



THE SOCIETY OF PENSION
PROFESSIONALS

making pensions work

By email only: pensions.policy@hmrc.gov.uk

HM Revenue & Customs
HM Treasury

13 September 2021

Dear Consulting Team

SPP comments in response to Increasing the normal minimum pension age for Pensions Tax

We welcome the opportunity to respond to this consultation.

Executive Summary

We have reviewed the Government's response to consultation and draft legislation and have highlighted in this letter some key issues and potential consequences that arise from the proposals to introduce Protected Pension Age ("PPA") of age 55, as drafted. These issues and potential consequences can be summarised as follows:

- Pension schemes (other than occupational pension schemes) will for the first time be examining their governing provisions to see if these confer a "right" on pension scheme members to take benefits prior to age 57 as at 11 February 2021. Contract-based arrangements will not have 'scheme rules' in the same way that occupational pension schemes do (and the regulations are based on the current PPA regime which only applies to occupational pension schemes). HMRC will need to provide clear guidance on what constitutes an unqualified right in the context of these types of arrangements – or we can foresee many arrangements requesting non-statutory clearance from HMRC to seek clarity. See section 1.
- Our interpretation of the proposed regulations is that members in a scheme that would meet the conditions for having a PPA of 55 will actually lose that protection if they transfer benefits to a new scheme that does not qualify for a protected pension age prior to 6 April 2023. We think this is the only possible interpretation of the draft regulations and if this is not the policy intention this needs to be addressed to provide protection to everyone who should benefit. See section 2.
- The Government's view is that there should be a window to allow new joiners to join an arrangement that has a PPA of 55 up to 6 April 2023 and that this is consistent with how the rise in NMPA from 50 to 55 was dealt with in 2010. It should be noted that the current proposal is much wider than what was permitted in 2010, as it will allow anyone who is eligible to join a pension (including this time a personal pension) to obtain "future" protection (including in relation to transferred-in amounts). In 2010 the window was only relevant to occupational pension schemes. This significantly increases the number of

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individuals able to obtain a PPA, potentially causing market disruption and reducing the impact of the increase in the NMPA (if large numbers of pension savers transfer benefits to personal pensions with PPA55 to gain protection). See section 3.

- There is significant work for administrators and providers to do in administering the PPA regime as currently envisaged when it comes to transfers on an individual and bulk basis. The issue of ringfencing for protected individual transfers and the potential for there to be multiple transfers-in of different types means administration systems and record keeping will need to be updated to allow this. We note that those with existing PPA at an age under 55 will still lose that protection entirely on an individual transfer. Communications with members will necessarily be complex. See section 4.
- Transitional arrangements should be settled as soon as possible to allow communication with members. See section 5.
- We remain concerned that the proposed approach followed in the draft legislation increases complexity for the majority of pension scheme members, trustee and providers, but will only provide a marginal benefit for what we understand could be a minority of members who are likely to wish to access benefits at either age 55 or 56. This approach is likely to increase the value placed by members on schemes that offer the right to access at age 55. In turn, this increases the risk that members may stay in or move to schemes that are unsuitable or represent poor value for money in order to have access to a feature that ultimately they may be unlikely to use. See section 6.

Detailed Comments

1. Establishing an unqualified right to a PPA

In order for a member to be eligible for a PPA, it is proposed that one of the conditions contained in paragraph 23ZB(3)(b) of Schedule 36 of the Finance Act 2004 will require the ‘rules of the pension scheme’ to confer a right on members to take benefits prior to the age of 57 on 11 February 2021.

We note that the draft regulations do not explicitly define what the ‘rules of a pension scheme’ consists of. Indeed, paragraphs 2.9 and 2.14 of the Government’s response to the consultation suggests that trustees, scheme managers, (after taking professional advice) would be best placed to determine member rights. Furthermore, paragraph 2.16 of the response also suggests that “other scheme documentation” may also help confer the right.

It is important to note that not all pension members are within a ‘scheme’ as such (e.g. a trust-based scheme) and therefore, establishing what the ‘scheme rules’ are will not always be straightforward. We note that the wording used for the new protection (‘rules of the pension scheme’) is the same as is used in paragraph 22(4) of Schedule 36 to the Finance Act 2004 for the current PPA regime which of course only applies to trust-based occupational pension schemes. The new regime will, however, apply to all registered schemes. Policies such as Retirement Annuity Contracts, Section 226 and Section 32 buy-out policies do not have ‘scheme rules’ in the same sense that an occupational trust based scheme does. These kinds of policies are governed instead by policyholder documents, for example a policy document and policyholder literature (i.e. these would constitute the policyholder’s terms and conditions).

Given the uncertainty around what documentation is sufficient to support an “unqualified right” for the purposes of this legislation for registered schemes which are not occupational schemes (for example T&Cs, policy documents, member brochures, key features), it is important that

HMRC provides further guidance on this, particularly in relation to contract-based schemes and individual policies such as Retirement Annuity Contracts, S226s and Section 32 buy-out policies. As we understand HMRC may wish to conduct future audits on access to pension benefits, the expectations must be clearly and explicitly laid out at the outset. If this is not the case, pension schemes are likely to seek clarity on a non-statutory clearance basis, and HMRC may be inundated with these requests from providers if the guidance is not clear.

2. Transfer of benefits for members with a PPA of 55 before 6 April 2023

We note that the proposed wording of the amendment to Paragraph 23ZB(3)(a) of Schedule 36 to the FA 2004, as described in paragraph 1(5) of the draft legislation, applies to rights held on 6 April 2023 only.

Our interpretation of this wording is that members in a scheme that would meet the conditions for having a PPA of 55 will lose that protection if they transfer benefits to a new scheme that does not qualify for a protected pension age prior to 6 April 2023, for example to a scheme which has rules stating 'Normal Minimum Pension Age' only. We think this is the only possible interpretation of the draft regulations and would query whether this is an intended consequence of tying scheme membership to April 2023 for the purposes of the protection?

This could lead to transfers which would otherwise be in members' interests (e.g. bulk transfers for the purposes of DC consolidation) not going ahead before April 2023, which could in turn result in member detriment.

This complexity could also result in additional advice costs for members contemplating an individual transfer, especially where there is a safeguarded (DB) benefit, due to legal requirements for transfers over £30k where members are required to take independent financial advice.

We do not believe that this was the intention of HMT, as in paragraph 2.2 of the 'Increasing the normal minimum pension age: summary of responses to the consultation on implementation' publication it states that the Government's intention is that members can retain their pre-existing minimum pension age as a PPA if they already have an unqualified right within their specific scheme rules to take their pension benefits at that age.

Therefore, if the intention is indeed to protect individual transfers and bulk transfers, the legislation should be amended to reflect the policy intent that if the member was a member on or after February 2021, then the protection should be retained on the same basis as post April 2023 transfers.

This could be achieved by amending the legislation to confirm that if a transferring scheme contained the right on 11 February 2021 (i.e. it's a PPA55 scheme) and the member was a member on or after that date and up to the date of transfer (which is before April 2023), then the protection would be retained on the same basis as post April 2023 transfers.

Although this would result in additional work to identify those members who have already transferred and establish whether they now have a PPA of 55 in their receiving scheme (and where it is an individual transfer work out an appropriate ringfencing of benefits), we are concerned that the current drafting could cause member detriment.

3. New joiners up to 6 April 2023

We note that the Government stated in paragraph 2.18 of the summary of responses to the consultation that the window for new members to join existing schemes by 5 April 2023 (where

scheme rules on 11 February give an unqualified right to take benefits below 57) is consistent with the approach taken when the NMPA rose from 50 to 55 in April 2010.

However, it is worth highlighting the key difference in 2010 was that legislation at the time only allowed an employee to join an employer's occupational pension scheme to gain protection (which limited the number of members able to take advantage of "future" protection).

The current proposal is much wider as it will allow anyone who is eligible to join a pension (including a personal pension) to obtain "future" protection (including in relation to transferred-in amounts). This significantly increases the number of individuals able to obtain a PPA, potentially causing market disruption and reducing the impact of the increase in the NMPA (if large numbers of pension savers transfer benefits to personal pensions with PPA55 to gain protection).

We would also note that it is at least possible for this window to be used by scammers looking to tempt members into an otherwise unsuitable vehicle by the April 2023 deadline in order to obtain a pension age of 55.

4. Transfers after 6 April 2023

We note the desire of Government stated in paragraph 2.22 of the summary of responses to the consultation to 'minimise the impact on pension schemes'.

However, we wish to highlight the significant additional complexity that the approach followed in the draft legislation creates for both members to understand the changes and for providers/trustees and administrators to clearly communicate the changes to members and also ensure correct records are kept to ensure benefits are paid properly.

For example, the draft legislation would require parallel records and rules to be maintained for:

- policies for members with a NMPA of 57;
- individual transfers received after 2023 with a PPA of 55, which will need to be ringfenced;
- block transfers received after 2023 with a PPA of 55, which are not ringfenced; and
- potentially pre-April 2023 transfers, which we assume would be brought in subject to the same conditions (e.g. ringfencing for individual transfers).

In addition, where further transfers are subsequently received, details of multiple transfers in on an individual or bulk basis would also need to be retained.

Ringfencing will mean different tranches of money within a scheme potentially being crystallised at different ages. This will create further complexity for example in relation to the interaction with the LTA (that also has various protections) and the calculation of tax free lump sums.

Further complications also arise from the differences between the 2010 PPAs and PPA of 55 (such as the 12-month membership rules).

We would also note that no new easement applies for a member with PPA of under age 55 who would still lose that protection on an individual transfer (as is currently the case) and after April 2028 only be able to take benefits from age 57. This leads to the result that such a member still loses protection on an individual transfer whereas someone with PPA55 would now retain it (subject to the ringfencing requirements) and be able to take benefits at age 55. As we read the regulations, HMT has not introduced any ability for a member with PPA of under age 55 to be able to take benefits from age 55 instead following an individual transfer.

There is clearly significant work here for trustees and providers to do to in order to administer protections as currently envisaged.

5. Transitional Arrangements

The Government acknowledged in paragraph 3.2 of the summary of responses to the consultation the need to provide clear guidance on any transitional arrangements, for example for those born between 6 April 1971 and 5 April 1973 who may lose their right to take benefits before aged 57 unless they take benefits earlier.

These are not currently included in the draft legislation, so we look forward to receiving details of these at the earliest opportunity.

6. Member and market impacts

We remain concerned that the proposed approach followed in the draft legislation increases complexity for the majority of pension scheme members, trustee and providers, but will only provide a marginal benefit for what we understand could be a minority of members who are likely to wish to access benefits at either age 55 or 56.

This approach is likely to increase the value placed by members on schemes that offer the right to access at age 55. In turn, this increases the risk that members may stay in or move to schemes that are unsuitable or represent poor value for money in order to have access to a feature that ultimately they may be unlikely to use.

For workplace pensions, employers will have selected the pension scheme for their employees, and whether or not there are “unqualified rights” to benefits payable at 55 is unlikely to have been a consideration in that selection. Many employees will therefore have a PPA because of a ‘rules lottery’ which could be perceived as being unfair by others that do not.

The complexity of the approach followed in the draft legislation would appear to be at odds with the significant policy work such as the introduction of the Dashboard to help member engagement and the work by DWP to simplify pensions and to help members understand their pensions (for example the recent consultation on permitted charges within Defined Contribution pension schemes, and introduction of a simplified two page benefit statement).

We are concerned that the continuing uncertainty around the rules means that it is difficult for schemes to communicate about the potential impacts to members.

The government acknowledges, at paragraph 2.8 of the response, that the DWP is proposing to limit the statutory right to transfer where there are signs of a scam. However allowing individuals to potentially join registered schemes, up to April 2023, with PPA of 55 could nevertheless put members at further risk of pensions scams in practice.

Yours faithfully

Fred Emden
Chief Executive, SPP

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