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Protected pension ages and the change in NMPA to age 57 in 2028

The government has published a response to the February 2021 consultation on the proposed protected pension age regime following confirmation that normal minimum pension age (NMPA) will increase to age 57 in 2028.

The changes will go ahead with two new easements that affect new joiners and individual transfers. A policy paper published by HMRC explains the new framework for these protections.

Background

NMPA is the minimum age at which members of registered pension schemes can take their pension benefits (unless they meet the ill-health condition). Where an individual takes their benefits earlier, all pension benefits paid before NMPA or protected pension age (whichever is applicable) are treated as unauthorised payments, potentially resulting in substantial tax charges.

Originally, NMPA was age 50, but it was increased to age 55 from 6 April 2010. When this change was implemented, protections were applied to members who before April 2006 had the unqualified right (i.e. employer or trustee consent was not needed) under a trust-based occupational pension scheme's rules to take benefits before age 55. However, various restrictions applied (in particular individuals had to cease working for the employer to whom the benefits related and had to take their benefits on the same date to maintain their protected pension age).

This 2010 protected pension age regime did not apply to members of contract-based personal pension schemes. Right to early access without consent is more common in defined contribution pension schemes than defined benefit schemes, but the wording in the scheme rules is important.

The new protected pension age regime

In 2014, the then coalition government consulted on raising NMPA to age 57 in 2028 to coincide with the rise in State Pension age to 67 (noting that the increase to age 67 is being phased in between

April 2026 and April 2028). The change does not affect anyone who was born before 6 April 1971 (as they will already be age 57 by 6 April 2028).

The government initially proposed to legislate for a similar protection regime to that in place from 2010 for any members who have the unqualified right at 11 February 2021 (the date the consultation was published) to take pension benefits before age 57. The protected pension age would only apply to the pension scheme where the right applies and to all the member's benefits under that scheme; it would not apply to other schemes that the individual was a member of.

The easements proposed for the new regime are unchanged in the government's response. In particular the protected pension age will not be lost by continuing in employment or taking benefits in tranches and certain armed forces, firefighter and police schemes are exempt.

Two new easements

Whether a protected pension age below age 57 applies depends on the wording of the pension scheme rules at 11 February 2021. The government has clarified that as long as the scheme rules give a member an unqualified right to take benefits before age 57, new joiners on or before 5 April 2023 will have a protected pension age which will continue to apply to benefits earned after 5 April 2028.

A block (or bulk) transfer would enable a member to retain their protected pension age, even if the transfer happens more than 12 months after the members join the receiving scheme. The consultation response confirmed that members will also be able to retain their protected pension age on an individual transfer, although it will not apply to new rights in the receiving scheme or rights that may already be held, meaning the transferred rights need to be ringfenced.

What's next?

The draft legislation is part of a joint HMRC and HM Treasury technical consultation about next year's Finance Bill. The consultation ends on 14 September 2021 and covers a number of areas of tax policy (including the changes to Scheme Pays from April 2022).

It is essential that members are given enough notice to plan, as 2028 will come round quickly. Trustees and managers of pension schemes should therefore be starting to consider when they plan to notify members of the increase in NMPA. Rules will also need to be reviewed to see if a protected pension age below age 57 applies.

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