



By email: [policypensions@HMRC.gov.uk](mailto:policypensions@HMRC.gov.uk) and [ltaadministration@hmrc.gov.uk](mailto:ltaadministration@hmrc.gov.uk)

29 September 2023

Dear HMRC,

**Proposed Lifetime Allowance Abolishment: Suggestions and Concerns (part 2 of 2)**

I am writing on behalf of the [Society of Pension Professionals \(SPP\)](#) in response to the proposed changes on abolishing the Lifetime Allowance (LTA) with effect from 6 April 2024 and the revised lump-sum focused regime, which are looking to be introduced in its place.

We respond here with concerns over the impact of LTA removal on procedures and information that members will be required to provide and understand. We also comment on impacts on DB flexibilities (allowing lump sums beyond the usual tax-free allowance), serious ill-health lump sums, transitional arrangements and cash-out lump sums. On the situation of a member dying before reaching 75, we express concerns on the taxation of crystallised benefits, DB transfers to DC, and inherited pots.

This document is a follow-up communication from our first letter dated 12 September 2023. On this occasion, we comment on the proposed changes<sup>1</sup> and offer some suggestions that, we believe, would help with achieving the Government's policy intent of simplifying the pensions tax system.

We would be happy to discuss this matter further.

Yours faithfully

**Amit Shanker**

Chair, SPP Administration Committee

**Fred Emden**

Chief Executive, SPP

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<sup>1</sup> <https://www.gov.uk/government/publications/abolishing-the-pensions-lifetime-allowance/abolition-of-the-lifetime-allowance> and <https://www.gov.uk/government/publications/pension-schemes-newsletter-152-july-2023/newsletter-152-july-2023>

## Detailed comments

### Overview

At a glance, this response covers our comments on some of the proposed changes which appear in the recent consultation, along with our suggestions on other related areas.

While we have provided comments, we are conscious that these are very complex changes, and due to the limited resources or time available, it has not been possible to perform a line-by-line reading. Therefore, our responses mainly cover the policy issues HMRC have identified.

### General comments

Although it is believed that the proposed changes will only impact the highest earners, they will impact everyone in terms of changes to processes, procedures and information that members will be required to provide or need to understand.

The pensions tax regime currently is extremely complicated, and schemes rely fundamentally on HMRC's guidance (PTM) to understand this complex legislation and how it applies in practice. With the legislation being altered and replaced in huge swathes, we cannot see how appropriate guidance will be issued in time for an implementation date of 6 April 2024, let alone in time to allow review for changes. Given this, our ability to rely on extant guidance will be compromised, which adds to costs (such as needing to take extra advice from legal advisers) and increases risks.

While the threshold for the tax-free lump sum has essentially remained the same as the current limit of 25% of the current standard LTA of £1,073,100 (£268,275), the LTA may once again increase in line with inflation from 6 April 2026. Then, the result of removing this inflation link means that the maximum tax-free lump sum members can take is reduced in real terms each year. As it is not clear from the drafts, we would welcome clarification from Government on its intention regarding tax free cash and whether or not they are looking to reduce members' tax-free cash entitlement in real terms each year – this could be an important factor for members planning for retirement. If it is not the Government's intention to reduce the tax-free cash entitlement in real terms each year then it would be sensible for the new regime to be inflation-linked rather than static – this will also lend itself for industry to maintain the percentage-based allowance that members are used to and make it easier to consider the impact of those limits on benefits taken before 6 April 2024.

The drafts also have important gaps. For example:

- there is no indication of how benefits drawn before 6 April 2024 impact the scope for and tax position of lump sums paid after that date. This is important for members with larger benefits making decisions now, for overall system design, and for any communications with members to gather relevant data before benefits are paid.
- details of information scheme administrators will be required to provide members, and any reporting requirements have yet to be provided. This is important to ensure they are able to

make any amendments to systems and processes to comply with any new statutory requirements.

Without this information, it is not possible at this time for pension scheme administrators to start to prepare for the changes. This is particularly concerning as the proposed changes are currently intended to take effect from 6 April 2024, which is less than seven months away.

Although the intention is to abolish the LTA, all the old rules and potential LTA charges will continue to apply in relation to the following:

- retrospective exercises before 6 April 2023 – including GMP equalisation and some aspects of the public sector McCloud remedy.
- a retrospective change after 5 April 2024 that is in effect between April 2023 and April 2024 will still need all the LTA calculations carried out, even though there will be no charges arising.
- a retrospective change after 5 April 2024 that is in effect before 6 April 2023 will still need all the LTA calculations carried out and for the relevant LTA charges where applicable.

Systems and procedures will still need to cater for these circumstances in addition to the new rules.

#### DB flexibility

The legislation, as currently drafted, would allow taxed lump sums beyond the usual tax-free allowance for DB schemes - essentially DC Freedom and Choice flexibilities for DB arrangements. As your subsequent newsletter 152 states, "it's not the Government's intention to significantly expand pension freedoms", we understand that the proposed draft clause is likely to be amended to close off this unintended flexibility. However, at this time, the industry still does not know how this core element of the regulations will be revised in any final drafted legislation and how correction of this 'unintended change' will knock on to other areas of the new regime. It is essential that, where a DB lump sum under the scheme rules could have been paid as an authorised lump sum prior to 5 April 2023 (when Finance (No 2) Act introduced various caps), that such a DB lump sum can continue to be paid as an authorised benefit thereafter.

#### Serious ill-health lump sum

We note that under the proposed new regime, this broadly remains the same as under current rules. However, we note that if the member were to exceed the new £1.0731m threshold, the excess serious ill-health lump sum would be taxed at the member's marginal tax rate.

While, in principle, this is consistent with HMRC's other proposals, we have some concerns on how this could affect some cases. Following the removal of the flat rate LTA charge from the 2023/24 tax year, we have concerns that members under age 75 could be incorrectly taxed (too much or too little) and, given the nature of the scenario, be unable to resolve (e.g. multiple pension arrangements

processing serious ill health, due to their health members unable to collate and provide the relevant information from those arrangements, expectation or need to process quickly).

Therefore it seems more sensible for serious ill health lump sum payments to be paid as gross, along with a requirement to report these payments to HMRC (possibly quarterly via the Accounting for Tax return), so HMRC can claim the relevant amount of tax from the recipient.

### Transitional arrangements

Currently, the members' Lifetime Allowance usage is used to cap the amount of tax-free lump sum a member is able to take from a scheme (i.e. the maximum tax-free allowance a member has is based on 25% of their remaining LTA). Under the new proposed regime, the limit will be a monetary amount of £268,275 (note our suggestion that this should increase each tax year in line with inflation). In both cases, there continues to be the requirement that at most 25% of the benefit drawn can be taken as a (tax-free) lump sum.

Pension arrangements are required at each benefit crystallisation event to issue members a BCE statement confirming their total LTA usage as a percentage and where they are in receipt of a pension (including where members have designated funds to provide drawdown pension) a reminder of this each tax year. This information does not confirm whether or not a member took a tax-free lump sum, and it would likely prove difficult for members to obtain this information going back to 6 April 2006 due to various circumstances, such as the scheme wound up, benefits secured with an insurer, and others.

We assume HMRC will make it a requirement from 6 April 2024 for scheme administrators to confirm:

- the total amount of lump sums which are measured against the new thresholds, including the amount measured against the member's tax-free limit, for a member from their scheme each tax year where in receipt of a pension (or designated funds to drawdown).
- as well as retaining the current requirement to confirm the LTA percentage usage for benefits crystallised prior to 6 April 2024.

From a member's perspective, the provision of this information needs to be simple, and we believe the above would be the most sensible and simplest way forward, as it remains consistent with what they are currently accustomed to. Over time, those who have crystallised benefits prior to 6 April 2024 will fall away eventually.

We suggest the current practice for benefits taken prior to 6 April 2024 continues to assume the member has taken a tax-free lump sum and reduce the member's tax-free allowance of £268,275 accordingly - e.g. a member utilised 50% of the standard LTA prior to 6 April 2024; therefore, members tax-free limit under the new proposed regime is £134,137.50 (268,275 – (268,275 x 50%)).

This method would then make it easier for scheme administrators to determine a member's tax-free limit where they have taken any tax-free lump sum under the new proposed regime and provide those details to the scheme administrator (see above). Where the first point is that a member is taking pension benefits since A-Day, our suggested method would work by using the formula which is currently in place (gross pension in payment prior to first proposed benefit crystallisation event x 25) and taking 25% of this to reduce the member's available tax-free allowance, i.e. for a current pre-A-day pension of £30,000 pa:  $268,275 - (25\% \times 25 \times 30,000) = 80,775$ .

#### 'Cash-out' lump sums

We note that under the new proposed regime, lump sums which are currently not considered a benefit crystallisation event and therefore not measured against a member's LTA, are to be measured against the new thresholds and, as a result, reduce the member's allowance – small lump sums, trivial commutation lump sums, winding up lump sums, relevant accretions.

Such lump sums payments have historically been used as tools to help tidy up schemes and avoid excessive costs and administrative burdens in relation to very small benefits. Members easily lose track or sight of such benefits. The amounts involved are necessarily small and the tax-free element associated with them (the only element that the government now has any interest in) is smaller still. There are also multiple conditions in place to minimise the possibility of circumstances being manipulated to engineer the availability of these payments and, over the next few years, these types of payments are expected to be particularly prevalent, for example, in association with GMP equalisation payments.

Depending on the size of the benefit (although they are all by definition small), members may simply fail to identify/notify administrators of relevant past payments, details which would be required by a pensions administrator to perform the appropriate checks under the new regime before they could proceed to payment. In extreme cases, members may disengage from the process of having to provide information (i.e. they could deem the effort/time to provide the information outweighs the amount to be paid).

We, therefore, strongly suggest that these types of benefits are not measured against the new proposed regime and that they are consolidated under one payment label with a limit of £30,000 per scheme, with the tax-free portion not measured against the £268,275 limit. This is similar to the current practice for Trivial Commutation Lump Sum Death Benefit payments.

We believe the above will help the Government achieve their overall aim of simplification.

#### Death before age 75

It appears that the approach for uncrystallised benefits under the new proposed regime is consistent with the approach taken under the current framework, that is, tax-free in the large majority of cases.

We note that this is not the case for crystallised benefits. We are concerned that the proposed change does not appear to be in line with the Government's overall aim to simplify the pensions tax system. On that note, the change will impact those who have already exercised a drawdown of funds based on appropriate advice. Also, some DB members may have previously transferred funds to DC with this tax outturn in mind.

Under the current system, heirs can inherit money via a beneficiary drawdown account where it remains invested, grows tax free and can be drawn free of income tax at any time, but under the new proposed regime, heirs would pay income tax on payments drawn.

Where the LTA only impacted those with the largest benefits (considered high earners), this new proposal would apply to anyone who inherited an untouched pension from a member who died under the age of 75, regardless of the size of that pot. If this proposal were to proceed, the only alternative would be for heirs to lose the pension wrapper and tax breaks associated with this and take the inheritance as a cash lump sum (which would remain tax-free). Compared to the current system, where funds were already invested under a pensions wrapper, once the above cash lump sum is paid, heirs would be left with difficult decisions of how to invest the money, how to manage it over time and consider that any remaining funds after their own death are at risk of falling under inheritance tax.

As this is such a large change in policy, HMRC should be drawing attention to it separately, rather than it being included at the end of a policy paper with this draft legislation.

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### **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.