employs some 15,000 people providing pension-related advice and services.