ASSOCIATION OF CONSULTING ACTUARIES

Association of Consulting Actuaries Limited · First Floor (129) · 40 Gracechurch Street · London · EC3V 0BT
Tel: +44 (0)20 3102 6761 · Email: acahelp@aca.org.uk · Web: www.aca.org.uk

14 September 2021

By email to pensions.policy@hmrc.gov.uk
To whom it may concern

# Implementation of the change in Normal Minimum Pension Age

I am writing on behalf of the Association of Consulting Actuaries with comments on the draft Finance Bill legislation in Increasing the normal minimum pension age for Pensions Tax .

The ACA welcomes the opportunity to provide input and set out our concerns in Appendices 1 and 2.

**Summarising our comments:**

We welcome sharing of the draft clauses for the new protected pension age ('PPA') regime for members who have certain unfettered rights in schemes currently (or whose schemes did provide such a right and who join the scheme before 6 April 2023). As noted in our previous consultation response, providing the new PPA seems appropriate so that existing rights do not lead to unauthorised benefits – even though this new and different layer of protection will create and extend complexities. We do however have particular (and urgent) concerns about the operation of this provision in relation to transfers between February 2021 and 5 April 2023 from a scheme that would have given a PPA below 57 to one that had no such protection. This is presently a great concern for consolidators and could (unless a statement of policy intent is given urgently) create a delay on transfers that could already be in process.

We also note that HMRC will provide guidance and examples "as appropriate" about the meaning of having 'an unqualified right under scheme rules' that give rights to the PPA. We do not address this further here but we look forward to seeing that guidance.

The proposals for the current change in NMPA will maintain the PPA provisions that arose from the previous increase in NMPA in 2010 ('2010 PPA') – which we welcome. However while some wider flexibility is now proposed around the new protections ('2028 PPA') against the NMPA rise to 57, those easements are not extended to the 2010 PPA protections. This will create administrative complexity for schemes and cause confusion among members. At minimum, guidance on both regimes (which are ongoing) will need to be issued and carefully framed.

We note that there is at present no draft legislation on the transitional arrangements that will be needed at 2028 for those members who do not have PPA and will be aged 55-57 when NMPA changes (ie those with date of birth 6 April 1971 – 5 April 1973) – and may have started but not completed the process of taking pension savings before the change in NMPA. The increase in NMPA is only 2 years - so much smaller than the 5 year change that applied at 2010. But lessons from the 2010 change show the importance of establishing the detail, and how the potential pitfalls can impact on the operation of schemes, certain scheme projects, and member decisions. HMRC has promised to provide further advice on the position of these transitional arrangements 'in due course'. We would be keen to review and give input to any draft legislation, which we would hope is finalised and issued well in advance of 2028. Appendix 2 of this document repeats our technical comments on the points needing addressing.

We hope you find our comments useful. We would be happy to discuss this matter further if you wish – if so, please contact me on 020 7432 6621 (or at karen.goldschmidt@lcp.uk.com), or Jillian Pegrum on 01252 768175 (email jillian.pegrum@aon.com)

Yours sincerely

**Karen Goldschmidt FIA**
Chair of the ACA Pensions Taxation committee
On behalf of the Association of Consulting Actuaries Limited

# Appendix 1 – comments except for matters on the 2028 transition

*In the following we refer to the provisions for a protected NMPA re the new measure (we call this **2028 PPA,** by contrast to the existing protections from the 2010 change in NMPA which we call **2010 PPA**)*

### Armed forces

The legislation prescribes NMPA as remaining at age 55 for members of the armed forces – regardless of when they joined – which is welcomed.

### Provisions for 2028 PPA

### General provision

- In the existing provisions of schedule 36 (paragraphs 22 and 23) around protected pension age the entitlement condition is met 'in relation to the member and the pension scheme'. Should the wording of paragraph 23ZB(3) include the same?

- We welcome the removal of the 'retirement' condition (that applies for 2010 PPA) when the member accesses benefit subject to a 2028 PPA. It is disappointing that the easement is not also introduced in relation to 2010 PPA.
  It is possible that someone could fall foul of their 2010 PPA (say age 50) by staggered drawing, but provided the scheme rules wording is sufficient to still given them an entitlement to that earlier PPA, we expect that the new paragraph 23ZB would at least kick in to allow them to take their benefit as authorised from age 55. This will need to be made clear in guidance.

- We also welcome the provision giving members a window until 5 April 2023 to join a scheme whose rules on 11 February 2021 conferred a right to take benefits at an age of less than 57. However this does bring inconsistency with transfers between February 2021 and 5 April 2023 OUT OF a scheme that would have given a PPA below 57 to one that had no such protection. We address this further below.

### Block transfers

The legislative provisions for retaining the 2028 PPA on block transfers seem on most counts appropriate and we welcome the removal of the restriction (that applies for 2010 PPA) relating to period of membership in the receiving scheme prior to the block transfer. It is a pity that this has not been removed for the 2010 PPA. We expect that a bulk transfer (which fails the block transfer requirements to protect a 2010 PPA) would be permitted to give a 2028 PPA (provided it meets those requirements for a block transfer). This will need to be made clear in guidance.

We note that "Block transfer" still does not cover partial transfers (which could be particularly relevant for transfers say of just DC benefits where a scheme retains DB liability, as is a common current exercise by trustees for example to master trusts). However our reading is that partial transfers do now fall under the 'other transfer' provisions of paragraph 23ZC so would acquire protection that way albeit on a ring-fenced basis (see our further comments on this in the next section).

As already pointed out by email to HMRC, a point of major concern is that the draft legislation does not seem to give PPA protection for transfers (individual or block) if they happen from a protected scheme into an unprotected scheme (ie from an "age 55" scheme to an "age 57" one) before 6 April 2023. The draft legislation (inserted paragraph 23ZB(4) of FA04 sched 36) currently says that:

> "The block transfer condition is met if the member is a member of the pension scheme ("a transferee pension scheme") as a result of—
>
> (a) a block transfer to the transferee pension scheme from a pension scheme ("the original pension scheme") in relation to which the entitlement condition is met"…

and the immediately preceding inserted 23ZB(3) says that

> "The entitlement condition is met if—

(a) on 5 April 2023 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 57"

If a transfer takes place before 5 April 2023, it seems that the entitlement condition could not be met in the original scheme and so the transfer wouldn't be a block transfer – there would be no protected NMPA.

Although the single date of 5 April 2023 for eligibility for PPA has the effect (as noted above) of giving people a window to join a scheme with a PPA, the present drafting has the (possibly unintended) effect that the protection on transfers applies only for transfers after that date. This is inconsistent with the position whereby if someone had 2028 PPA at 5 April 2023 and then transfers into another scheme they do retain the protection.

There was no highlighting of such a restriction in the material accompanying the draft legislation, so we cannot tell whether this is deliberate policy or unintentional. We do note that a similar potential scenario (reflecting protection against the 50-55 NMPA change) was avoided by way of SI 2006/573 ("Transfers between 10 December 2003 and 5 April 2006"). It is imperative that HMRC make clear whether this is policy intent so that schemes know how to operate currently. If it is not policy intent but a regulatory adjustment will be used for this latest NMPA change, this needs a statement to be made urgently. Alternatively (and preferably) this might be addressed by amendment of the primary legislation eg paragraph 23ZB(4) which at present makes no reference to when the block transfer takes place.

## Other transfers

Paragraph 23ZC would now cover individual transfers or bulk transfers that do not meet all the requirements for a "Block transfer".

- Our reading is that this paragraph would also now apply to transfers to individual buy-out policies in preparation for wind-up (this is unlike the position for older PPAs where it is only by way of additional regulation that transfers to buy-out policies count as block transfers and hence retain the protection). Please could you confirm in guidance that you agree.

- For all non-block transfers, we understand the rationale of HMRC limiting retention of 2028 PPA to just the funds transferred (ie not any previous accrual or benefits accrued subsequently, in the receiving scheme). However this will cause complexity for both schemes and members, as members will end up with different NMPAs in the same scheme. (There are also some scenarios where the benefit of the 2028 PPA could be lost in practice – for example if a trivial or small commutation payment is to be made this must extinguish all rights so would need to be delayed until the regular NMPA of 57.) There will also be a need for the receiving scheme to retain segregated funds and the member will need to make decisions as to which funds they bring into payment/transfer in their retirement journey. Removing the ringfencing would reduce some of the extra complexity that these measures are creating.

- We suggest more clarity is needed in paragraph 23ZC(3) which in subparagraph (b) says 'paragraph 23ZB applied in relation to the transferor scheme and that member or this paragraph applied to those sums or assets and that member as a result of a relevant transfer to the transferor scheme.' It is not clear to us what 'this paragraph' is referring to. It may be clearer to say 'either because of the entitlement or block transfer condition'.

## Appendix 2 - Implementation of the new NMPA from 2028 (for those without a PPA)

(This is largely a bringforward of the points we made in our response to the original consultation, which continue to be relevant.)

The draft legislation changes NMPA to age 57 ‘on and after 6 April 2028’.

This applies for pension benefits and any authorised lump sums whose payment timing is linked to NMPA (lump sum examples are trivial and small commutations, and UFPLS – with PCLS having added complexity).

The position is clear for those with date of birth before 6 April 1971 (who will be over 57 on 6 April 2028) and those with date of birth after 5 April 1973 (who would not have reached age 55 by 6 April 2028).

However it appears to have the following outcomes for members without a PPA and with date of birth between 6 April 1971 – 5 April 1973:

- Taken with the provisions of FA04 s165 (‘No payment of pension may be made before the day on which the member reaches normal minimum pension age’) this appears to imply that such a member who commences a scheme pension before 6 April 2028 but receives instalments of that pension after 6 April 2028 would be receiving unauthorised payments for as long as they are under age 57 – clearly an unsatisfactory position.

  For the 2010 change HMRC clarified by guidance (newsletter 44 in December 2010), that HMRC’s reading of similar law wording then was that whether the NMPA for the benefit concerned is the old or new NMPA is determined by whether the first payment of pension is before or after 6 April [2020]. If HMRC continues with this reading it should be supported by similar clarification in relation to the 2028 change.

  However even this needs to be set out with care – if the intention is that the legislation would require the first instalment of a scheme pension to be paid to such a member before 6 April 2028 in order to capture a 55 NMPA, this could cause problems for a scheme that pays pensions in arrears (so that actual payment of the first instalment might not be before 6 April 2028) so need careful planning by the scheme and be impractical for some dates.

  Alternatively, HMRC could re-set the primary legislation to centre around having “entitlement” to the pension ahead of 6 April 2028 (as was effectively brought for the 2010 change by regulations SI 2011/732 which applied retrospectively from 6 April 2010 for cases which otherwise would fail the primary legislation condition).

- Lifetime annuities are subject to similar considerations as for scheme pension (but in the practical context of a very different typical timing of first pension payment, and a different context for entitlement).

- A similar problem occurs in relation to drawdown (which could be more relevant than in 2010 due to the post 2015 freedoms and the much bigger number of DC pots now). As currently written, any payment of income withdrawal after 6 April 2028 and under member age 57 might be read to be unauthorised. With a clarification from HMRC that their reading is similar to that implied in newsletter 38, if such a member has (before 6 April 2028) designated funds into flexible drawdown, then they would have to make their first income withdrawal before 6 April 2028 if they want to make any further withdrawals before reaching age 57. However the member might not have wanted to make a withdrawal and it would trigger the application of the Money Purchase Annual Allowance at that point.

  To avoid this, the legislation could centre around the timing of the date of benefit crystallisation (ie designation of funds for drawdown, rather than taking payments of

drawdown), so that (perhaps providing there were no further contributions made after the designation date) the remaining fund could be subject to NMPA 55.
(We also think that changes need to be made for drawdown consistent with provisions in Schedule 32 of FA04 that deals with when a first payment for pension or annuity is taken before NMPA.)

- As became evident around the 2010 changes, there are further issues around payment of PCLS (which for good practical reasons can be paid up to 6 months before the entitlement to the associated scheme pension arises but must by law be paid after NMPA).

- As drafted, small lump sums/ trivial commutation lump sums would need either to be paid before 6 April 2028 or else wait until the member reaches age 57.

- As drafted, payment of UFPLS would need either to be paid before 6 April 2028 or else wait until the member reaches age 57. Where an UFPLS has been paid before 6 April 2028 but extinguishes only part of a DC fund, any residual funds remaining at that date would then need to be retained until the member reaches age 57. This is a real issue, as in practice it is common for individuals to wish to split drawing DC into a series of UFPLS to manage income and so as not to face unduly high band tax rates. (If appropriate changes are made to drawdown – see above – perhaps this could be resolved in practice by schemes replacing multiple UFPLS by an initial drawdown designation and multiple withdrawals, but this loses some of the original policy simplicity intent.)

The issues will need to be considered broken down into different characteristics:

- individuals who reach age 55 by 5 April 2028 but have not taken some or all of their benefits from a scheme
- individuals who reach age 55 by 5 April 2028 and have taken some or all of their benefits from a scheme, but then take action that might - without proper wording in legislation – be seen as making future payments unauthorised
- individuals who reach age 57 shortly after 5 April 2028 (and who may commence pension shortly after that date but wish to take the related PCLS before 6 April 2028 when they would have been above the NMPA of 55 at the time)

Based on the legislation for the 2010 change (and 2011 amending regulations) a member's status as regards having commenced a benefit no earlier than the prevailing NMPA was retained following a transfer of pension or funds. We expect that these regulations will work in a similar way for the 2028 change but this needs checking.