THE SOCIETY OF PENSION PROFESSIONALS
making pensions work

By email: policypensions@hmrc.gov.uk

12 September 2023

Dear HMRC,

Draft Finance Bill provisions – Abolition of the pensions lifetime allowance

We very much appreciate the opportunity to comment on this draft Finance Bill legislation. Our colleagues from the SPP's Administration Committee are writing separately to HMRC with their comments on a wide range of issues arising out of the draft legislation. The purpose of this letter is to focus on the effect the abolition of the pensions lifetime allowance, and the draft legislation, has on the amount of pension commencement lump sum ("PCLS") a member can take.

The current legislation limits the amount of PCLS in paragraphs 1(2) and (5) of Schedule 29 to the Finance Act 2004 by reference to a 'permitted maximum', which is defined in paragraph 2 of that Schedule and later by reference to an 'applicable amount' in paragraph 3 of that Schedule.

The amendments that would be made by the current text of the draft Finance Bill provisions would remove that permitted maximum limit and instead apply limits to the tax treatment of PCLS through the provisions of new section 637A inserted into the separate Income Tax (Earnings and Pensions) Act 2003 (ITEPA03). Whilst that new drafting still uses the terms 'permitted maximum' and 'applicable amount', the context and effect are very different. Crucially, the draft legislation would not limit the actual size of a PCLS but only its tax treatment. Consequently, the provisions of Schedule 29, as amended, would have hardly any limit on the amount of PCLS.

This would be a significant change as the only requirements for a PCLS are, to paraphrase:

- a link to entitlement to a relevant pension (paragraph (aa))
- payment in a period beginning six months before and ending one year after the entitlement date (paragraph (c))
- payment once the member has reached normal minimum pension age (or the ill health condition being satisfied) (paragraph (d))
- the payment not being an excluded lump sum where the linked pension is a CMP-derived drawdown pension (paragraph (f)).

This means that a PCLS could, in principle, be much more than 25% of the overall value of the scheme pension or lifetime annuity taken, and, although the tax-free element would be limited, there would be scope (subject to GMP requirements, where relevant) for payment of only a nominal linked pension for entitlement purposes while the rest of the value is paid out as partly taxed lump sum.

This could be particularly problematic for some defined benefit (DB) schemes, where their scheme rules contain provisions allowing the member to take as much PCLS as would be permitted as an authorised payment under the Finance Act 2004. The draft legislation would indeed allow a great

The Society of Pension Professionals
124 City Road, London, EC1V 2NX T: 020 7353 1688
E: info@the-spp.co.uk www.the-spp.co.uk

deal. In other cases, scheme rules would give the trustees power to agree (or otherwise) to the new maximum commutation, which could put them in a difficult position that was never intended to arise when the rules were drafted.

Such a policy change could also have a substantial effect on DB schemes' funding and investment strategies and mean a smaller proportion of investment into longer-term asset classes, such as patient capital, of the kind championed by the Chancellor in his recent Mansion House speech. This is because schemes would need to be able to pay out much larger lump sums than currently permitted when members exercise their new right, which would require greater cash holdings and mean increased liability values (because liabilities to pay pension many years in the future could become liabilities to make a single much earlier lump sum payment). It may also adversely affect the buy-in/out terms that DB schemes can access, since insurers taking on the liabilities would be similarly affected.

This could also affect DC schemes. Whilst there is already 'pension freedom' in this sphere, some schemes have chosen not to allow retirement benefits, other than a PCLS, to be taken in lump sum form (with a transfer-out always being an option to members who wish to access the full range of pension freedoms). In some DC schemes, in the same way as for DB schemes, the rules could suddenly permit a very much larger lump sum payment than the employer and trustees have decided to offer.

Whilst we welcome the clarification in Pension Schemes Newsletter 152 at section 1 that it is not the Government's intention to significantly expand pension freedoms, comments in the initial policy paper seemed to indicate that this was intended. If, therefore, this is the Government's intention, we submit that, for all of the above reasons, any decision to introduce DB (and more DC) 'pension freedoms' should be the subject of specific consultation and a full impact assessment.

Finally, we would suggest that there is a statutory power for trustees to make amendments to scheme rules to adapt them for the full abolition of the lifetime allowance and the introduction of the revised tax regime.

We thank you for your attention in this matter.

Yours sincerely,

Faye Jarvis
Chair, Legislation Committee, Society of Pension Professionals

Fred Emden
Chief Executive, SPP

THE SOCIETY OF PENSION PROFESSIONALS

PROFESSIONALS

making pensions work

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.

The Society of Pension Professionals
124 City Road, London, EC1V 2NX T: 020 7353 1688
E: info@the-spp.co.uk www.the-spp.co.uk